STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0205

Troy K. Scheffler,
Appellant,

vs.

Brian Richard Helget, et al.,
Respondents.

Filed December 12, 2022
Affirmed
Slieter, Judge

Sherburne County District Court
File No. 71-CV-21-84

Peter J. Nickitas, Peter J. Nickitas Law Office, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Janine Kimble, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal, appellant challenges the district court's rule 12.02(e) dismissal of his civil claims arising from respondent-state-trooper's response to a "road rage" traffic incident that involved appellant pointing a handgun at the other driver. Because qualified and official immunity shield respondent state trooper from liability, we affirm.

FACTS

Appellant Troy K. Scheffler sued respondent-state-trooper Brian Richard Helget, alleging violations of his Second and Fourth Amendment rights, and raising state-law claims. The district court dismissed the complaint for failure to state a claim upon which relief can be granted. *See* Minn. R. Civ. P. 12.02(e). We derive the following facts from Scheffler's amended complaint and its attached materials.

On February 11, 2018, Scheffler was driving his vehicle east on Highway 10 in Sherburne County with his service dog when he was rear-ended by another vehicle. Both drivers stopped their vehicles on the shoulder. The other driver approached Scheffler's vehicle and pounded on the window. Scheffler then pointed a handgun he lawfully possessed at the other driver and told him to "[b]ack away immediately," which the other driver did. Both drivers called law enforcement.

While Trooper Helget was on the way to the scene, the dispatcher informed him that Scheffler had a handgun and intended to "leave it on his lap until [the trooper] g[o]t there and then he'll put it in the glove box."

When Trooper Helget arrived, he parked behind the other driver's vehicle and walked past it toward Scheffler's vehicle with his gun drawn. He confirmed that Scheffler's gun was in the glove box and instructed Scheffler to roll the window up, exit the vehicle with his hands raised, and back slowly to the rear of the car. Trooper Helget handcuffed Scheffler and informed him that he was "not under arrest, [he was] being detained . . . until we [do] a further investigation and figure out what's going on."

Trooper Helget placed Scheffler in his patrol car and heard Scheffler's account of what happened. He then talked with the other driver and heard his account of the incident. Trooper Helget decided he would seize Scheffler's gun as potential evidence and prepare a report for the county attorney to make a charging decision.

Trooper Helget returned to his patrol car and, when Scheffler complained about the handcuffs being "kind of tight," removed the handcuffs and returned Scheffler to the back seat. He finished his investigation by obtaining Scheffler's insurance and contact information and gave Scheffler a case number to track his handgun. With Scheffler's help, Trooper Helget retrieved the gun from Scheffler's vehicle. Scheffler then left.

Eleven days later, Scheffler retrieved his gun from the state patrol office in St. Cloud in a prearranged meeting.

In February 2020, Scheffler sued Trooper Helget, alleging violations of his Second and Fourth Amendment rights and state-law claims.

Trooper Helget moved to dismiss the complaint for failure to state a claim upon which relief can be granted and to stay discovery. Attached to this motion, Trooper Helget submitted patrol-car video of the stop and a transcript of the dispatch call. Scheffler filed an amended complaint "attach[ing] and incorporate[ing]" the patrol-car video and the dispatch call Trooper Helget had previously filed with his motion to dismiss and adding an additional common-law claim.[1]

[1] Scheffler also added a claim against the Minnesota Department of Public Safety pursuant to Title II of the Americans with Disabilities Act. Scheffler raises this issue in his appeal but presents no argument in support of his claim of error, so we consider the issue waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Moreover, the district court

The district court granted respondent's motion to dismiss Scheffler's amended complaint. Scheffler appeals.

DECISION

We "review de novo whether a complaint sets forth a legally sufficient claim for relief . . . [,] accept[ing] the facts alleged in the complaint as true and construe[ing] all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted); *see also Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786, 790 (Minn. 2019). We "consider only the facts alleged in the complaint, accepting those facts as true." *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted). If, on a motion to dismiss for failure to state a claim upon which relief can be granted, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56," including by giving the parties "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Minn. R. Civ. P. 12.02. However, "a court may consider documents referenced in a *complaint* without converting the motion to dismiss to one for summary judgment." *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004). The materials must be referenced in the complaint itself. *See id.* at 491 (concluding it was error to consider affidavits "not referenced in or a part of the pleading that was the subject of the motion to dismiss").

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concluded that this claim fails because Scheffler does not allege that he was *actually* "excluded from participation in or . . . denied the benefits of" any "services, programs, or activities of a public entity," which is required to state a claim pursuant to Title II of the ADA. 42 U.S.C. § 12132 (2018).

Because Scheffler's amended complaint referenced the attached patrol-car video and dispatch-call audio, the district court properly considered these materials in its rule 12.02(e) dismissal, and we apply the rule 12.02(e) standard.

I. Qualified Immunity

"Qualified immunity is a defense available to public officials sued for damages under 42 U.S.C. § 1983. Qualified immunity shields government officials from civil liability if 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mumm v. Mornson*, 708 N.W.2d 475, 483 (Minn. 2006) (citation omitted) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Questions of qualified immunity "should be resolved at the earliest possible stage to shield officers from disruptive effects of broad-ranging discovery and effects of litigation." *Elwood v. Rice County*, 423 N.W.2d 671, 675 (Minn. 1988) (citing *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987)). To give effect to this goal, plaintiffs must provide more than conclusory allegations they hope to find factual support for during discovery, and "should supply in their complaints or other supporting materials greater factual specificity and particularity than is usually required." *Id.* at 676 (quotation omitted). We review *de novo* whether qualified immunity applies. *Mumm*, 708 N.W.2d at 481.

For alleged constitutional violations, determining if qualified immunity applies requires determining "whether the facts alleged are adequate to show a constitutional violation," and deciding "whether the law regarding the right allegedly violated 'was clearly established.'" *Id.* at 483 (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

However, strict application of both steps is not mandatory if one resolves the issue. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). "Whether the law regarding the right was clearly established is a legal question for the court." *Mumm*, 708 N.W.2d at 483-84.

Scheffler argues that his Second and Fourth Amendment rights were violated by the temporary seizure of his gun and his confinement in the patrol car while Trooper Helget investigated.

The Second Amendment protects "the right of the people to keep and bear arms." U.S. Const. amend. II. "Lawful seizure and retention of firearms, however, does not violate the Second Amendment . . . [and] even the *unlawful* retention of specific firearms does not violate the Second Amendment, because the seizure of one firearm does not prohibit the owner from retaining or acquiring other firearms." *Rodgers v. Knight*, 781 F.3d 932, 941-42 (8th Cir. 2015). Thus, the temporary seizure of Scheffler's gun did not violate a clearly established Second Amendment right.

The Fourth Amendment protects against "unreasonable searches and seizures." U.S. Const. amend. IV. "[I]n the ordinary case," seizure of property pursuant to a valid search "is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity." *Texas v. Brown*, 460 U.S. 730, 741-42 (1983) (quoting *Payton v. New York*, 445 U.S. 573, 587 (1980)). The Supreme Court "frequently has remarked [that] probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would warrant a [person] of reasonable caution in the belief that certain items may be . . . useful as evidence of a crime." *Id.* at 742 (quotation

and citation omitted). The officer's belief does not need to be "more likely true than false." *Id.*

When Trooper Helget temporarily seized Scheffler's gun, he had been informed that there had been a "road rage" incident and that Scheffler had pointed a loaded handgun at the other driver. On these facts, "a [person] of reasonable caution" could believe that Scheffler intended to cause the other driver fear of immediate bodily harm, which would be a crime for which the gun would be useful evidence. *Id.* (quotation omitted); *see also* Minn. Stat. §§ 609.222 (criminalizing assault with a dangerous weapon), .02, subds. 6 (defining "dangerous weapon" as "any firearm, whether loaded or unloaded"), 10(1) (defining "assault" as "an act done with intent to cause fear in another of immediate bodily harm or death") (2016). Thus, seizure of Scheffler's gun as potential evidence was reasonable and, therefore, not in violation of the Fourth Amendment.

Scheffler also argues that his Fourth Amendment rights were violated by Trooper Helget "extending the detention beyond the time needed to complete the traffic-ticketing process" without "reasonable suspicion that other criminal activity may be afoot."

Confinement in a patrol car may be reasonable if it relates to the lawful basis for a stop, furthers investigation of a lawfully discovered offense, or protects officer safety. *State v. Askerooth*, 681 N.W.2d 353, 369-70 (Minn. 2004). Minnesota applies the principles and framework set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), to determine whether seizure during a traffic stop is reasonable. *State v. Sargent*, 968 N.W.2d 32, 38 (Minn. 2021). *Terry* provides a two-prong analysis which first asks, "whether the traffic stop was justified at its inception," then whether the "scope and methods of a search or

seizure" invalidated the stop by making it "intolerable in its intensity or scope." *Id.* (quotations omitted).

Trooper Helget detained Scheffler in his patrol car because he believed it was necessary to separate the two individuals whose recent conflict involved Scheffler pointing his handgun at the other person, and the handgun remained in Scheffler's car. Trooper Helget reasonably detained Scheffler in the patrol car while he investigated the potentially deadly traffic incident, ensuring his own safety and the safety of the other driver. *See State v. Moffatt*, 450 N.W.2d 116, 120 (Minn. 1990) ("The officers had the choice of leaving the men in the stopped car, but that would have been foolish because the officers were investigating the possible involvement of the men in a burglary and the men might have had one or more weapons in the car.").

Furthermore, Scheffler's detention lasted only approximately 37 minutes, and during the entire time Trooper Helget was questioning the parties involved, collecting insurance and contact information, and preparing a report. When Scheffler complained that the handcuffs were uncomfortable, Trooper Helget removed them. He also warned Scheffler to "watch [his] foot" when he closed the patrol-car door, sympathized with him about the back seat being cramped because of equipment the trooper carried, and offered to open a window if Scheffler was too hot. Nothing about the temporary detention indicates an intolerable scope, duration, or intensity. *See id.* at 119 (noting that the reasonableness of the time someone is detained is fact-specific and that a 61-minute detention was reasonable). The facts do not show that the detention of Scheffler violated the Fourth Amendment, and the district court properly applied qualified immunity.

II. Official Immunity

"[T]he doctrine of common law official immunity provides that 'a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong.'" *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004) (quoting *Elwood*, 423 N.W.2d at 677). In this context, "[m]alice means nothing more than the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right." *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991) (quotation omitted). "[W]hether official immunity applies turns on: (1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious." *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014). "[T]he conduct of police officers in responding to a dispatch or making an arrest involves precisely the type of discretionary decisions, often split-second and on meager information, that [the supreme court] intended to protect from judicial second-guessing through the doctrine of official immunity." *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 665 (Minn. 1999). We review *de novo* whether official immunity applies. *Anoka Hennepin*, 678 N.W.2d at 655.

Scheffler argues that the district court erred by dismissing his state-law claims because it misapplied the malice standard and "cherry-picked" facts.

"In order to find malice, the court must find that 'the wrongful act so unreasonably put at risk the safety and welfare of others that as a matter of law it could not be excused

or justified.'" *Vassallo*, 842 N.W.2d at 465 (quoting *Kari v. City of Maplewood*, 582 N.W.2d 921, 925 (Minn. 1998)). As previously discussed, Scheffler's confinement in the patrol car and the seizure of his gun were reasonable. And nothing in Scheffler's complaint or the incorporated materials suggest that Trooper Helget's actions "put at risk the safety and welfare of others." *Id.* (quotation omitted).

Contrary to Scheffler's argument that the district court erroneously based its lack-of-malice conclusion on the fact that "Trooper Helget was respectful, polite, [and] thoughtful," the district court cited the correct law and thoroughly explained why Trooper Helget's actions were reasonable. Our *de novo* review of the complaint and incorporated materials confirms the district court's analysis and conclusion. *See Anoka Hennepin*, 678 N.W.2d at 655.

Scheffler also argues that the district court "'cherry-picked' [facts] for its narrative," citing a Seventh Circuit case reversing a federal rule 12(b)(6) dismissal. *See Federated Mut. Ins. Co. v. Coyle Mech. Supply Inc.*, 983 F.3d 307, 312 (7th Cir. 2020). But the district court order shows only appropriate selection of the relevant facts and, moreover, *Federated* interpreted the federal civil-procedure rules, not the Minnesota rules.[2]

Affirmed.

[2] Scheffler also argues that his complaint was erroneously dismissed because the district court had approved his application to proceed *in forma pauperis*. This argument is unpersuasive because it conflates the separate standards applied to an application to proceed *in forma pauperis* and a rule 12.02(e) motion to dismiss.