

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1322**

State of Minnesota,
Respondent,

vs.

Jose Alarcon,
Appellant.

**Filed August 21, 2023
Affirmed
Gaïtas, Judge**

Steele County District Court
File No. 74-CR-20-1076

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Daniel McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Gaïtas, Judge; and Florey, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Jose Alarcon appeals his convictions, following a jury trial, for attempted third-degree criminal sexual conduct and electronic solicitation of a child. He argues that the district court erred in denying his pretrial motion to suppress evidence after determining that a police officer had a reasonable and articulable suspicion of criminal activity that justified the officer's decision to seize him. Because the district court did not err when it denied Alarcon's motion to suppress, we affirm.

FACTS

A late-night encounter with a police officer in a parking lot ultimately led to Alarcon's arrest for sexually soliciting a 13-year-old girl earlier in the day. Following Alarcon's arrest, respondent State of Minnesota charged him with third-degree criminal sexual conduct and electronic solicitation of a child. Alarcon filed a motion to suppress the evidence, asserting that the police officer had illegally seized him during the encounter in the parking lot. The district court presided over an evidentiary hearing on Alarcon's motion.

At the hearing, the officer testified that, while patrolling at approximately 12:45 a.m., he received a report regarding a young teenager who was solicited for sexual activity. According to the officer, the allegations were "very similar" to a report he had received earlier in the day.

He proceeded to respond to the report, but his attention was soon drawn to a silver Chevrolet pickup truck, which slowly drove through a closed gas station parking lot. The

pickup truck did not approach the gas pumps but instead continued driving slowly into another nearby parking lot for several closed businesses. According to the officer, the pickup truck parked in an “out of the way” spot and then its headlights turned off.

The officer testified that he had received information about a stolen silver Chevrolet pickup truck earlier in the evening. He noted that the stolen pickup truck had a “topper” on it, and the pickup truck in the darkened parking lot did not. But the officer explained that a topper can be removed. Based on the reported theft of a similar vehicle, the officer decided to further investigate the pickup truck.

Without using his squad car lights, the officer entered the parking lot. He drove toward the pickup truck and parked behind it, leaving enough room for the pickup truck to back out. The officer testified that he intended to run the pickup truck’s license plate to determine whether it was the stolen vehicle. But before he could run the plate, a man, ultimately identified as Alarcon, exited the pickup truck and approached the officer’s squad car.

The officer testified that Alarcon’s conduct put him “on alert” because, in his experience, when a suspect exits a vehicle, it suggests the suspect is attempting to distance from “whatever’s going on [in the vehicle].” Given this concern, the officer got out of his squad car to speak with Alarcon. Alarcon told the officer that the pickup truck was not working properly, and they briefly discussed the alleged problem with the vehicle. The officer noticed that Alarcon repeatedly turned his head to look around. He thought Alarcon seemed nervous and “fidgety.” The officer testified that this conduct also put him “on

alert” because, in his experience, fidgeting can be a sign that a suspect will flee or return to a vehicle to “get some kind of who knows what[.]”

Based on the officer’s observations, he asked Alarcon to provide his driver’s license. Alarcon complied and produced a driver’s license.

According to the officer, when he saw the name on the driver’s license—Jose Alarcon, Jr.—he wondered whether Alarcon was the individual involved in the solicitation offenses. The officer recalled that the suspect in the report from earlier in the day had used a name containing “junior.”

When backup law enforcement arrived, the officer who stopped Alarcon further investigated both the vehicle theft and the solicitation offense. The officer learned that Alarcon’s pickup truck, which was a 2012 model, was not stolen; the vehicle that had been reported stolen was a 2011 model of the same pickup truck. But the officer discovered that the suspect in the solicitation incident had used the name “Joe Junior” and drove a silver pickup truck. The officer ultimately arrested Alarcon in connection with that offense.

During the evidentiary hearing, the state introduced video from the officer’s squad car camera and body camera. Those videos show Alarcon’s driving conduct and the officer’s initial interaction with Alarcon.¹

Following the evidentiary hearing, the district court denied Alarcon’s suppression motion in a written order. The district court credited the officer’s testimony about the encounter with Alarcon, including the officer’s observations based on his training and

¹ Two other police officers testified at the evidentiary hearing, but their testimony is not relevant to the issues on appeal, and we do not summarize it here.

experience. And the district court determined that the officer had a reasonable and articulable suspicion that Alarcon was involved in criminal activity, which justified an investigatory seizure.

Alarcon had a jury trial, and the jury found him guilty of both attempted third-degree criminal sexual conduct and electronic solicitation of a child. The district court sentenced Alarcon to 71 months in prison.

Alarcon appeals.

DECISION

Alarcon argues that the district court erred in denying his motion to suppress the evidence. According to Alarcon, the police officer seized him without a lawful basis when the officer asked him for his driver's license during their encounter in the parking lot. Alarcon contends that, because the officer did not have a reasonable and articulable suspicion of criminal activity, the request for his driver's license violated the federal and state constitutions, requiring suppression of the resulting evidence.

In reviewing a district court's order on a motion to suppress, the appellate court reviews factual findings for clear error and legal conclusions de novo. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). "Findings of fact are clearly erroneous if, on the entire evidence, [the appellate court is] left with the definite and firm conviction that a mistake occurred." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010). Whether an officer had a reasonable, articulable suspicion of criminal activity is a question of law that is reviewed de novo. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

The Fourth Amendment of the United States Constitution, and article I, section 10 of the Minnesota Constitution, prohibit unreasonable searches and seizures. Warrantless searches and seizures are unreasonable under both the state and federal constitutions unless a recognized warrant exception applies, *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009), and the state must show that such an exception applies, *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

One exception to the warrant requirement permits limited investigatory seizures. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). Under this exception, a police officer may briefly detain an individual when the officer “has a reasonable, articulable suspicion that criminal activity is afoot.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968))). There is a reasonable, articulable suspicion if “the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21. The “reasonableness inquiry considers the ‘totality of the circumstances,’ including the special training, experience, and ability of law enforcement officers to make inferences and deductions beyond that of the average person.” *State v. Sargent*, 968 N.W.2d 32, 38-39 (Minn. 2021) (quoting *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007)).

“To determine whether the officer’s actions meet an objective standard of reasonableness the court should ask whether with the facts available to the officer at the moment of the seizure or search, would a person of reasonable caution believe that the action taken was appropriate.” *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992). “The

test for appropriateness, in turn, is based on a balancing of the government's need to search or seize 'and the individual's right to personal security free from arbitrary interference by law officers.'" *Askerooth*, 681 N.W.2d at 365 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)). And "[f]inally, it is the state's burden to show that a seizure was sufficiently limited to satisfy these conditions." *Id.*

However, not all encounters between the police and citizens constitute investigatory seizures. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993) (citing *Terry*, 392 U.S. at 19 n.16). To decide whether there was a seizure, a court must consider "whether, looking at all of the facts, the conduct of the police would communicate to a reasonable person in the defendant's physical circumstances an attempt by the police to capture or seize or otherwise to significantly intrude on the person's freedom of movement." *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993); accord *United States v. Mendenhall*, 446 U.S. 544, 554-55 (1980).

An officer's request for identification does not automatically constitute a seizure. *State v. Pfannenstein*, 525 N.W.2d 587, 589 (Minn. App. 1994), *rev. denied* (Minn. Mar. 14, 1995). But a seizure may still occur if an officer exhibits a show of authority such that a reasonable person would not feel free to decline the request for identification. *Id.*

Although the parties agree on appeal that the officer seized Alarcon at some point during the encounter in the parking lot, they dispute when the seizure occurred. As noted,

Alarcon contends that the officer seized him by requesting his driver's license. The state argues that the seizure occurred after the officer had Alarcon's driver's license in hand.²

We need not decide this question. Even assuming that Alarcon is correct—that a seizure occurred when the officer requested Alarcon's driver's license—we conclude that it was supported by a reasonable and articulable suspicion of criminal activity.

Based on the totality of the circumstances that existed before the officer requested Alarcon's driver's license, the officer had an objectively reasonable and articulable suspicion that Alarcon was involved in criminal activity. The officer observed that Alarcon engaged in suspicious driving conduct at a late hour; Alarcon was driving a pickup truck that largely matched the description of a reported stolen vehicle; Alarcon parked the pickup truck in a parking lot for businesses that were closed; Alarcon abruptly exited his car when the officer pulled into the parking lot behind him, suggesting that there was possibly something suspicious in the car; and Alarcon's behavior was nervous and fidgety, alluding that Alarcon might flee or do something worse. Together, these circumstances objectively indicated that criminal activity was afoot. Because the officer had an objectively reasonable suspicion that Alarcon was engaged in criminal activity, the officer had a constitutionally valid basis to detain Alarcon for further investigation. Thus, even

² The district court did not expressly address the question of when the initial seizure occurred, but instead determined that, when the encounter ultimately shifted from a voluntary interaction to a seizure, it was justified by a reasonable and articulable suspicion of criminal activity. This determination was consistent with the argument that Alarcon made below. At the suppression hearing, Alarcon argued that “the seizure . . . should have stopped once the officer found out the . . . truck was not the one that was reported stolen and that the expansion of this investigation was against [Alarcon's] rights.”

assuming without deciding that the officer's request for Alarcon's driver's license was an investigative stop, the officer's conduct was lawful.

Alarcon argues that the factual circumstances, when viewed in isolation, did not create a reasonable suspicion of criminal activity. He cites caselaw recognizing that driving conduct may not constitute a reasonable suspicion of criminal activity, that vague allegations of a stolen vehicle may not support a seizure, and that nervousness alone may not justify an investigatory stop. But, as noted, the law requires us to consider the totality of the circumstances, and not isolated facts, when deciding whether an investigatory stop was lawful. *Sargent*, 968 N.W.2d at 38. Considering the circumstances together, as we must, we conclude that the officer's observations created an objectively reasonable suspicion of criminal activity.

Alarcon also argues that, even considered together, the factual circumstances in his case did not establish reasonable suspicion. He identifies two Minnesota Supreme Court cases that he contends support his position.

Alarcon points to *State v. Burbach*, where the supreme court determined that an officer did not have a reasonable and articulable suspicion of criminal activity sufficient to justify a search for drugs following a legal traffic stop. 706 N.W.2d 484, 491 (Minn. 2005). There, the officer testified that he suspected drug activity based on the driver's violation of the posted speed limit and her nervousness, and the officer recalled that he had seen the driver's name and license plate number on a list of suspicious vehicles. *Id.* at 489-90. The supreme court concluded that the officer's observations were "weak evidence" of drug possession at best and did not support an objectively reasonable suspicion of drug

possession sufficient to expand the scope of the stop by requesting the driver's consent to search the car. *Id.* at 490. Alarcon also contends that his case is similar to *Diede*, where the supreme court again considered whether an officer had a reasonable and articulable suspicion of drug activity that supported the officer's decision to expand a lawful stop into a more intrusive drug investigation. 795 N.W.2d at 840-41. The supreme court determined in *Diede* that the officer did not have a sufficient basis to suspect that a driver was involved in drug activity based solely on the conduct of her passenger, who was arrested during the stop for previous drug sales and may have tossed something from his pocket into the vehicle immediately before his arrest. *Id.* at 843-46.

Neither *Burbach* nor *Diede* affect our analysis here, however. The decisions in those cases were limited to the specific factual circumstances presented. Here, the totality of the specific factual circumstances provided the officer with an objectively reasonable and articulable suspicion that Alarcon was engaged in criminal activity.

Likewise, we are not persuaded by Alarcon's argument that the officer's decision to detain him was unlawful because there were potential innocent explanations for his suspicious activity. The case that Alarcon cites for this proposition, *State v. Baumann*, does not require a police officer to rule out possible innocent explanations for factual circumstances that reasonably suggest criminal activity. 759 N.W.2d 237, 240 (Minn. App. 2009), *rev. denied* (Minn. Mar. 31, 2009). Indeed, *Baumann*, implicitly rejected this argument and concluded that there was a reasonable and articulable suspicion of criminal activity notwithstanding the possibility of an innocent explanation for the facts. *Id.* at 241.

Finally, Alarcon argues that two of the district court’s factual findings in its order denying suppression were clearly erroneous. Alarcon contends that the district court erred in finding that Alarcon’s actions in exiting the pickup truck and approaching the officer “prompted [the officer] to request [Alarcon]’s ID.” And he asserts that the district court erred in finding that he parked “behind” the gas station in a parking lot that was “out of the way.” But based on our review of the evidence, including the videos from the squad car and the officer’s body camera, we determine that these findings are supported by the record and are not clearly erroneous.

In sum, applying de novo review, we determine that the officer had a lawful basis for an investigative stop at the time he requested Alarcon’s driver’s license because the facts available to the officer created an objectively reasonable and articulable suspicion that Alarcon was involved in criminal activity. Because the officer had a lawful basis to perform an investigative stop, his conduct did not violate Alarcon’s constitutional rights, and the district court did not err in denying Alarcon’s motion to suppress the evidence.

Affirmed.