

*This opinion is nonprecedential except as provided by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
A23-0783**

State of Minnesota,
Respondent,

vs.

Lisa Marie Hellerud-Schuth,
Appellant.

**Filed April 1, 2024
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-19-1515

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anneliese L. McCahery, Robbinsdale City Prosecutor, Eckberg Lammers, P.C., Stillwater,
Minnesota (for respondent)

Robert M. Christensen, Robert M. Christensen, P.L.C., Minneapolis, Minnesota (for
appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and
Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In a direct appeal from a judgment of conviction for third-degree driving while impaired (DWI), appellant argues that the district court erred in denying her motion to suppress evidence. She contends a law-enforcement officer unlawfully seized her by (1) showing authoritative force when the officers first approached as she sat in a parked vehicle and (2) questioning her after the initial suspicion that she was a “slumper” was dispelled. Because we determine that appellant was not unlawfully seized, we affirm.

FACTS

In January 2019, respondent State of Minnesota charged appellant Lisa Marie Hellerud-Schuth with third-degree DWI under Minn. Stat. § 169A.20, subd. 1(5) (2018), for having an alcohol concentration of 0.08 within two hours of being in physical control of a motor vehicle. Appellant moved to suppress the evidence and dismiss the charge, arguing, among other things, that she was “seized in violation of the . . . constitutional and statutory protections against unreasonable searches and seizures.” At a hearing on appellant’s motion, a law-enforcement officer testified and the district court received squad-car and body-camera videos into evidence. The following summarizes the evidence received at the hearing and the district court’s order denying appellant’s motion to suppress and dismiss.

On December 22, 2018, around 9:40 a.m., the first law-enforcement officer “responded to a report of a possible slumper” in Robbinsdale.¹ Dispatch advised the first officer that a 911 caller reported “that [a] vehicle had been stationary for around 30 minutes and the driver’s head was down.” When the first officer arrived at the location reported by the 911 caller, he “observed a car parked on the curb in a residential area” and “noticed that the car was running.” The first officer “parked his police SUV about a car-length behind and a little to the left” of the parked car.

A second law-enforcement officer “was one block behind [the first] officer.” The second officer “parked her police SUV next to” the first officer’s SUV; the second officer’s SUV was in the middle of the street “about a car length behind [appellant]’s car, and slightly at an angle toward it.” The second officer got out of her SUV and approached appellant’s car; the second officer “stayed several feet behind” the first officer, who “walked up to and talked” to appellant.

The first officer approached the driver-side door and saw appellant “in the driver’s seat with her head down.” The first officer could not tell if appellant was conscious until he reached the driver-side window and “saw that she appeared to be texting on her phone.” He also observed that the keys were in the ignition. The first officer knocked on the driver-side window “to explain why he was there,” at which point appellant “opened her

¹ The first officer testified that a “slumper” refers to “a person . . . in a motor vehicle . . . that appears to be either unconscious or . . . not doing what a normal person would be doing in that circumstance.”

car door.” The first officer “promptly detected the smell of alcohol” and noticed that appellant’s eyes were “bloodshot and watery” and her speech was “thick.”

The first officer informed appellant that “someone called and was concerned” because it “looked like [she] might have been slumped over in [her] car.” Appellant replied that she “was just responding to some text messages.” Appellant also said that she had been “with a friend . . . right down the street” and was going home to Waconia. The first officer asked appellant how much she had to drink; appellant responded, “Not much.” The first officer asked appellant to exit her vehicle. Appellant complied and performed field sobriety tests. The first officer determined that appellant was intoxicated and arrested her.

Appellant’s motion to suppress argued that she was unlawfully seized because the officers (1) approached her “in a forceful, authoritative manner” such that a reasonable person “would not have felt free to leave” and (2) lacked “reasonable suspicion of criminal activity or medical emergency” to question appellant once they saw she “was conscious and texting on her cellphone and was, therefore, not a ‘slumper.’”

The state opposed appellant’s motion, and the district court denied the motion after determining that the officers’ “initial contact did not entail a seizure.” The district court also determined that the first officer “did not initially intend to question” appellant “except to ask if she was all right and to tell her why he had been called to check on her.” Even so, once the first officer “smelled alcohol from inside the car, [he] properly expanded the welfare check to a DWI investigation.”

The parties agreed to a stipulated-evidence trial under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, and the district court found appellant guilty of third-degree DWI. The district court sentenced appellant to 365 days in jail and stayed all but 30 days.

This appeal follows.

DECISION

“When reviewing a district court’s pretrial order on a motion to suppress evidence, [appellate courts] review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). “Findings of fact are clearly erroneous if, on the entire evidence, [appellate courts] are left with the definite and firm conviction that a mistake occurred.” *State v. Anderson*, 784 N.W.2d 320, 334 (Minn. 2010). Appellate courts “may independently review the facts and determine whether, as a matter of law, the district court erred in suppressing or not suppressing the evidence.” *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004).

Both the United States and the Minnesota Constitutions prohibit “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Not all contact between citizens and police constitutes a seizure.” *State v. Cripps*, 533 N.W.2d 388, 390 (Minn. 1995). A seizure occurs “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). In determining whether a seizure has occurred, appellate courts consider if, under totality of the circumstances, “a reasonable person would have believed that he or

she was neither free to disregard the police questions nor free to terminate the encounter.” *Cripps*, 533 N.W.2d at 391.

The following circumstances could indicate that a seizure has taken place: “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quotation omitted). A person generally is not seized, however, “merely because a police officer approaches him in a public place or in a parked car and begins to ask questions.” *Id.* For example, this court has held that an officer approaching a stopped vehicle “to check on the welfare of its occupants” is not a seizure. *State v. Klamar*, 823 N.W.2d 687, 693 (Minn. App. 2012); *see also State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993) (holding that the standard is always whether “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” and that when an officer approaches to offer help, a reasonable person would not feel seized).

Appellant acknowledges that an unconstitutional seizure does not occur “when an officer walks up to a stopped vehicle to see if there is a problem and observes the driver is intoxicated.” Appellant argues, however, that the district court erred in denying her motion to suppress and dismiss because she was “unlawfully seized” upon her initial contact with the officers. Appellant argues she was “seized” when the officers first approached her because they did so “in an authoritative manner.” Alternatively, appellant argues that she was seized when the first officer spoke with and questioned her after he saw appellant was

“conscious and texting” and his “initial suspicion [was] dispelled.” We address these arguments in turn.

I. Law enforcement did not seize appellant when they first approached her.

Appellant argues that a reasonable person would not have felt free to terminate the encounter because the officers first approached her “with an authoritative show of force.” She points to these circumstances: the positioning of the officers’ squad cars was “not normal parking conduct”; two officers were present; the first officer approached appellant “wearing his police uniform with a badge and a gun with his hand on it”; and the first officer knocked on the driver-side window and “open[ed] the car door without [appellant’s] consent.” The state argues that the officers “made no action to show any physical force, authority, or otherwise restrain [appellant’s] liberty.”

The district court concluded that law enforcement’s “initial contact did not entail a seizure” because appellant “did not perceive most of” the events she contended were “an authoritative show of force,” either because the events were outside her field of vision or because the alleged events did not occur. The district court found that appellant “could not see either police vehicle” or the second officer, who “was behind” the first officer, “before she opened her [car] door.” The district court also found that the first officer “did not have his hand on his gun” and that appellant “was the one who opened the door,” not the first officer.

The body-camera and squad-car videos depict how the officers parked their squad cars. Appellant’s car was parked along the curb. Both squad cars pulled up next to each

other and behind appellant's car with their emergency lights off. The second officer parked her squad car in the middle of the street, angled toward appellant's left rear tire.

The videos also show that the first officer approached appellant's driver-side window from the rear with no hand on his gun, which was on his right hip. The second officer remained in the street, well behind the first officer. When the first officer neared appellant's driver-side window, he said, "Texting." The first officer then knocked on the window with his right hand. The second officer stood several feet behind the rear end of appellant's car. Appellant's head was down, her phone in her lap. As soon as the first officer knocked, appellant looked up and opened her door "a few inches," at which point the first officer opened the car door "all the way," as described in the first officer's testimony.

We conclude that the district court's factual findings were not clearly erroneous. *See Gauster*, 752 N.W.2d at 502 (applying a clear-error standard of review to the district court's findings of fact on a motion to suppress). The videos support the district court's findings that the first officer did not have his hand on his gun and that appellant opened her car door, not the first officer.

As for appellant's argument about the presence of two officers and their "not normal parking conduct," the videos support the district court's findings that appellant could not see the parked squad cars or the second officer before she opened her car door. Indeed, appellant's head was down until the first officer knocked. The second officer stood several feet behind the first officer. Both squad cars were behind appellant's car and did not block

her car. As the first officer spoke to appellant, he asked how she was and explained his concern based on the 911 call.

In short, the officers did not seize appellant when they first approached her because they did not make a show of force such that a reasonable person would believe she was not free to leave. We are instructed by *Harris*, in which the supreme court determined that no seizure occurred because it did “not appear that the officers acted in a threatening manner.” 590 N.W.2d at 99, 102 (quotation marks omitted). The supreme court stated that, though armed, the officers did not “display[] a weapon,” did not touch Harris, and questioned Harris using “a low key, easy-going tone of voice.” *Id.* at 96, 102-03. Here, the first officer likewise did not touch appellant upon approaching, was armed but did not display a weapon, and used an easy-going tone of voice. Thus, the totality of the circumstances indicates that no seizure occurred when the officers first approached appellant.

II. Law enforcement did not seize appellant by questioning her after they found her texting and conscious.

Appellant argues that once the first officer saw appellant was “conscious and texting” and therefore “not a ‘slumper,’” he should have ended the encounter because the initial suspicion was dispelled. The state argues that “law enforcement is allowed to make contact with a driver—even if the basis for the stop has been resolved prior to contact with the driver—to explain the reason for the stop and to advise that the driver is free to leave.” The state also notes that as soon as the first officer spoke with appellant, he “observed indicia of impairment and he properly expanded the interaction into a DWI investigation.”

The district court reasoned that the first officer “acted properly in checking on” appellant, even though “immediately before” the first officer “reached the car window he could see that [appellant] was hunched over, texting on her phone.” The district court found that the first officer “did not initially intend to question [appellant] except to ask if she was all right and to tell her why he had been called to check on her.” The district court also found, however, that once appellant opened her car door, the first officer “smelled alcohol from inside the car” and “properly expanded the welfare check to a DWI investigation.”

Appellant argues that this case is like *State v. Hickman*, in which an officer stopped Hickman’s car because of an expired vehicle-registration sticker. 491 N.W.2d 673, 674 (Minn. App. 1992), *rev. denied* (Minn. Dec. 15, 1992). While still seated in his squad car after stopping Hickman’s car, the officer saw a temporary permit in the corner of Hickman’s rear window and confirmed that the permit was valid. *Id.* The officer then approached Hickman, asked for his driver’s license, and discovered that Hickman did not have a valid license. *Id.* The district court granted Hickman’s motion to suppress the evidence from the stop and dismissed the charge of driving after license revocation. *Id.* This court affirmed, determining that “detaining Hickman to check his driver’s license constituted an unlawful intrusion because [the officer’s] suspicions about the vehicle’s registration had been dispelled before he approached” Hickman. *Id.* at 675.

We are not persuaded that this case is like *Hickman*. At no point was appellant seized, unlike Hickman, who was seized when the officer stopped his car based on an expired vehicle-registration sticker. Thus, the continuation of the stop in *Hickman* after “the officer no longer had articulable and reasonable suspicion . . . that any criminal

activity was afoot” was unconstitutional. *Id.* Here, however, the first officer’s contact with appellant was a lawful welfare check and not a seizure. “It is not a seizure under the fourth amendment for an officer to approach and talk to a driver seated in a parked vehicle . . . even when there is no indication that the occupants of the vehicle are engaged in criminal activity, to determine whether they need assistance.” *Paulson v. Comm’r of Pub. Safety*, 384 N.W.2d 244, 245 (Minn. App. 1986); *see also Klamar*, 823 N.W.2d at 693 (determining that an officer may lawfully approach a stopped vehicle “to check on the welfare of its occupants”). We also note that appellant’s texting did not entirely dispel the suspicion that she was a slumper, because the 911 caller reported that appellant was a slumper and appellant may have woken up after the 911 caller’s observation.

Once appellant opened the door, the first officer detected an odor of alcohol and had a lawful basis to expand the welfare check to inquire further and request field sobriety tests.² *See State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001), *rev. denied* (Minn. Sept. 25, 2001) (“Because the odor of alcohol provided [the officer] with reasonable suspicion of criminal activity . . . she had a lawful basis to . . . conduct an investigation.”).

In sum, appellant was not illegally seized because the officers did not engage in an authoritative show of force when they first approached appellant’s car, the first officer

² Appellant’s brief to this court also argues that she was seized because the first officer “demand[ed]” her driver’s license and asked “incriminat[ing]” questions. The first officer’s body-camera video shows that he asked for appellant’s license only after she was arrested and in the squad car. The body-camera video also shows that the first officer questioned appellant only after the point at which, he testified, he detected the smell of alcohol. Appellant does not challenge the district court’s determination that the smell of alcohol allowed the first officer “to expand the welfare check into a DWI investigation.”

conducted a lawful welfare check, and then the first officer lawfully expanded the investigation after he detected the odor of alcohol.

Affirmed.