

*This opinion is nonprecedential except as provided by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
A24-0660**

State of Minnesota,
Respondent,

vs.

Luther Boris Cousette,
Appellant.

**Filed February 3, 2025
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CR-21-706

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Evan A. Ottaviani, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Worke, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction of unlawful possession of a firearm, appellant argues that the district court erred in denying his motion to suppress evidence because police did not have a legal basis to seize him. Because police had

reasonable, articulable suspicion of criminal activity, the district court properly denied appellant's suppression motion, and we affirm.

FACTS

Respondent State of Minnesota charged appellant Luther Boris Cousette with unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2020). Cousette moved to suppress the state's evidence, arguing that his seizure by police was not supported by reasonable, articulable suspicion of criminal activity.

At a hearing on the suppression motion, a law-enforcement officer testified that, shortly before 1:00 a.m. on October 31, 2020, he observed a vehicle with three occupants parked in a "high-crime area." The officer also observed that the vehicle did not have license plates. Because the vehicle was missing license plates and was parked in an area which had a recent history of burglaries, the officer "initiated an investigatory stop." Cousette was sitting in the driver's seat. A firearm was found during a subsequent search of the vehicle. The officer's report and footage from his body-worn camera were admitted into evidence.

The district court denied Cousette's suppression motion, reasoning that the vehicle's location next to a closed business, in an area with a history of burglaries, with missing license plates, and in the "middle of the night," together provided the officer with reasonable suspicion of criminal activity.

Following a stipulated-facts trial, the district court found Cousette guilty of unlawful possession of a firearm. The district court convicted Cousette and sentenced him to 60 months' imprisonment.

Cousette appeals.

DECISION

“When reviewing a pretrial order on a motion to suppress evidence, [appellate courts] review the district court’s factual findings under a clearly erroneous standard and its legal determinations de novo.” *State v. Gibson*, 945 N.W.2d 855, 857 (Minn. 2020) (quotation and citation omitted). Appellate courts “may independently review facts that are not in dispute, and determine, as a matter of law, whether the evidence need be suppressed.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). “We will not reverse a correct decision by the district court simply because we disagree with its reasoning.” *State v. Eichers*, 840 N.W.2d 210, 216 (Minn. App. 2013) (citing *Kahn v. State*, 289 N.W.2d 737, 745 (Minn. 1980)), *aff’d on other grounds*, 853 N.W.2d 114 (Minn. 2014). “We may affirm the district court on any ground, including one not relied on by the district court.” *State v. Fellegly*, 819 N.W.2d 700, 707 (Minn. App. 2012) (citing *Kafka v. O’Malley*, 22 N.W.2d 845, 849 (Minn. 1946)), *rev. denied* (Minn. Oct. 16, 2012); *see also Eichers*, 840 N.W.2d at 216 (quoting this aspect of *Fellegly* in an appeal challenging a district court’s order on a defendant’s motion to suppress).

The United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But “[n]ot all encounters between the police and citizens constitute seizures.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Generally, a person is not seized when “a police officer approaches him . . . in a parked car and begins to ask questions.” *Id.*

A seizure does occur, however, “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *Id.* at 98 (quotation omitted). “In [considering] whether a seizure has occurred, the court determines whether a police officer’s actions would lead a reasonable person under the same circumstances to believe that [they were] not free to leave.” *State v. Lopez*, 698 N.W.2d 18, 21 (Minn. App. 2005). This determination is based on the totality of the circumstances “as applied to a reasonable person.” *Id.* at 21-22. The Minnesota Supreme Court has “held that a passenger of a car is considered seized ‘if a reasonable person, under the circumstances, would not feel free to disregard the police questions or to terminate the encounter.’” *State v. Sargent*, 968 N.W.2d 32, 37 n.3 (Minn. 2021) (quoting *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003)).

The district court rejected Cousette’s claim that he was seized when officers approached his vehicle, noting that squad car lights were not activated, the vehicle was already stopped, and the officer “only asked, ‘what’s going on?’” The district court determined that Cousette was seized when officers later told him to stop moving and a passenger was taken out of the backseat. Directing Cousette to restrain his movements is a sufficient show of authority to turn the interaction into an investigative seizure. *Harris*, 590 N.W.2d at 98. We therefore consider whether the officer had reasonable suspicion of criminal activity when Cousette was seized.

“Searches and seizures conducted without warrants are presumptively unreasonable. An exception to the warrant requirement permits a police officer to conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that

criminal activity is afoot.” *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (quotation and citation omitted). “Reasonable, articulable suspicion must be present at the moment a person is seized.” *State v. Hunter*, 857 N.W.2d 537, 543 (Minn. App. 2014) (quotation omitted).

Cousette maintains that the officers lacked reasonable suspicion of criminal activity at the time of seizure because they had only observed a parked vehicle, late at night, in a high-crime area. The state responds that, at the time of seizure, the officers also knew that Cousette’s vehicle did not have license plates which, together with all the other circumstances, provides reasonable suspicion of criminal activity to support seizure. We agree with the state.

The district court found that “[o]n October 31, 2020, shortly after midnight, [two officers] . . . , while on patrol, observed a gold Buick Century idling in the parking lot of a closed business.” It continued, “[t]he vehicle had its headlights illuminated, its engine was running, and it had no license plates.” These findings are supported by the record.

The officer testified that he observed that the vehicle was missing license plates before approaching.

Q: When you initially decided to approach the vehicle was when you were passing by, correct?

A: I had passed by the vehicle at some point, yes.

Q: And you saw it didn’t have a license plate, right?

A: Yes, I did observe it had no license plate.

Q: And you had some concern about a potential burglary?

A: Correct.

Q: That's when you initially decided to approach and investigate, correct?

....

A: Once I observed occupants in the vehicle, yes.

The officer's report, which was accepted into evidence, also indicates that officers observed a vehicle "with no plates idling in the parking lot with lights [on]."

A vehicle that is missing license plates and parked in a high-crime area late at night and after normal business hours, provides reasonable, articulable suspicion of criminal activity. *See Lugo*, 887 N.W.2d at 486 ("It is enough that a law enforcement officer can articulate specific facts which, taken together with rational inferences from those facts, objectively support the officer's suspicion."). Because the officer had reasonable, articulable suspicion of criminal activity, the seizure did not violate Cousette's Fourth Amendment right against warrantless searches and seizures, and the district court, therefore, properly denied his suppression motion.

Affirmed.