STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1223

State of Minnesota,
Respondent,

vs.

Royce James Stute,
Appellant.

Filed June 16, 2025
Affirmed
Johnson, Judge

Hubbard County District Court
File No. 29-CR-23-1032

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

John Olson, Hubbard County Attorney, Anna M. Emmerling, Assistant County Attorney, Park Rapids, Minnesota (for respondent)

Isaiah P. Volk, Thorwaldsen & Malmstrom, Detroit Lakes, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Royce James Stute was convicted of refusing to submit to a chemical test and carrying a pistol while under the influence of alcohol. We conclude that the district court did not err by denying Stute's pre-trial motion to suppress evidence. Therefore, we affirm.

FACTS

During the evening of September 14, 2023, Deputy Sheriff Kiessel was at the scene of an accident on a county road in Hubbard County. The deputy was sitting in his squad vehicle, which was parked on the right side of a two-lane highway, partially on the shoulder and partially in a traffic lane, with its emergency lights activated.

Deputy Kiessel saw a vehicle pull up behind him and stop. He got out of his squad vehicle and approached the driver of the vehicle, Stute, to let him know that the road was clear and that he could pass. Stute's driver's-side window was rolled down approximately four to six inches. While speaking with Stute, Deputy Kiessel observed that his speech was slow and slurred and that his eyes were watery, bloodshot, and glossy. Deputy Kiessel asked Stute how many drinks he had consumed that evening. Stute said that he had consumed only one and that he lived nearby.

Deputy Kiessel asked Stute to shift his vehicle into park and to step out of his vehicle. Stute rolled up his window and stared forward with both hands on the steering wheel. Stute put his vehicle in park only after Deputy repeatedly asked him to do so. As Deputy Kiessel continued to ask Stute to step out of his vehicle, Stute asked several times, "Why?" Deputy Kiessel responded that he wanted Stute to perform field sobriety tests.

Deputy Kiessel saw Stute's right hand leave the steering wheel and reach for the gearshift. Deputy Kiessel opened the door to Stute's vehicle and grabbed his right wrist to prevent him from driving away. Deputy Kiessel smelled alcohol when he opened the vehicle door. Deputy Kiessel held onto Stute's right wrist while he continued to ask Stute to exit his vehicle. After approximately 11 seconds, Deputy Kiessel let go of Stute's wrist, turned off the vehicle, and removed the keys from the ignition. Stute eventually stepped out of his vehicle after multiple requests to do so. Deputy Kiessel arrested Stute shortly thereafter.

The state charged Stute with four offenses: (1) refusal to submit to a chemical test, in violation of Minn. Stat. § 169A.20, subd. 2(1) (2022); (2) operation of a vehicle while under the influence of alcohol, in violation of Minn. Stat. § 169A.20, subd. 1(1) (Supp. 2023); (3) obstructing legal process and interfering with a peace officer, in violation of Minn. Stat. § 609.50, subd. 1(2) (Supp. 2023); and (4) carrying a pistol while under the influence of alcohol, in violation of Minn. Stat. § 624.7142, subd. 1(4) (Supp. 2023).

In November 2023, Stute moved to suppress evidence and to dismiss all charges on the ground that Deputy Kiessel violated his constitutional right to be free from unreasonable seizures. The district court conducted an evidentiary hearing in January 2024. Deputy Kiessel was the only witness. The parties submitted memoranda of law after the hearing. Stute argued that Deputy Kiessel violated his rights by opening the door to his vehicle. In March 2024, the district court filed an order denying Stute's motion.

In May 2024, the parties agreed that the state would dismiss counts 2 and 3, that counts 1 and 4 would be tried to the court on stipulated evidence, that appellate review

would be limited to the ruling on state's pre-trial motion, and that the pre-trial ruling would be dispositive. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court filed a 13-page order in which it found Stute guilty on both counts. The district court imposed jail sentences of 364 days and 90 days, of which 45 days must be served, with the remainder stayed for probation.[1] Stute appeals.

DECISION

Stute argues that the district court erred by denying his motion to suppress evidence and to dismiss the charges.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. The Fourth Amendment also protects the right of the people to be secure in their motor vehicles. *Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984); *Delaware v. Prouse*, 440 U.S. 648, 653-55 (1979); *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

A law-enforcement officer may, consistent with the Fourth Amendment, briefly stop or detain a person in a motor vehicle for investigative purposes if the officer has a reasonable, articulable suspicion that the person might be engaged in criminal activity.

[1]The commissioner of public safety revoked Stute's driver's license after he was arrested on September 24, 2023. In November 2023, Stute petitioned the district court to rescind the revocation of his driver's license. That civil case proceeded separately from this criminal case. The district court conducted an implied-consent hearing in December 2023, approximately one month before the evidentiary hearing on Stute's motion in this case. The district court denied Stute's petition to rescind the revocation, and this court affirmed. *See Stute v. Commissioner of Public Safety*, No. A24-0517, 2024 WL 5036720 (Minn. App. Dec. 9, 2024).

Berkemer, 468 U.S. at 439-40; (citing *Terry v. Ohio*, 392 U.S. 1, 29 (1968)); *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). A reasonable, articulable suspicion exists 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 reasonable-suspicion standard is not high, but the suspicion must be more than a "mere hunch" and must be based on "specific and articulable facts." *State v. Taylor*, 965 N.W.2d 747, 751-52 (Minn. 2021) (quotation omitted). A court must consider the totality of the circumstances in determining whether reasonable suspicion exists. *Id.* at 752.

Article I, section 10, of the Minnesota Constitution requires that an investigative stop be reasonable in both duration and scope. *State v. Askerooth*, 681 N.W.2d 353, 363, 366 (Minn. 2004) (concluding that officer who made stop for minor traffic violation acted unreasonably by confining driver in squad car solely for officer's convenience). To determine whether an investigative stop is reasonable in duration and scope, a Minnesota court must conduct a two-step analysis. *Id.* at 364. First, the court must determine "whether the stop was justified at its inception." *Id.* Second, the court must determine whether "each incremental intrusion during a traffic stop [is] tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *Id.* at 365; *see also State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). The third condition is present if an objective test is satisfied: "'would the facts available to the officer at the moment of the seizure . . . warrant a [person] of reasonable caution in the belief that the action taken was appropriate.'" *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 21-22). The reasonableness of

an officer's action "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." *Id.* at 365 (quotation omitted).

In this case, the district court determined that "Deputy Kiessel's initial contact with Mr. Stute was not a seizure" because the deputy approached Stute's vehicle merely "to figure out why Mr. Stute parked behind his squad vehicle." The district court determined that "Deputy Kiessel had reasonable, articulable suspicion that Mr. Stute was an impaired driver" after the deputy perceived Stute's slurred speech, watery eyes, and the odor of alcoholic beverages. The district court further determined that Deputy Kiessel's requests for Stute to shift his vehicle into park and to exit the vehicle were "justified by Deputy Kiessel's continuing reasonable, articulable suspicion that Mr. Stute was an impaired driver." The district court concluded that Deputy Kiessel's "seizure of Mr. Stute and expansion of the seizure were lawful." Stute challenges the district court's decision in two ways.

A.

Stute first argues that Deputy Kiessel did not have a reasonable, articulable suspicion of criminal activity when he opened the driver's door of Stute's vehicle.

To resolve this argument, we first must determine exactly when Stute was seized by Deputy Kiessel. A person is seized "if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quotation omitted). Generally, it is not a seizure for a law-

enforcement officer "to simply walk up and talk to a person standing in a public place or to a driver sitting in an already stopped car." *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). Given Deputy Kiessel's initial purpose of encouraging Stute to proceed along the highway, Stute was not seized when Deputy Kiessel approached him and first spoke with him. *See id.* But Stute was seized when Deputy Kiessel asked him to step out of his vehicle. *See State v. Klamar*, 823 N.W.2d 687, 693 (Minn. App. 2012).

The next question implicated by Stute's first argument is whether it was reasonable for Deputy Kiessel to request that Stute step out of his vehicle. *See Askerooth*, 681 N.W.2d at 364. Generally, if an officer has a reasonable, articulable suspicion of criminal activity, the officer may, as a matter of course, ask the driver to step out of the vehicle while the officer conducts a brief investigation. *Pennsylvania v. Mimms*, 434 U.S. 106, 109-11 (1977); *State v. Ortega*, 770 N.W.2d 145, 152 (Minn. 2009). The incremental intrusion arising from such a request is justified by concerns of officer safety. *Mimms*, 434 U.S. at 109-11. Such a request is "reasonable" so long as, viewed objectively, the request is appropriate in light of "a balancing of the government's need to search or seize and the individual's right to personal security free from arbitrary interference." *Askerooth*, 681 N.W.2d at 364-65 (quotation omitted).

Deputy Kiessel testified that, when he approached and first spoke with Stute, he observed that Stute had "slow and slurred speech, along with glossy eyes." Based on those observations, Deputy Kiessel "believed that [Stute] may have been drinking or consuming alcohol." The district court specifically found Deputy Kiessel's testimony to be credible. Based on Deputy Kiessel's observations of indicia of impairment, as well as Stute's

unusual behavior in stopping rather than driving around Deputy Kiessel's squad vehicle, Deputy Kiessel had a reasonable, articulable suspicion that Stute was driving while impaired. *See Klamar*, 823 N.W.2d at 694; *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001), *rev. denied* (Minn. Sept. 25, 2001).

Given Deputy Kiessel's reasonable, articulable suspicion that Stute was driving while impaired, it was reasonable for Deputy Kiessel to ask Stute to step out of his vehicle. The United States Supreme Court has stated that "the intrusion into the driver's personal liberty" arising from the incremental step of asking a driver to exit his or her vehicle "can only be described as *de minimis*" because the driver "is being asked to expose to view very little more of his person than is already exposed" and the officer has "already lawfully decided that the driver shall be briefly detained" so that "the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it." *Mimms*, 434 U.S. at 111. Similarly, the Minnesota Supreme Court has acknowledged that, under the Minnesota Constitution, "a police officer may order a driver out of a lawfully stopped vehicle without an articulated reason." *Askerooth*, 681 N.W.2d at 367. In *Klamar*, in which an officer approached a vehicle that was already stopped on the shoulder of a highway and perceived that the driver was impaired, we reasoned that there is "no constitutionally significant distinction between ordering Klamar out of her vehicle for further investigation and continuing the investigation at the driver's window" because "[t]he degree of intrusion occasioned by directing her to exit her vehicle was not so significant as to render the seizure constitutionally offensive." 823 N.W.2d at 692, 695. Thus, it was reasonable for Deputy Kiessel to ask Stute to step out of his vehicle.

The final question raised by Stute's first argument is whether it was reasonable for Deputy Kiessel to open the driver's door of Stute's vehicle. The supreme court has recognized that "there is little practical difference between ordering a driver to open his door and get out of his car, on the one hand, and opening the door for the driver and telling him to get out, on the other." *State v. Ferrise*, 269 N.W.2d 888, 890 (Minn. 1978). Even if an officer's opening of a driver's door must be justified by additional facts, such facts are present in this case. Deputy Kiessel testified that, after he asked Stute to step out of his vehicle, Stute did not comply but, rather, rolled up his window, stared forward with both hands on the steering wheel, and repeatedly asked "why" Deputy Kiessel wanted to perform field sobriety tests. In addition, Deputy Kiessel saw Stute's right hand leave the steering wheel and reach for the gearshift, which caused Deputy Kiessel to believe that Stute might attempt to drive away.[2] At that point in time, Deputy Kiessel had a reasonable basis for believing that Stute might try to flee. The videorecording created by Deputy Kiessel's body-worn camera confirms that Deputy Kiessel gave Stute a reasonable amount of time—approximately 90 seconds—in which to comply with his requests to exit the vehicle before Deputy Kiessel opened the door. Accordingly, it was reasonable for Deputy Kiessel to open the driver's door of Stute's vehicle.

[2]The state points out that, in this respect, the evidentiary record in this case is slightly different from the evidentiary record in the implied-consent case. *Cf. Stute v. Commissioner of Public Safety*, 2024 WL 5036720, at *1-2.

Thus, Deputy Kiessel had a reasonable articulable suspicion of criminal activity when he opened the driver's door of Stute's vehicle, and it was reasonable for him to do so.

B.

Stute also argues that, even if Deputy Kiessel was justified in opening the driver's door of his vehicle, the investigative seizure was unreasonable on the ground that Deputy Kiessel grabbed his wrist, held it "for a long period of time," and "jerked" his wrist and body toward vehicle's door.

The district court did not make any findings of fact concerning whether Deputy Kiessel acted unreasonably by grabbing and holding Stute's wrist or whether Deputy Kiessel "jerked" Stute's wrist. Likewise, the district court did not make any conclusions of law as to whether the investigative seizure was, as Stute argues, "'intolerable' in its 'intensity or scope.'" (Quoting *Askerooth*, 681 N.W.2d at 363.) It appears that the district court did not make such findings or conclusions because Stute did not clearly present an argument to the district court that Deputy Kiessel acted unreasonably by grabbing, holding, and "jerking" his wrist. In the memorandum that he filed after the evidentiary hearing, Stute focused on Deputy Kiessel's act of opening of a door to his vehicle. Stute mentions in passing the fact that Deputy Kiessel grabbed his wrist, but he made no argument whatsoever that Deputy Kiessel held it too long or "jerked" it. Thus, Stute forfeited the argument that Deputy Kiessel acted unreasonably by grabbing, holding, and jerking his wrist. *See* Minn. R. Crim. P. 11.02(a), (b), (g); *State v. Sorenson*, 441 N.W.2d 455, 457

(Minn. 1989); *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 14 (Minn. 1965); *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996).

Even if we were to consider Stute's second argument, we would conclude that it is without merit. Deputy Kiessel testified that he grabbed Stute's wrist after Stute did not exit the vehicle after multiple requests and reached for the gearshift, which caused Deputy Kiessel to believe that he might attempt to drive away. The videorecording created by Deputy Kiessel's body-worn camera shows that he held Stute's wrist while Stute remained in the driver's seat for approximately 11 seconds and that he let go of Stute's wrist after Stute stepped out of the vehicle. The videorecording does not indicate that Deputy Kiessel jerked Stute's wrist or that Stute gave any indication of pain or discomfort. Deputy Kiessel's actions appear reasonable in light of Stute's noncompliance with Deputy Kiessel's requests, the possibility that Stute might drive away, and the state's strong interest in preventing impaired persons from driving on public roads. *See State v. Bernard*, 859 N.W.2d 762, 773 (Minn. 2015) (recognizing "the severe threat that impaired drivers pose to the public's safety" (quotation omitted)); *see also Boude v. City of Raymore, Missouri*, 855 F.3d 930, 933 (8th Cir. 2017) (concluding that officer acted reasonably by reaching into car, turning off ignition, and physically removing intoxicated driver from vehicle after driver did not comply with orders and placed car into gear).

Thus, Stute is not entitled to appellate relief on the ground that the investigative seizure was intolerable in intensity or scope. *See Stute v. Commissioner of Public Safety*, 2024 WL 5036720, at *7-8 (rejecting similar argument in Stute's implied-consent case).

In sum, the district court did not err by denying Stute's motion to suppress evidence.

Affirmed.