STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1515

State of Minnesota,
Appellant,

vs.

George Kenyata Muumbo,
Respondent.

Filed May 12, 2025
Reversed and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-23-23674

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

Katrina E. Joseph, Gregory P. Holly, Richfield City Prosecutors, H|J Law, Minneapolis, Minnesota (for appellant)

Anders J. Erickson, Johnson Erickson Criminal Defense, Minneapolis, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this pretrial appeal, appellant State of Minnesota challenges the district court's order suppressing evidence from a law-enforcement officer's investigative detention of respondent George Kenyata Muumbo. The state argues that the district court's decision

(1) critically impacts the state's ability to prosecute Muumbo for driving while impaired (DWI) and (2) was contrary to established law. Because the state met its burden to show critical impact and the investigative detention was justified by reasonable suspicion of Muumbo's impairment, we reverse and remand.

FACTS

The state charged Muumbo with two counts of misdemeanor DWI for being in physical control of a motor vehicle while under the influence of alcohol on November 4, 2023. Muumbo moved to suppress evidence obtained during his investigative detention.[1] The state opposed the motion. At an evidentiary hearing, the district court heard testimony from the law-enforcement officer who detained Muumbo and received into evidence a video recording from the officer's body-worn camera. The following summarizes the district court's factual findings following the hearing along with portions of the officer's testimony and body-worn-camera recording that relate to the issue on appeal.

At around 12:00 a.m. on November 4, 2023, a Richfield police officer responded to a dispatch request about a "suspicious vehicle in the parking lot" of an apartment building. Dispatch relayed the report that "there appeared to be someone who was homeless in the lot."

The officer arrived at the Richfield parking lot and located a sport utility vehicle (SUV) with a license plate that matched the license-plate number provided by dispatch. The officer saw "one man standing outside of [the SUV] and another man sitting in the

[1] Muumbo also moved the district court to dismiss the complaint for lack of probable cause, which was denied.

driver's seat." The officer testified that, when he approached the SUV, the man "standing outside of the vehicle was very argumentative with [him]" and "didn't want to answer any of [his] questions."

Muumbo, who was sitting in the driver's seat, was talkative and cooperative while interacting with the officer. He told the officer that law enforcement had conducted welfare checks on him for the past three days. He explained "that he was homeless and that he used the pole in the parking lot for electricity." Muumbo and the other man acknowledged to the officer that they did not live in the apartment building. The officer told Muumbo that he needed to leave and that, if he did not, the apartment building's management would likely pursue him for trespass.

Muumbo asked the officer if he could exit the SUV, and the officer said, "Yes." When Muumbo exited the vehicle, the other man left. After Muumbo stood up, the officer "noticed that [Muumbo's] pants were unbuckled and there was a wet spot in the [SUV]" that the officer believed "could have been [from] someone urinating." Muumbo walked toward the officer, and the officer "smelled the odor of alcohol on [Muumbo's] breath" and noticed that "his eyes were red and watery." The officer told Muumbo that he "reek[ed] like booze." The officer asked Muumbo how much he had to drink that night, and Muumbo said, "Enough to pass a sobriety test."

The officer instructed Muumbo to move away from the SUV for field sobriety testing. Muumbo did not move but kept talking with the officer. The officer said, "You wanted to be difficult with me this entire time, so now we are going to do a field sobriety test."

The officer conducted three field sobriety tests, the results of which indicated to the officer that Muumbo was impaired. Muumbo told the officer that he had consumed "two beers" and "half a pint." The officer arrested Muumbo for DWI and brought him to the police station, where Muumbo provided a breath sample. Test results showed that Muumbo's alcohol concentration was 0.13.

Following the hearing on Muumbo's motion to suppress evidence, the district court granted the motion. The district court determined that the officer's check of Muumbo's welfare "became a DWI investigation not because of [the officer's] reasonable, articulable suspicion, but as retaliation for the aggravated discussion he was having with Mr. Muumbo." The district court found that, "[i]n his body worn camera video, [the officer] states plainly that the reason for the field sobriety test was that Mr. Muumbo 'wanted to be difficult.'" The district court also found that the field sobriety tests showing indicia of impairment and Muumbo's admission to consuming alcohol "occurred *after* the beginning of the DWI investigation." The district court concluded that the "expansion" of the welfare check "was at best based on a 'hunch' and constitutes a violation of Mr. Muumbo's constitutional rights."

The state appeals.

DECISION

"When the state appeals a pretrial order, it must show clearly and unequivocally (1) that the ruling was erroneous and (2) that the order will have a critical impact on its ability to prosecute the case." *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quotations omitted). Appellate courts "view critical impact as a threshold issue and will

not review a pretrial order absent such a showing." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017) (quotation omitted). We discuss both issues in turn, starting with critical impact.

I. The district court's suppression order critically impacts the state's ability to prosecute its case against Muumbo.

Suppression of evidence critically impacts the state's case "when excluding the evidence significantly reduces the likelihood of a successful prosecution." *McLeod*, 705 N.W.2d at 784 (quotation omitted). For the state to prove the DWI charges against Muumbo, it needs evidence that Muumbo was driving, operating, or in physical control of a motor vehicle while "under the influence of alcohol." Minn. Stat. § 169A.20, subd. 1(1) (Supp. 2023).

The district court suppressed all evidence obtained from the officer's DWI investigation, including the officer's observations, the field sobriety tests, Muumbo's statements, and the breath-test results. The state argues that, "[w]ithout this evidence, the state will be unable to prove [Muumbo's] impairment at trial." Muumbo does not address critical impact in his brief to this court.

Excluding all evidence from the officer's DWI investigation of Muumbo reduces the likelihood of a successful prosecution for DWI. *See State v. Ault*, 478 N.W.2d 797, 799 (Minn. App. 1991) (concluding that suppression of a "chemical test showing an alcohol level in excess of the statutory limit" critically impacted the state's ability to prosecute a DWI offense); *State v. Lopez*, 631 N.W.2d 810, 812-13 (Minn. App. 2001) (concluding that suppression of evidence from a traffic stop that documented a minor's signs of

impairment critically impacted the state's ability to prosecute the respondent for charges that he procured alcohol for minors), *rev. denied* (Minn. Sept. 25, 2001). We thus conclude that the district court's suppression order critically impacts the state's ability to prosecute Muumbo for DWI.

II. The district court erred by granting Muumbo's motion to suppress.

"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).

Under both the United States and Minnesota Constitutions, individuals have a right "to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, individuals may be searched or seized only upon the issuance of a warrant based on probable cause. *Id.* Brief investigative detentions are an exception to the warrant requirement. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). These brief detentions are often called a "*Terry*" detention or "stop." *State v. Askerooth*, 681 N.W.2d 353, 359-60 (Minn. 2004) (citing *Terry v. Ohio*, 392 U.S. 1, 88 (1968)).

For a brief investigative detention to be constitutional, "a police officer must be able to point to specific and articulable facts which, together with reasonable inferences from those facts, reasonably warrant the invasion of a citizen's personal security." *State v. Engholm*, 290 N.W.2d 780, 783 (Minn. 1980). The detention "cannot be based on an inarticulate hunch, and must be reasonable in light of the particular circumstances." *Id.*

"Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011) (quotation omitted). Courts determine reasonable suspicion based on the totality of the circumstances. *State v. Lugo*, 887 N.W.2d 476, 486-87 (Minn. 2016). This standard is "not high," and officers are "entitled to draw inferences on the basis of all of the circumstances." *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotations omitted).

The parties agree that the district court correctly determined that the officer was performing a welfare check when he first approached Muumbo in the apartment parking lot. A welfare check is not a seizure. *State v. Klamar*, 823 N.W.2d 687, 693 (Minn. App. 2012) (concluding that a "trooper's approach to [a stopped] vehicle to check on the welfare of its occupants was not a seizure"). Muumbo's brief to this court acknowledges that the officer's "initial encounter with [Muumbo] was reasonable." Accordingly, the issue on appeal is whether the officer had reasonable suspicion to investigate Muumbo for DWI and to ask him to comply with field sobriety testing.[2]

The state argues that the officer reasonably suspected that Muumbo was an impaired driver based on the totality of the circumstances. The state contends that Muumbo "voluntarily, and without prompting, got out of his vehicle and approached the officer."

[2] The parties focus on whether the officer had reasonable suspicion to "expand the scope of the welfare check" by starting a DWI investigation, as is required for the expansion of a *Terry* investigative detention. *See Askerooth*, 681 N.W.2d at 364. We decline to follow this reasoning because the officer's initial encounter with Muumbo was a welfare check, which is neither a seizure nor a *Terry* investigative detention. *See Klamar*, 823 N.W.2d at 693.

The officer then "smelled an odor of alcohol coming from [Muumbo], and saw that [Muumbo's] eyes were bloodshot and watery." The state urges that the district court's decision improperly considered the officer's subjective reasons without considering the officer's objective reasons for initiating a DWI investigation.

Muumbo argues that we should affirm the district court's decision because the district court correctly determined that the "DWI investigation was retribution and not based on suspicion that [Muumbo] committed a crime." He argues that (1) "the district court made a credibility determination based on [the officer's] testimony and the body camera video and concluded that when [the officer] began his investigation into a potential DWI, it was based on him seeking retribution against [Muumbo] because he was being difficult" and (2) the district court "correctly found" that "any objective suspicion was developed after . . . the DWI investigation began." We consider each of Muumbo's arguments in turn.

First, we are not persuaded that the district court's decision is based on a determination of the officer's credibility. The district court did not make any adverse credibility finding. In fact, the district court's factual findings tracked the officer's version of events. Also, the officer's testimony is supported by the body-worn-camera video recording.

Second, we are not convinced that the district court found that the officer observed indicia of impairment only after he requested that Muumbo comply with field sobriety testing. It is correct that the district court found "the indicia of impairment noted in the field sobriety tests and Mr. Muumbo's admission to drinking occurred *after* the beginning

of the DWI investigation." But the district court also found that, after Muumbo exited the SUV, the officer "smelled the odor of alcohol on Mr. Muumbo's breath and noted that his eyes were red and watery."

The officer's observations of Muumbo upon his exit from the SUV provide reasonable suspicion for the officer's DWI investigation and the officer's request that Muumbo complete field sobriety testing. *See Klamar*, 823 N.W.2d at 694, 696 (determining that an officer had reasonable suspicion to conduct field sobriety tests based on the odor of alcohol coming from a vehicle and a driver's bloodshot and watery eyes). Therefore, even though the field sobriety testing and Muumbo's admission to consuming alcohol occurred after the DWI investigation began, the district court's findings show that the officer observed other indicia of impairment before beginning the DWI investigation.

Muumbo's brief to this court does not respond to the state's argument that the district court improperly relied on the officer's subjective intent. The district court concluded that the officer was motivated by "retaliation" for the "aggravated discussion" with Muumbo. The district court noted that "[t]he video shows that it may have been reasonable for [the officer] to be frustrated" because Muumbo did not leave the parking lot and that their "interaction" was "not comfortable or easy."

The officer's frustration and subjective intent are not relevant to our reasonable-suspicion analysis. The Minnesota Supreme Court has concluded that, "if there is an objective legal basis for an arrest or search, the arrest or search is lawful even if the officer making the arrest or conducting the search based his or her action on the wrong ground or had an improper motive." *State v. Everett*, 472 N.W.2d 864, 867 (Minn. 1991).

Reasonable suspicion is an objective analysis. *See State v. Smith*, 814 N.W.2d 346, 351-52 (Minn. 2012) (stating that "the basis of the officer's suspicion must satisfy an *objective*, totality-of-the-circumstances test" that considers whether "the facts available to the officer at the moment of the seizure would warrant a [person]of reasonable caution in the belief that the action taken was appropriate" (emphasis added) (quotations omitted)). Therefore, if an officer has an objective, reasonable suspicion of criminal activity, that reasonable suspicion is not negated by the officer's subjective or pretextual intentions.

Accordingly, we analyze the circumstances leading up to the DWI investigation, rather than the officer's subjective intent, to determine whether the officer had reasonable suspicion. The *Klamar* opinion is instructive. In *Klamar*, a state trooper "observed a vehicle stopped on the right shoulder of the freeway" and "pulled up behind the stopped vehicle to conduct a welfare check." 823 N.W.2d at 689-90. The trooper "observed the passenger door open and the passenger vomiting." *Id.* at 690. When the trooper approached the vehicle on the passenger side, the trooper "noticed a strong odor of alcohol emanating from the vehicle" and later noticed that the driver, Klamar, had "bloodshot and watery" eyes. *Id.* Klamar admitted that she had "one drink," and the trooper asked her to exit the vehicle and complete field sobriety testing. *Id.*

The district court dismissed the DWI charge against Klamar after determining that the trooper's DWI investigation lacked reasonable suspicion. *Id.* On appeal, this court reversed after determining that, while the trooper's initial encounter was a welfare check, the trooper's request for field sobriety testing was supported by reasonable suspicion. *Id.* at 693-94, 696. We explained that the trooper "noticed an odor of alcohol emanating from

Klamar and that Klamar's eyes were bloodshot and watery" and that the "observation of two indicia of intoxication specific to Klamar reasonably justified further intrusions in the form of field sobriety and preliminary breath testing." *Id.* at 696.

The facts here are similar to those in *Klamar*. The officer approached Muumbo's car for a welfare check, and Muumbo asked to exit his SUV. Shortly after Muumbo exited the SUV, the officer noticed that Muumbo smelled like alcohol and had watery, bloodshot eyes. The officer then asked Muumbo to perform field sobriety testing. We accordingly determine, as we did in *Klamar*, that the officer's seizure of Muumbo for field sobriety testing was supported by reasonable suspicion based on indicia of intoxication.

For these reasons, we conclude that the district court erred by suppressing evidence from the DWI investigation and granting Muumbo's motion to suppress.

Reversed and remanded.