No.

IN THE SUPREME COURT OF THE UNITED STATES

BRUCE SANFORD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a citizen is seized within the meaning of the Fourth Amendment when law enforcement impedes the citizen's freedom of movement?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Bruce Sanford (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), Devra T. Hake (Assistant United States Attorney), and Elizabeth B. Prelogar (Solicitor General of the United States of America).

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OPINION BELOW

The decision of the Eighth Circuit Court of Appeals can be found at *United States v. Sanford,* 108 F.4th 655 (8th Cir. 2024), reh'g denied, No. 23-2108, 2024 WL 3688738 (8th Cir. Aug. 7, 2024), and is attached as Appendix A.

JURISDICTION

The Judgment of the Eighth Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on July 16, 2024. However, a timely Petition for Rehearing was filed on July 22, 2024, which was not denied until August 7, 2024. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

STATEMENT OF FACTS

In the district court, Mr. Sanford entered a conditional guilty plea to one count of possessing a firearm after having been convicted of a felony in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), while reserving the right to appeal the denial of a motion to suppress.

The suppression motion concerned an interaction between Mr. Sanford and

law enforcement on September 5, 2021. That evening the owner of a nightclub in Waterloo, Iowa, contacted a law enforcement officer stating that two men were smoking and drinking in a car in front of the club. When the officer arrived, she parked in the traffic lane of the street, in front of the main entrance, and both parallel to and in front of a vehicle occupied by Mr. Sanford. Another officer ultimately arrived on the scene and parked directly behind the first officer's vehicle, and thus parallel to Mr. Sanford's vehicle.

The officers ultimately approached Mr. Sanford's vehicle, smelled marijuana coming from it, ordered Mr. Sanford and his codefendant out of the vehicle, searched the vehicle, and found marijuana, money, and a handgun, which resulted in Mr. Sanford's charges.

Mr. Sanford argued he was unlawfully seized when the officers blocked his vehicle in a manner that prevented him from leaving, and that because the seizure occurred before the officers smelled marijuana, all evidence seized from the vehicle required suppression.

After an evidentiary hearing, the district court found that Mr. Sanford's vehicle was parked alongside a curb, and that there was an empty parking space directly in front of the vehicle. However, a vehicle was parked in front of the empty space. The first law enforcement officer parked her car in the street parallel to the empty space, and the second officer parked his car behind the first officer's vehicle and alongside Mr. Sanford's vehicle. The district court observed that there was not a car parked immediately behind Mr. Sanford's. Based on its findings, the district

court concluded that Mr. Sanford was not unlawfully seized prior to the officers approaching his vehicle and smelling marijuana coming from it. According to the district court, Mr. Sanford's traditional path of forward travel was blocked because of the position of the officers' cars, but he nonetheless could have backed up and gone around the law enforcement vehicles. Accordingly, because Mr. Sanford could have backed his way around the law enforcement officers' vehicles, the district court concluded that a reasonable person would not have believed they could not leave and thus no seizure had occurred.

On appeal, the circuit court concluded that the position of law enforcement's cars limited the options for Mr. Sanford's vehicle's egress, but there were no other factors to support the assertion that he was seized, and affirmed the district court's denial of his motion to suppress.

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT A SEIZURE OCCURS WHEN LAW ENFORCEMENT IMPEDES A CITIZEN'S FREEDOM OF MOVEMENT.

At issue in this Petition is whether a seizure occurs when law enforcement impedes a citizen's freedom of movement. This Court should grant review to establish that the impeding of a citizen's freedom of movement constitutes a seizure and quash the decision below.

"Under the Fourth Amendment, a seizure occurs when, under the totality of the circumstances, a reasonable person would have thought he was not free to leave." *Keller v. Fleming*, 952 F.3d 216, 222 (5th Cir. 2020) (citing, *Michigan v. Chesternut*, 486 U.S. 567, 572, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988) (citation omitted)). "[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has seized that person." *Id.* (quoting, *Terry v. Ohio,* 392 U.S. 1, 16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (internal quotations omitted).

Although the question of whether a seizure has occurred is examined under the totality of the circumstances, the circuit courts have recognized that whether a person's freedom of movement has been restrained is likely to be the decisive factor, *see*, *e.g.*, *Keller*, 952 F.3d at 223 ("In other words, Officer Hawthorne interrupted Simpson's path and 'intercept[ed] him to prevent his progress'—which is 'probably decisive' in assessing seizure." (quoting *United States v. Berry*, 670 F.2d 583, 597 (5th Cir. 1982) (blocking defendant's path at an airport constituted a seizure) (citation omitted), and a showing that a defendant was completely boxed in is

unnecessary to convey that leaving is not an option. *See*, *e.g.*, *United States v. Smith*, 794 F.3d 681, 686 (7th Cir. 2015) ("officers need not totally restrict a citizen's freedom of movement in order to convey the message that walking away is not an option."); *United States v. Delaney*, 955 F.3d 1077, 1083 (D.C. Cir. 2020) (Although the defendant could have maneuvered his vehicle around law enforcement's vehicle, the impeding of the defendant's freedom of movement was indicative of a seizure).

This Court should establish that not only is the restraining of a citizen's freedom of movement "likely" to be decisive of whether a seizure has occurred, it *is* decisive of the matter. Leaving the restraint of a citizen's movement as a gray area which may or may not constitute a seizure creates a danger to both the citizenry and to law enforcement. Take, for instance, Mr. Sanford's case. If, as the district court found, Mr. Sanford was not seized when law enforcement impeded his path, then to exercise his right to be left alone he should have backed his vehicle around law enforcements' vehicles - in a dimly lit street - and negotiated around them. Doing so would have created obvious risks to the safety of law enforcement and any passersby. Further, it would have also created a risk that law enforcement would view Mr. Sanford as a safety concern, and in the name of the oft quoted "concern for officer safety," escalated the situation to one that posed a risk to Mr. Sanford, and, again, any passersby. To avoid creating such precarious situations, this Court should establish that where law enforcement impedes a citizen's freedom of movement, they are deemed seized within the meaning of the Fourth Amendment. Doing so would mean that law enforcement would be prohibited from searching a

citizen whose freedom of movement they have impeded without probable cause, thus removing any cause for a citizen to negotiate around law enforcement and creating safety issues where there need be none.

Accordingly, this Court should grant review, establish that where law enforcement impedes a citizen's freedom of movement the citizen is seized within the meaning of the Fourth Amendment, quash the decision below, and remand the case with instructions that Mr. Sanford's Plea, Judgment, and Sentence be vacated, and that he be discharged from custody.

For the reasons stated above, this Court should grant review, establish that where law enforcement impedes a citizen's freedom of movement the citizen is seized within the meaning of the Fourth Amendment, quash the decision below, and remand the case with instructions that Mr. Sanford's Plea, Judgment, and Sentence be vacated, and that he be discharged from custody.

Respectfully Submitted,

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APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 23-2108

United States of America

Plaintiff - Appellee

v.

Bruce Terrell Sanford

Defendant - Appellant

No. 23-2186

United States of America

Plaintiff - Appellee

v.

Houston Simmons, III

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Eastern

Submitted: February 16, 2024
Filed: July 16, 2024
[Published]

Before LOKEN, COLLOTON[1] and KELLY, Circuit Judges.

PER CURIAM.

Co-defendants Bruce Sanford and Houston Simmons, III, each entered a conditional guilty plea to one count of possessing a firearm after having been convicted of a felony, 18 U.S.C. §§ 922(g)(1), 924(a)(2), reserving the right to appeal the denial of their motions to suppress. They now appeal, and we affirm.

I.

On September 5, 2021, the owner of a nightclub in Waterloo, Iowa, texted Waterloo Police Department (WPD) Officer Amira Ehlers to say that two men were "smoking and drinking" in a car in front of the club. Officer Ehlers texted back, asking for a description of the car, but she did not receive a response before she began driving to the club. When Ehlers arrived, she parked in the traffic lane of the street, in front of the main entrance, as she usually did when responding to calls from this location. Ehlers put on her amber warning lights and got out of her squad car to speak with the club's owner, who pointed to a blue Kia sedan parked at the curb in front of the club. By this point, WPD Sergeant Spencer Gann had also arrived. He parked in the street directly behind Ehlers' squad car and asked her which vehicle was the subject of the call. Ehlers told him it was the Kia.

As Ehlers approached the Kia, the driver's side window was down, and she saw two men—Sanford and Simmons—one in the driver's seat and one in the passenger seat. She also smelled marijuana coming from the Kia. The officers ordered Sanford and Simmons out of the car, searched it, and found marijuana, a large amount of cash, and a handgun.

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[1]Judge Colloton became chief judge of the circuit on March 11, 2024. See 28 U.S.C. § 45(a)(1).

At the district court,[2] both Sanford and Simmons filed motions to suppress.[3] They argued they were unlawfully seized when the officers "completely blocked in the Kia" at the curb in a manner that prevented them from leaving. And because the alleged seizure occurred before Ehlers smelled marijuana, all evidence seized from the Kia must be suppressed as a result.

After an evidentiary hearing, the district court made specific findings about the location of each vehicle parked in front of the club to determine whether the location of the squad cars prevented the Kia from leaving the scene. It found that the Kia was parked alongside the curb, and that there was an empty parking space directly in front of it large enough to accommodate another vehicle. In front of that empty space was an SUV. Ehlers parked her squad car in the street parallel to the empty space. Gann parked his squad car behind Ehlers' car and alongside the Kia. No car was parked immediately behind the Kia, either alongside the curb or in the traffic lane.

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[2]The Honorable C.J. Williams, then District Judge, now Chief Judge, United States District Court for the Northern District of Iowa, adopting in relevant part the findings and recommendations of the Honorable Mark A. Roberts, United States Magistrate Judge for the Northern District of Iowa.

[3]Simmons filed his motion first. After an evidentiary hearing, the district court adopted the magistrate judge's recommendation that the motion be denied. Sanford did not make his initial appearance on the superseding indictment until after the proceedings on Simmons' motion to suppress were concluded. Sanford then filed his own motion, in which he sought to raise arguments "identical" to those raised by Simmons. As the magistrate judge explained, "Sanford's motion seeks to 'piggyback' on [Simmons'] motion to suppress," and "Sanford does not wish to reopen the record or assert arguments that are new or different from those made by [Simmons]." The magistrate judge recommended that Sanford's motion be denied for the same reasons that Simmons' motion had been denied. The district court adopted that recommendation as well. Because Sanford simply adopted Simmons' arguments and the district court relied on the same evidentiary record to decide both motions, we do not distinguish between them.

Based on these findings, the district court concluded that Sanford and Simmons were not unlawfully seized prior to Ehlers approaching the Kia and smelling marijuana coming from inside it. It noted that the Kia's "most usual and convenient path of travel from the curb to the street" was blocked because of the position of the officers' squad cars. But relying on photographs and video footage of the scene that night, the court found that the Kia could have backed up along the curb or into the adjoining driveway, without facing any obstacle, despite the placement of the squad cars.

The district court also addressed the alternative argument that no reasonable person in the Kia would have felt free to leave. It found that the arrival of armed and uniformed law enforcement officers in marked cars with flashing warning lights was insufficient, without more, to lead a reasonable person to believe they could not leave the scene, and it denied the motions.

II.

"We review the denial of a motion to suppress de novo but review underlying factual determinations for clear error." United States v. Soderman, 983 F.3d 369, 373 (8th Cir. 2020) (quoting United States v. Robbins, 682 F.3d 1111, 1115 (8th Cir. 2012)). "We will affirm the denial of a motion to suppress unless the district court's decision was unsupported by substantial evidence, was based on an erroneous interpretation of applicable law, or was clearly mistaken in light of the entire record." Id. at 373–74 (quoting United States v. Murillo-Salgado, 854 F.3d 407, 414 (8th Cir. 2017)).

On appeal, Sanford and Simmons continue to argue that the officers "completely blocked" the Kia in. But neither explains why the district court's findings to the contrary are clearly erroneous. After reviewing the record, including the photographs, video footage, and testimony, we see no basis for overturning the district court's findings. See United States v. White, 41 F.4th 1036, 1038 (8th Cir. 2022) ("We will reverse a finding of fact for clear error only if, despite evidence

supporting the finding, the evidence as a whole leaves us with a definite and firm conviction that the finding is a mistake." (quoting United States v. Holly, 983 F.3d 361, 363 (8th Cir. 2020))).

We also agree with the district court that a reasonable person in defendants' position would have felt free to leave. See United States v. Lillich, 6 F.4th 869, 875 (8th Cir. 2021) (explaining that a Fourth Amendment seizure occurs only when, based on "all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave" (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980))); United States v. Lozano, 916 F.3d 726, 729 (8th Cir. 2019) ("We review whether an encounter amounted to a seizure *de novo*." (citation omitted)). Defendants rely heavily on their assertion that they were "completely blocked" in by the squad cars, but we have found no clear error in the district court's finding otherwise. They also point out that the officers arrived at the club in uniform and armed, with the warning lights flashing on their squad cars. But these factors alone are insufficient to make a reasonable person believe they would not be free to leave the area of the club. The positioning of the marked squad cars limited the options for the Kia's egress, but Sanford and Simmons point to no other factors to support their assertion that they were seized after the officers arrived at the club but before Ehlers smelled marijuana. See Lozano, 916 F.3d at 729 (identifying factors courts may consider when determining whether an encounter with law enforcement "ripened into a seizure").

III.

We affirm the judgment of the district court.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2108

United States of America

Appellee

v.

Bruce Terrell Sanford

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:22-cr-02019-CJW-2)

ORDER

The petition for rehearing by the panel is denied.

August 07, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik