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State of Nebraska, appellee, v. LaShawna Saunsoci, appellant.

___ N.W.3d ___

Filed November 13, 2026. No. S-25-966.

1. **Constitutional Law: Search and Seizure: Motions to Suppress: Appeal and Error.** When reviewing a trial court's ruling on a motion to suppress based on a claimed violation of the Fourth Amendment, an appellate court applies a two-part standard of review. Regarding historical facts, an appellate court reviews the trial court's findings for clear error, but whether those facts trigger or violate Fourth Amendment protections is a question of law that is reviewed independently of the trial court's determination.
2. **Constitutional Law: Search and Seizure: Investigative Stops: Arrests: Probable Cause.** The Fourth Amendment guarantees the right to be free of unreasonable search and seizure. This guarantee requires that an arrest be based on probable cause and limits investigatory stops to those made upon an articulable suspicion of criminal activity.
3. **Constitutional Law: Criminal Law: Police Officers and Sheriffs: Search and Seizure: Investigative Stops: Arrests: Probable Cause: Words and Phrases.** There are three tiers of police-citizen encounters under Nebraska law. The first tier of police-citizen encounters involves no restraint of the liberty of the citizen involved, but, rather, the voluntary cooperation of the citizen is elicited through noncoercive questioning. This type of contact does not rise to the level of a seizure and therefore is outside the realm of Fourth Amendment protection. The second category, the investigatory stop, as defined by the U.S. Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), is limited to brief, nonintrusive detention during a frisk for weapons or preliminary questioning. This type of encounter is considered a seizure sufficient to invoke Fourth Amendment safeguards, but because of its less intrusive character requires only that the stopping officer have specific and articulable facts sufficient to give rise to reasonable suspicion

that a person has committed or is committing a crime. The third type of police-citizen encounters, arrests, is characterized by highly intrusive or lengthy search or detention. The Fourth Amendment requires that an arrest be justified by probable cause to believe that a person has committed or is committing a crime. Only the second and third tiers of police-citizen encounters are seizures sufficient to invoke the protections of the Fourth Amendment to the U.S. Constitution.

4. **Constitutional Law: Search and Seizure: Investigative Stops: Motor Vehicles.** A traffic stop is a seizure for Fourth Amendment purposes and therefore is accorded Fourth Amendment protections.
5. **Investigative Stops: Motor Vehicles: Probable Cause.** A traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle.
6. **Investigative Stops: Motor Vehicles: Time.** A lawful traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of the stop.
7. ____: ____: ____. When the mission of an investigative stop is addressing a suspected traffic violation, the stop may last no longer than is necessary to effectuate that purpose, and authority for the seizure thus ends when tasks tied to the traffic infraction are, or reasonably should have been, completed.
8. **Investigative Stops: Police Officers and Sheriffs: Drunk Driving: Probable Cause.** An officer is required to have only a reasonable, articulable suspicion that a motorist was driving under the influence in order to expand the scope of the initial stop and detain him or her for field sobriety tests.
9. **Probable Cause: Words and Phrases.** Reasonable suspicion entails some minimal level of objective justification for detention, something more than an inchoate and unparticularized hunch, but less than the level of suspicion required for probable cause.
10. **Search and Seizure: Investigative Stops.** The line between a second-tier encounter, or investigatory stop, and a third-tier encounter, or de facto arrest, is sometimes difficult to draw, and it depends on all the surrounding circumstances. In distinguishing a second-tier encounter from a third-tier encounter, a court must not adhere to rigid time limitations or bright-line rules but must use common sense and ordinary human experience.
11. **Police Officers and Sheriffs: Search and Seizure: Time.** Several circumstances are deemed relevant to the analysis of whether a seizure is a second-tier or third-tier encounter, including (1) the law enforcement purposes served by the detention, (2) the diligence with which law

enforcement pursues the investigation, (3) the scope and intrusiveness of the detention, and (4) the duration of the detention.

12. **Criminal Law: Police Officers and Sheriffs: Search and Seizure: Investigative Stops: Arrests: Motor Vehicles.** The fact that a detention may be considered investigative is not decisive on whether it is a second-tier encounter. The police may not carry out a full search of a person, or his or her vehicle, who is no more than suspected of criminal activity, nor may the police attempt to verify their suspicions by means that approach the circumstances of an arrest.
13. **Police Officers and Sheriffs: Investigative Stops: Time.** An investigative stop must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.

Appeal from the District Court for Douglas County: MOLLY B. KEANE, Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Mary Mullin Dvorak for appellant.

Michael T. Hilgers, Attorney General, and Cody S. Barnett for appellee.

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, BERGEVIN, and VAUGHN, JJ.

BERGEVIN, J.

I. INTRODUCTION

LaShawna Saunsoci appeals her conviction in the district court for Douglas County for driving under the influence (DUI), fourth offense. She assigns that the court erred in overruling her motion to suppress evidence obtained from a traffic stop and the subsequent investigation. She argues that when police officers transported her from the location she had been stopped to a parking garage attached to police headquarters to conduct field sobriety tests, the encounter exceeded the limits of an investigatory detention justified by reasonable

suspicion and became an arrest without probable cause. We affirm Saunsoci's conviction.

II. BACKGROUND

Saunsoci was charged by information in the district court for Douglas County with DUI, fourth offense, stemming from a February 11, 2025, traffic stop made by two police officers. Prior to trial, Saunsoci filed a motion to suppress evidence obtained from what she asserted was a warrantless arrest made without probable cause. The court held a hearing on Saunsoci's motion to suppress at which it heard testimony from the two officers involved in the traffic stop and received evidence, including footage from the two officers' body-worn cameras.

Officer Patrick Heaton testified that on February 11, 2025, he and his partner, Officer James Guyott, were on patrol duty in the Old Market area of downtown Omaha, Nebraska. The officers were in uniform and were parked in a marked police cruiser at 11th and Howard Streets. At around 8:45 p.m., the officers saw a vehicle approaching the intersection from the north. The vehicle drew their attention because the sound of the vehicle on the cobblestone street indicated that it was "traveling at a pace that is above the normal pace of what a car should be traveling" as it approached the stop sign at the intersection. They also noticed that the vehicle had "no plates and no visible in-transits" that they could see.

The officers decided to make a traffic stop, and as the vehicle turned left in front of them to travel eastbound on Howard Street, they followed it and turned on their cruiser's emergency lights. They saw the vehicle first pull over to the left-hand side of the street, which required it to cross the oncoming traffic lane. The vehicle then crossed back over the traffic lanes to pull over on the right-hand side of the street where, Heaton testified, "it should have normally pulled over." The vehicle's movements prompted Guyott to repeatedly tell Heaton to "'[w]atch her.'" After the officers parked the cruiser, they

approached the vehicle with caution because they noted that the vehicle's reverse lights were on, indicating that the vehicle was in reverse, rather than in park.

Heaton approached the vehicle on the driver's side and spoke with the driver, who identified herself as Saunsoci. Heaton asked whether she had a driver's license, and she replied that she did not. When Heaton asked where Saunsoci and her passenger had come from, she replied that they were having a good time and were "trying to enjoy [their] night." When Heaton again asked about a driver's license, Saunsoci confirmed she did not have a driver's license and said that she "shouldn't have been driving" and "was wrong for that." Heaton testified that when he was trying to get information from Saunsoci, she seemed concerned with her passenger, who was being questioned by Guyott, and that Saunsoci was dividing her attention between Heaton and her passenger. Heaton testified that Saunsoci "appear[ed] a little confused" because she kept looking over to her passenger, rather than focusing on Heaton's questions, and because she had "some issues giving [him] her ZIP code," saying the number two or three times and then asking, "'My ZIP code, right?'"

Guyott testified that he approached the vehicle on the passenger's side and spoke with the passenger, who appeared to be "highly intoxicated." Guyott asked the passenger for her identification, and she "became argumentative," questioning why he was asking for identification. But Guyott was able to obtain the passenger's identifying information.

Heaton and Guyott returned to their cruiser for a brief conversation in which Heaton stated, regarding Saunsoci, "I don't smell anything, but she's acting awful weird," and Guyott stated that the passenger was intoxicated. The officers decided to get Saunsoci out of the vehicle to "test for impairment." Saunsoci complied with their request and got out of the vehicle so the officers could conduct field sobriety tests. After Saunsoci was out of the vehicle, Heaton asked whether she had anything to drink that day and she replied that she had

not. When Guyott later asked Saunsoci whether she had consumed any alcohol, she stated that, earlier in the day, she had "weed . . . little edible things." The officers began the observation period for a preliminary breath test (PBT) by making sure she did not have anything in her mouth.

Guyott testified that the officers placed Saunsoci inside their cruiser because she was "currently being detained" and they wanted "to get her out of the inclement weather" as it "was snowing and cold." The officers ran Saunsoci's name to check for warrants, prior convictions, and other information. They learned through the check that Saunsoci had three prior DUI convictions; that her driver's license was currently "expired, suspended, surrendered, revoked"; and that her license had been revoked for 2 years based on her third DUI conviction on February 10, 2023.

The officers decided to conduct field sobriety tests on Saunsoci. They determined that because of the weather, they would "move [Saunsoci] to a safer, warmer location, which was [police] headquarters garage downtown." Guyott testified that the officers transported Saunsoci from the location of the stop because of "slick conditions and inclement weather and cold." Heaton described the weather conditions as being that "it had just started to snow, and . . . the temperature was, like, 10 degrees [and] [i]t was chilly." Heaton testified that the officers did not "want to conduct [field sobriety tests] in that type of environment" and would "much rather conduct them inside" because the driver "could slip . . . could be cold . . . could be shivering." He further testified that at the location of the stop in this case, "the street is cobblestone, and we would have had to walk up underneath the awning," which "would still be cold." Heaton testified that "we have an environment right up the street [where] it's much, much better for us and the driver" to conduct field sobriety tests.

Heaton testified that the parking garage at police headquarters was "three or four blocks" from where they had stopped Sansouci. Heaton testified that it was normal for officers to

transport drivers to the parking garage to conduct preliminary field sobriety tests when "it's raining, snowy, icy" because the parking garage was a safe place to conduct the tests. Guyott also testified that under such conditions, "we've done it in the past . . . we'll transport them to the garage where it's dry and climate controlled," which is a preferable location when there "could be slick conditions" and the driver "could lose their balance and fall, possibly hurt themselves."

After they arrived and parked inside the parking garage, the officers got Sansouci, who was not in handcuffs at that point, out of the cruiser and began conducting field sobriety tests. As Saunsoci was coming out of the cruiser, Guyott noticed a "moderate smell of alcohol" coming from her. Heaton conducted the horizontal gaze nystagmus test, the alphabet test, and the counting backward test. Guyott conducted the walk-and-turn test and the one-legged stand test. Guyott also administered a PBT; the PBT showed a breath alcohol concentration of .165, which Guyott testified was "[t]wice the legal limit" of .08. Heaton and Guyott both testified that after completion of the field sobriety tests, Sansouci was under arrest. The officers placed Sansouci in handcuffs, took her inside police headquarters, and took an elevator to a room where a DataMaster test was administered. The DataMaster test showed a breath alcohol concentration of .128.

On cross-examination at the hearing on Saunsoci's motion to suppress, Heaton testified that they entered the parking garage at police headquarters through a secured entrance that could only be used by police and could not be used by the public. But he also testified that if Saunsoci was not being detained, she would have been able to exit the parking garage on her own.

After the hearing on Saunsoci's motion to suppress, the district court entered an order overruling the motion. The court determined that the officers had made a lawful traffic stop and that they had reasonable suspicion to justify a continued detention of Saunsoci. Regarding the transport of Saunsoci from

the location of the stop to the parking garage at police headquarters, the court found that the officers transported Saunsoci "due to the cold weather and snow." The court determined:

> Based on the totality of the circumstances, the officers lawfully transported [Saunsoci] to a garage just a few blocks from the traffic stop to conduct further investigation and field sobriety tests in a safe environment. The fact that this garage was attached to central headquarters did not make it a jail or other place of custody. It was instead a convenient, dry location for field sobriety tests.

The district court found that after administering the field sobriety tests and the PBT in the parking garage, the officers handcuffed Saunsoci and moved her into the police headquarters to complete the DataMaster test, and that after administering the DataMaster test, the officers read Saunsoci her *Miranda* rights and Saunsoci responded to their "standard DUI interview questions." The court determined that the "totality of the circumstances provided officers probable cause to arrest" Saunsoci and that statements she made were "not fruits of an illegal custodial interrogation" and were admissible.

The matter was thereafter submitted to the district court in a bench trial. The court received evidence, including the parties' stipulated facts. Saunsoci renewed the objections raised in her motion to suppress in connection with evidence, including the stipulated facts, the footage from the officers' body-worn cameras, and the police reports, and the court overruled the objections and received the evidence. The court also received, without objection, evidence of Saunsoci's three prior DUI convictions. The court found that on February 11, 2025, Saunsoci had operated a motor vehicle while under the influence of alcohol with a concentration over the legal limit and that she had been convicted of similar charges on June 1, 2018; March 18, 2021; and February 10, 2023. The court found her guilty of DUI, fourth offense. The court thereafter sentenced Saunsoci to imprisonment for 90 days, a fine of

$2,000, and probation for 3 years, and it revoked her driver's license for 15 years.

Saunsoci appeals her conviction for DUI, fourth offense.

III. ASSIGNMENT OF ERROR

Saunsoci assigns that the district court erred in overruling her motion to suppress and finding that the officers did not arrest her without probable cause when they transported her to the parking garage at police headquarters to conduct field sobriety tests.

IV. STANDARD OF REVIEW

[1] When reviewing a trial court's ruling on a motion to suppress based on a claimed violation of the Fourth Amendment, an appellate court applies a two-part standard of review.[1] Regarding historical facts, an appellate court reviews the trial court's findings for clear error, but whether those facts trigger or violate Fourth Amendment protections is a question of law that is reviewed independently of the trial court's determination.[2]

V. ANALYSIS

Saunsoci challenges the district court's determination that the officers "lawfully transported" her to the parking garage to conduct field sobriety tests. She argues that when the officers transported her from the location of the traffic stop, the encounter became an arrest requiring probable cause, which the officers did not have prior to the transport.

We begin our analysis by reviewing Fourth Amendment case law and the different levels of police-citizen encounters, as well as case law relating to the specific types of encounters in this case—a traffic stop and an extended detention to investigate for DUI. We then review case law distinguishing between investigative detentions and arrests, and we thereafter consider

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[1] *State v. Weber*, 320 Neb. 934, 31 N.W.3d 229 (2026).

[2] *Id.*

all the surrounding circumstances to determine whether transporting Saunsoci to the parking garage to conduct field sobriety tests was within the limits of a detention to investigate for DUI or whether it was an unlawful arrest.

1. Fourth Amendment Standards and Levels of Police-Citizen Encounters

[2] The Fourth Amendment guarantees the right to be free of unreasonable search and seizure.[3] This guarantee requires that an arrest be based on probable cause and limits investigatory stops to those made upon an articulable suspicion of criminal activity.[4]

[3] There are three tiers of police-citizen encounters under Nebraska law. The first tier of police-citizen encounters involves no restraint of the liberty of the citizen involved, but, rather, the voluntary cooperation of the citizen is elicited through noncoercive questioning.[5] This type of contact does not rise to the level of a seizure and therefore is outside the realm of Fourth Amendment protection.[6] The second category, the investigatory stop, as defined by the U.S. Supreme Court in *Terry v. Ohio*,[7] is limited to brief, nonintrusive detention during a frisk for weapons or preliminary questioning.[8] This type of encounter is considered a seizure sufficient to invoke Fourth Amendment safeguards, but because of its less intrusive character requires only that the stopping officer have specific and articulable facts sufficient to give rise to reasonable suspicion that a person has committed or is committing a crime.[9] The third type of police-citizen encounters, arrests, is characterized

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[3] *Id*.

[4] *Id*.

[5] *State v. Saitta*, 306 Neb. 499, 945 N.W.2d 888 (2020).

[6] *Id*.

[7] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

[8] *State v. Saitta, supra* note 5.

[9] *Id*.

by highly intrusive or lengthy search or detention.[10] The Fourth Amendment requires that an arrest be justified by probable cause to believe that a person has committed or is committing a crime.[11] Only the second and third tiers of police-citizen encounters are seizures sufficient to invoke the protections of the Fourth Amendment to the U.S. Constitution.[12]

2. Traffic Stop and Further Detention to Investigate for DUI

[4,5] The encounter between Saunsoci and the officers began as a traffic stop. A traffic stop is a seizure for Fourth Amendment purposes and therefore is accorded Fourth Amendment protections.[13] A traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle.[14] In this case, when the officers decided to stop Saunsoci's vehicle, they had observed that the vehicle appeared to be "traveling at a pace that is above the normal pace" and that the vehicle had "no plates and no visible in-transits" that they could see. Saunsoci does not dispute that the officers had sufficient cause to initiate the traffic stop.

[6-9] A lawful traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of the stop.[15] When the mission of an investigative stop is addressing a suspected traffic violation, the stop may last no longer than is necessary to effectuate that purpose, and authority for the seizure thus ends when tasks tied to the traffic infraction are, or reasonably should have been, completed.[16] But the scope of a traffic stop may be

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[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *State v. Perry*, 318 Neb. 613, 17 N.W.3d 504 (2025).

[14] *State v. Weber, supra* note 1.

[15] *State v. Lang*, 305 Neb. 726, 942 N.W.2d 388 (2020).

[16] *Id.*

expanded to investigate whether a driver was driving under the influence. An officer is required to have only a reasonable, articulable suspicion that a motorist was driving under the influence in order to expand the scope of the initial stop and detain him or her for field sobriety tests.[17] Reasonable suspicion entails some minimal level of objective justification for detention, something more than an inchoate and unparticularized hunch, but less than the level of suspicion required for probable cause.[18]

In this case, while investigating suspected traffic violations, the officers expanded the scope of the stop to investigate whether Saunsoci was driving under the influence. The district court found that the officers developed reasonable suspicion to detain Saunsoci to investigate for DUI. Evidence that supported reasonable suspicion included the officers' observations regarding Saunsoci's operation of the vehicle, specifically her rate of speed when approaching the stop sign and her movements after the officers initiated the traffic stop, including crossing the centerline to pull over on the left side of the street, and then recrossing the centerline to park on the right side, and having the vehicle in reverse, rather than park, as the officers approached the vehicle. Other observations supporting reasonable suspicion included Saunsoci's behavior, which Heaton described as "awful weird" and indicating confusion and lack of focus. Specific behavior he noted indicating confusion and lack of focus included dividing her attention between Heaton's questions and her passenger and struggling to provide her ZIP Code. Saunsoci denied that she had anything to drink, but she admitted that earlier in the day she had "weed . . . little edible things."

On appeal, Saunsoci does not dispute that the officers had reasonable suspicion to expand the scope of the traffic stop

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[17] *State v. Lamb*, 280 Neb. 738, 789 N.W.2d 918 (2010), *disapproved on other grounds, State v. Melton*, 308 Neb. 159, 953 N.W.2d 246 (2021).

[18] *State v. Nelson*, 282 Neb. 767, 807 N.W.2d 769 (2011).

to investigate whether she was driving under the influence. Instead, her argument is that while reasonable suspicion may have supported conducting the investigative detention, including the field sobriety tests, at the location she was stopped, transporting her to the parking garage at police headquarters changed the nature of the encounter from a tier-two investigative detention to a tier-three arrest that required probable cause.

3. Transporting or Moving Defendant to Another Location

Saunsoci argues that the U.S. Supreme Court has set a "bright line that nonconsensual transport to the police station for further investigation requires more than the reasonable suspicion" required for an investigative detention and that it instead requires probable cause.[19] She cites *Hayes v. Florida*,[20] in which the Court held that seizures where police

> forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes . . . are sufficiently like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable cause.

However, to the extent the cases set a bright line, it is where the seizure is made in a manner that resembles arrest, such as suspects being taken from their homes to the police station for investigative purposes associated with an arrest, such as fingerprinting and interrogation. The seizure in this case is different in that Saunsoci was not seized from her home, and, instead, she was initially seized in a traffic stop that was expanded in scope for a DUI investigation supported

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[19] Brief for appellant at 7.

[20] *Hayes v. Florida*, 470 U.S. 811, 816, 105 S. Ct. 1643, 84 L. Ed. 2d 705 (1985). See, also, *Dunaway v. New York*, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979); *Davis v. Mississippi*, 394 U.S. 721, 89 S. Ct. 1394, 22 L. Ed. 2d 676 (1969).

by reasonable, articulable suspicion. Saunsoci was already "seized" for Fourth Amendment purposes at the time the officers decided to transport her. Further, she was not taken to police headquarters itself but to an attached parking garage, and she was taken there not for fingerprinting, interrogation, or other investigative procedures traditionally associated with an arrest but for field sobriety tests traditionally associated with a DUI investigatory detention.

The U.S. Supreme Court in *Florida v. Royer*[21] has stated that when a seizure is permitted on less than probable cause, the Fourth Amendment requires that the "scope of the detention must be carefully tailored to its underlying justification." The Court acknowledged that "there are undoubtedly reasons of safety and security that would justify moving a suspect from one location to another during an investigatory detention."[22] Citing *Florida v. Royer* and other federal and state decisions, the Supreme Court of Pennsylvania rejected a "hard and fast rule which prohibits the movement of suspects during the course of an investigative detention," and the Pennsylvania court instead stated that "[t]he overwhelming weight of Fourth Amendment authority supports a degree of flexibility in the conduct of *Terry* [stops], including a recognition that it may be appropriate to move a suspect during the course of such detention"[23] and that "where exigent circumstances exist—and particularly where the exigency involves safety and/or security concerns—such movement is compatible with *Terry* and its progeny."[24]

Regarding the time and means necessary to effectuate the purpose of a stop or detention, the U.S. Supreme Court

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[21] *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983) (plurality opinion).

[22] *Id.*, 460 U.S. at 504.

[23] *Com. v. Revere*, 585 Pa. 262, 276, 888 A.2d 694, 703 (2005).

[24] *Id.* at 277, 888 A.2d at 704.

in *United States v. Sharpe*[25] has stated that "[i]n assessing whether a detention is too long in duration to be justified as an investigative stop," it is "appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." The Court further stated in this regard that a "court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing"[26] regarding less intrusive alternative means and that the "question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it."[27] Distilling holdings from *Florida v. Royer* and *United States v. Sharpe*, the U.S. Court of Appeals for the Ninth Circuit stated:

> [P]olice may move a suspect without exceeding the bounds of the *Terry*-stop when it is necessary for safety or security reasons, . . . when it is the least intrusive method available to achieve the legitimate goals of the stop, . . . and when moving the suspect does not make the circumstances of the detention so coercive that the detention becomes indistinguishable from an arrest.[28]

Based on the authority set forth above, we determine that there is no bright-line rule that transporting Saunsoci raised the level of the encounter to an arrest. Instead, we must apply the principles we have employed in other contexts to determine whether the transport in this case exceeded the limits of an investigatory stop and changed the encounter to an arrest.

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[25] *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985).

[26] *Id.*, 470 U.S. at 686.

[27] *Id.*, 470 U.S. at 687.

[28] *U.S. v. Baron*, 860 F.2d 911, 915-16 (9th Cir. 1988) (citations omitted).

4. Distinction Between Investigative Detention and Arrest

In prior cases, we have set forth principles for distinguishing an arrest from an investigative detention. We note that those principles include some of the principles set forth in U.S. Supreme Court cases and other cases discussed above regarding moving or transporting a suspect during an investigative detention.

[10,11] The line between a second-tier encounter, or investigatory stop, and a third-tier encounter, or de facto arrest, is sometimes difficult to draw, and it depends on all the surrounding circumstances.[29] In distinguishing a second-tier encounter from a third-tier encounter, a court must not adhere to rigid time limitations or bright-line rules but must use common sense and ordinary human experience.[30] Several circumstances are deemed relevant to the analysis of whether a seizure is a second-tier or third-tier encounter, including (1) the law enforcement purposes served by the detention, (2) the diligence with which law enforcement pursues the investigation, (3) the scope and intrusiveness of the detention, and (4) the duration of the detention.[31]

[12,13] The fact that a detention may be considered investigative is not decisive on whether it is a second-tier encounter. The police may not carry out a full search of a person, or his or her vehicle, who is no more than suspected of criminal activity, nor may the police attempt to verify their suspicions by means that approach the circumstances of an arrest.[32] An investigative stop must be temporary and last no longer than is necessary to effectuate the purpose of the stop.[33] Similarly, the investigative methods employed should be the least

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[29] *State v. Thomas*, 308 Neb. 312, 953 N.W.2d 793 (2021).

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *State v. Saitta, supra* note 5.

intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.[34]

5. Transport in This Case Did Not Elevate Saunsoci's Detention to Arrest

We address the relevant circumstances in this case in three respects. First, we consider the law enforcement purposes served by the detention, and particularly the purposes served by the transport. We then consider how the transport affected the duration of the detention and the diligence with which the officers pursued the investigation. Finally, we consider the scope and intrusiveness of the detention and, in particular, how transport to the parking garage attached to police headquarters affected the scope and intrusiveness of the detention.

(a) Purpose of Detention and Transport

The general purpose for detaining Saunsoci was to investigate whether she was driving under the influence. But relevant to the question in this case, we focus on the purpose served by transporting Saunsoci to the parking garage. The district court found that the officers transported Saunsoci "due to the cold weather and snow." The officers testified that because of the snow and cold conditions at the time, they had safety concerns with conducting field sobriety tests on the cobblestone streets at the location of the stop. Such tests included walking and turning and standing on one leg, and the officers expressed concern that in "slick conditions" a driver "could lose their balance and fall, possibly hurt themselves."

The officers in this case asserted the sort of "reasons of safety and security" that we think the U.S. Supreme Court contemplated could "justify moving [Saunsoci] from one location to another during an investigatory detention."[35] At least one other court has determined that "harsh weather conditions" and "physical conditions that would prevent accurate sobriety

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[34] *Id.*

[35] See *Florida v. Royer, supra* note 21, 460 U.S. at 504.

testing" are safety and security reasons that justify movement of a suspect during an investigatory detention.[36]

However, we do not think that merely identifying safety and security concerns based on weather conditions is sufficient to show that transporting a suspect is within the scope of an investigative detention. Instead, the purpose of transporting the suspect must be considered with all the surrounding circumstances. Common sense and ordinary human experience must be applied to determine whether the transport in a particular case exceeded the scope of an investigative detention and constituted a de facto arrest. We therefore caution that unfavorable weather conditions will not justify transporting a suspect under all circumstances. Instead, our analysis encompasses all the surrounding circumstances as discussed below.

(b) Duration of Detention and Diligence of Officers

We next consider the effect of transporting Saunsoci on the duration of the detention and the diligence with which the officers pursued the investigation. The officers testified that the parking garage was only three or four blocks from the location of the stop, and the body-worn camera footage indicates that it took only a few minutes to drive from the location of the stop to the parking garage. Regarding diligence, we note that once the officers and Saunsoci were parked inside the parking garage, the officers promptly began administering the PBT and conducting field sobriety tests, which were completed in approximately 10 minutes. The body-worn camera footage indicates that it was approximately 35 minutes from the time the officers initiated the traffic stop of Saunsoci's vehicle until the time the PBT and field sobriety tests were completed in the parking garage. Under all the circumstances

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[36] *State v. Beckstrom*, 300 P.3d 773, 776 (Utah App. 2013).

in this case, transporting Saunsoci to the parking garage did not significantly add to the duration of the detention.

(c) Scope and Intrusiveness of Detention

Regarding whether transporting Saunsoci increased the scope and intrusiveness of the detention, we consider all the circumstances, including the fact that Saunsoci was transported to a parking garage that was attached to police headquarters. When the officers transported Saunsoci, they were properly detaining her to investigate whether she was driving under the influence. When Saunsoci and the officers arrived at the parking garage, the investigative techniques employed by the officers were limited to those normally associated with detention based on a reasonable suspicion that a driver is under the influence—conducting field sobriety tests and administering a PBT. The officers did not employ other investigative techniques associated with arrest, such as fingerprinting Saunsoci or putting her into a room for interrogation. Saunsoci was not handcuffed during the drive to the parking garage or during the field sobriety tests, and no other incidents of arrest, such as performing a full search of her person or her vehicle, were done prior to or during the transport. The techniques employed by the officers during and immediately after the transport were consistent with the scope and intrusiveness of an investigative detention based on reasonable, articulable suspicion.

We also consider whether the fact that the parking garage was attached to the police headquarters increased the scope and intrusiveness of the detention. The State cites to a case[37] in which the Supreme Court of Iowa determined that the "sally port [of a jail] was not a 'place of detention'" for purposes of a statute governing when a person in police custody had the right to call a family member or attorney. Although that case involved statutory interpretation, we think it is useful

[37] *State v. Davis*, 922 N.W.2d 326, 332 (Iowa 2019).

to our Fourth Amendment analysis in this case. The Iowa court reasoned that the "sally port" was not a place for detaining persons but a parking area for vehicles and that "[t]he fact that the sally port was attached to the jail [was] immaterial because [the defendant's] freedom was not any more restricted there than it would have been at the scene," that the officer did not handcuff the defendant, that "the location of the [field sobriety] testing was shifted only because of the bad weather," and that "the sally port . . . was a convenient, dry location for field sobriety tests."[38]

By this same reasoning, the fact that the parking garage was attached to police headquarters did not increase the scope and intrusiveness of the detention in this case. The parking garage was a parking area for vehicles and not a place for detaining persons. Heaton testified that although the officers used a secured entrance to access the parking garage, Saunsoci could have exited the parking garage on her own. The officers' reasons for transporting Saunsoci to the parking garage were based on the weather and physical conditions at the location of the stop, and the nearby parking garage was a convenient, dry location to perform field sobriety tests.

(d) Resolution

Having reviewed the relevant circumstances, we now consider whether transporting Saunsoci changed the encounter from an investigative detention to an arrest. The State cites a case[39] in which the Utah Court of Appeals found no Fourth Amendment violation when police transported the defendant from the scene of a traffic stop to a nearby parking garage attached to a police station to complete field sobriety tests. The Utah case differs from the present case in the significant aspect that the defendant consented to the transport. There is no evidence in this case that the officers sought consent or

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[38] *Id.*

[39] *State v. Beckstrom, supra* note 36.

that Saunsoci gave her consent to be transported. However, the Utah court's reasoning informs our analysis because the surrounding circumstances in that case were like those in this case.

The Utah court noted that "[s]evere weather was the primary impetus for the officer's decision to relocate the testing venue," that the "close proximity [of the parking garage] did not lengthen Defendant's detention much beyond what would have been entailed in relocating" to another location, that "tests were conducted promptly," and that there was "no evidence that the level of coercion or intrusiveness increased once Defendant arrived at the parking garage."[40] In this case, the officers transported Saunsoci because of safety concerns related to the cold and snowy conditions and the potential risk in conducting field sobriety tests at the location of the stop. They decided that the nearby parking garage provided a safe and convenient location to conduct the field sobriety tests. Transporting Saunsoci did not significantly increase the duration of the detention, and the officers diligently pursued the investigation. The investigative techniques and the manner in which the officers transported Saunsoci were within the scope of the investigative detention and were not those associated with an arrest. Conducting the field sobriety tests at the parking garage, rather than the location of the stop, did not significantly increase the intrusiveness of the investigation.

Considering all the surrounding circumstances, we determine the officers' transporting Saunsoci to the parking garage was within the scope of the investigative detention and did not transform the encounter into an arrest requiring probable cause. It is therefore unnecessary for us to decide whether, as the State suggests, the officers had probable cause to arrest Saunsoci for felony DUI at the time they transported her from the location of the stop. We conclude that the district court did not err when it found there was not an unreasonable seizure

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[40] *Id.* at 777.

in violation of the Fourth Amendment and when it overruled Saunsoci's motion to suppress.

VI. CONCLUSION

Based on all the surrounding circumstances of this case, the officers did not raise the level of the encounter to an arrest requiring probable cause when they transported Saunsoci to a parking garage attached to police headquarters for field sobriety testing. The district court did not err when it overruled Saunsoci's motion to suppress. We therefore affirm Saunsoci's conviction for DUI, fourth offense.

AFFIRMED.