STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1612

State of Minnesota,
Appellant,

vs.

Laryountae Eugene Taylor,
Respondent.

Filed April 21, 2025
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-23-22237

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

Mary F. Moriarty, Hennepin County Attorney, Matthew D. Hough, Linda M. Freyer, Assistant County Attorneys, Minneapolis, Minnesota (for appellant)

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

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

Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this pretrial appeal, appellant State of Minnesota challenges the district court's order suppressing evidence recovered from respondent Laryountae Eugene Taylor's vehicle after a search pursuant to a warrant. Because Taylor's parked vehicle was seized without a warrant prior to the search, and that seizure was not supported by probable cause, we affirm the order to suppress.

FACTS

The relevant facts are based on the stipulated evidence submitted for purposes of Taylor's suppression motion. The stipulated record for the search consists of the warrant application, search warrant, and inventory receipt from the search; and the stipulated record for the seizure consists of the related police reports and photos of the inside of the vehicle. Because we conclude that the seizure issue is dispositive, we focus on the facts related to that issue.

Around 6 p.m. on October 22, 2022, Minneapolis police officers were patrolling an area near a commercial intersection that was known to law enforcement as an "open-air drug market." The police were aware that people frequently loitered in the area, storing firearms and narcotics in their nearby vehicles. Officers began walking through a commercial parking lot, looking in parked vehicles for contraband in plain view. One officer recognized an unoccupied, parked vehicle and asked another officer to run the license plate through a database. The owner of the vehicle was reported to be Taylor. The officer was familiar with Taylor from previous contacts, including one month earlier when

Taylor was arrested in the same parking lot after a gun was seen in plain view inside his vehicle, resulting in Taylor being charged with unlawful possession of a firearm.

The officer approached the passenger door of the vehicle and smelled a strong odor of marijuana from inside the vehicle. Then, looking in the driver's side window, the officer saw a small triangular piece of cellophane on the driver's seat. The officer described the piece of cellophane as a "tear off," which is the "corner" of a "tear off baggie." The officer knew that a "tear off baggie is commonly found in narcotics use/dealings."

The officer instructed other officers to tow the vehicle and obtain a search warrant. Shortly thereafter, Taylor approached the officer, and the officer informed him why his vehicle was being towed. Taylor refused to consent to a search or to provide his keys to law enforcement.[1] Officers subsequently towed the vehicle to an impound lot.

Officers obtained a search warrant that evening, after which Taylor's vehicle was searched and police discovered a handgun, extended magazine, and black gloves in the vehicle.

The state charged Taylor with one count of unlawful possession of ammunition or a firearm in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2022). Taylor moved to suppress all evidence obtained through the warrantless seizure and the warranted search of his vehicle, arguing that both lacked probable cause.

[1] The police reports include additional facts about Taylor's interaction with officers that evening, including Taylor's admission to police that he had marijuana on his person. The state conceded at oral argument, and we agree, that this interaction occurred after the seizure of Taylor's vehicle and therefore is not part of the seizure analysis.

The district court granted Taylor's motion to suppress, determining that the facts described in the warrant affidavit did not establish probable cause for a search. The district court's order did not address whether the warrantless seizure of Taylor's vehicle was supported by probable cause.

The state appeals.

DECISION

The state may appeal as of right from a pretrial order so long as it can establish "how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial." Minn. R. Crim. P. 28.04, subds. 1(1), 2(2)(b). "The critical impact requirement has evolved into a threshold issue, so that in the absence of critical impact [appellate courts] will not review a pretrial order." *State v. Underdahl*, 767 N.W.2d 677, 683 (Minn. 2009) (quotations omitted). To satisfy the critical-impact requirement, the state must demonstrate that the "prosecution's likelihood of success is seriously jeopardized" by the district court's order. *Id.* Here, the state argues, and Taylor does not dispute, that the district court's pretrial order suppressing the handgun found in Taylor's vehicle will have a critical impact on the state's ability to successfully prosecute Taylor for illegal possession of that firearm. We agree, and we turn to the merits of the suppression issue.

In its opening brief to this court, the state challenges the district court's determination that the warrant application failed to establish probable cause to search Taylor's vehicle. Taylor responds that the warrant was not supported by probable cause, but he also argues that this court may affirm the district court's suppression order on an alternative ground—namely, that the warrantless seizure of his vehicle was not supported

by probable cause. In its reply brief, the state argues that the seizure was constitutional. We begin, and end, our analysis with the seizure issue. We address (1) whether we may consider the vehicle's seizure as an alternative ground to affirm the suppression order and (2) if so, whether the seizure was unconstitutional.

1. Consideration of the unconstitutionality of the seizure of Taylor's vehicle as an alternative ground for suppressing the evidence is appropriate.

Taylor argues that we may consider the seizure of his vehicle as an alternative ground for affirming the district court's suppression order because Taylor and the state submitted arguments about the seizure to the district court and stipulated to the record for that issue—specifically, the police reports and photos. The state briefed the seizure issue on the merits in its reply brief to this court and, during oral argument, conceded that the issue of the seizure, while not decided by the district court, is properly before us and that the record is sufficient for us to rule on that issue. We agree.[2]

"A respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003). Consideration of the seizure of Taylor's vehicle is appropriate because all three elements from *Grunig* are met: the stipulated record for the seizure issue is part of the appellate record; there is legal support for Taylor's argument, as further explained below; and the alternative ground for suppression does not expand the relief previously

[2] We appreciate the state's concession.

granted because it would yield the same result—suppression of the evidence found in Taylor's vehicle.

2. The seizure was unconstitutional.

The United States and Minnesota Constitutions protect against unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, evidence obtained through an unlawful search or seizure must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-79 (Minn. 2007). "[A] warrantless seizure is presumptively unreasonable unless one of a few specifically established and well-delineated exceptions applies." *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (quotations omitted).

Taylor argues that the evidence from his vehicle should be suppressed because the warrantless seizure of his vehicle lacked probable cause to believe the vehicle contained contraband or evidence of a crime. Specifically, he argues that the odor of marijuana, the "small piece of cellophane," the location, and Taylor's prior possession of a firearm in the vehicle are insufficient to establish probable cause that the vehicle contained contraband. The state counters that the facts considered in their totality established probable cause to seize the vehicle. Alternatively, the state argues that the vehicle could have been seized based only on reasonable suspicion that it contained illegal drugs.

Probable Cause

The Minnesota Supreme Court has held that law enforcement may seize a vehicle without a warrant prior to searching it if, at the time of the seizure, they have probable cause to believe that the vehicle contains contraband. *State v. Roy*, 265 N.W.2d 663, 665

(Minn. 1978); *see also Chambers v. Maroney*, 399 U.S. 42, 52 (1970) ("For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment."). Probable cause "exists when there are facts and circumstances sufficient to warrant a reasonably prudent [person] to believe that the vehicle contains contraband." *State v. Johnson*, 277 N.W.2d 346, 349 (Minn. 1979). When a seizure of a vehicle is unconstitutional, any evidence obtained from a resulting search must be suppressed. *See State v. Rohde*, 852 N.W.2d 260, 266 (Minn. 2014) (ordering the suppression of evidence found from a vehicle search because impounding the vehicle was unconstitutional).

Analyzing the circumstances underlying the decision to seize Taylor's vehicle, we conclude that the facts, both individually and in their totality, do not establish probable cause.

First, a strong odor of marijuana was coming from the vehicle. But odor alone, without "other evidence to indicate that the marijuana was being used in a manner, or was of such a quantity, so as to be criminally illegal," is generally insufficient to establish probable cause. *State v. Torgerson*, 995 N.W.2d 164, 175 (Minn. 2023).[3]

[3] Although *Torgerson* was decided after the search and seizure of Taylor's vehicle, *Torgerson* restated applicable precedent and thus offers helpful and relevant guidance in Taylor's case. *Id.* at 173 ("Our precedent . . . shows that . . . we have never held that the odor of marijuana (or any other substance), alone is sufficient to create the requisite probable cause to search a vehicle.").

Second, a piece of cellophane was seen in the vehicle and identified by an experienced officer as a "tear off" from a "tear off baggie," which is related to drug use and trafficking. However, even deferring to the officer's experience, the presence of part of a tear-off baggie is merely a sign that drugs may have been in the car at some time and is not sufficient to establish probable cause that the vehicle presently contains such contraband. *See Johnson*, 277 N.W.2d at 349.

Third, the location being an "open-air drug market" is likewise insufficient to support probable cause. "[M]erely being in a high-crime area will not justify a stop," *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), let alone provide probable cause to believe a vehicle in the area contains contraband.

Fourth, the fact that the officer had encountered Taylor with a firearm in his car at that location about one month earlier is insufficient to establish probable cause to believe that Taylor had a firearm in his vehicle on the day of the seizure. *Cf. State v. McGrath*, 706 N.W.2d 532, 544-45 (Minn. App. 2005) (deciding that the presence of marijuana in three curbside garbage searches over the three weeks preceding the warrant application was evidence of ongoing criminal activity sufficient to establish probable cause that contraband would be found in the residence), *rev. denied* (Minn. Feb. 22, 2006).

Even taken together, these circumstances were insufficient to establish probable cause. Taylor's vehicle was lawfully parked around 6 p.m. in a commercial parking lot serving nearby businesses located near a busy intersection. No drug paraphernalia or drug residue were seen in the vehicle. And no activity was observed or reported involving the vehicle. In this context, the marijuana odor, the tear off, the location, and Taylor's past

possession of a firearm were insufficient to lead a reasonably prudent person to believe that contraband would be found in Taylor's vehicle. *See Johnson*, 277 N.W.2d at 349.

Reasonable Suspicion

In the alternative, the state argues that the seizure was constitutional because the circumstances gave the police reasonable suspicion that Taylor's vehicle contained contraband or evidence of a crime. With reasonable suspicion, the state contends, the police could have seized the vehicle while they obtained a search warrant.

Under the principles articulated in *Terry v. Ohio*, 392 U.S. 1 (1968), the police may temporarily detain a person without probable cause if the police have reasonable suspicion of criminal activity. *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). Reasonable suspicion is a lower standard than probable cause. *Id.* at 843. It cannot be based on a mere hunch; there must be "objectively articulable facts" supporting the detention. *Id.* (quotation omitted). The existence of reasonable suspicion is based on the totality of the circumstances. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007).

The state argues that the reasonable-suspicion standard applies to the seizure of Taylor's vehicle by analogizing this case to the case of *United States v. Place*, 462 U.S. 696 (1983). In *Place*, the Supreme Court concluded that the *Terry* reasonable-suspicion standard applied to the police's temporary detention of luggage from an air traveler who was engaging in suspicious activities. 462 U.S. at 706. The Supreme Court balanced the "minimally intrusive" imposition on the individual's Fourth Amendment interests against the government's "substantial" interest in stopping drug trafficking to conclude that seizure of the luggage could be based on less than probable cause. *Id.* at 703-06. But the Supreme

Court concluded that the manner of the seizure in that case—specifically, the length of the detention of the luggage (90 minutes) and the failure of police to diligently investigate—took the seizure outside of the *Terry* exception to the probable-cause requirement. *Id.* at 708-10.

The state argues that, just like the temporary seizure of luggage can be justified by reasonable suspicion under the Fourth Amendment's balancing test, so, too, could the seizure of Taylor's vehicle. The state observes that Minnesota appellate courts have employed a balancing test to determine whether impoundment of a vehicle is constitutionally permissible. It cites *State v. Rohde*, in which the Minnesota Supreme Court held that the state's interest in public safety may outweigh an individual's Fourth Amendment interests when, for example, a vehicle is presenting a traffic hazard or is blocking a roadway. 852 N.W.2d at 264. The state argues that "the public interest in preventing and detecting drug crimes is as substantial as these interests" and that, therefore, a lawfully parked vehicle may be seized if there is reasonable suspicion that it contains drugs. It contends that, because the detention of Taylor's vehicle before it was searched pursuant a warrant was not long,[4] the seizure did not fall outside the *Terry* exception to the probable-cause requirement.

The state's argument is unpersuasive. The state has cited no Minnesota case in which the reasonable-suspicion standard has been applied to the seizure and towing of a

[4] According to the state, body-worn-camera and squad-car footage show that the search warrant was executed at 7:37 p.m., about an hour and a half after the vehicle was seized. As no video footage is in the appellate record, we cannot verify the state's assertion.

lawfully parked vehicle for the purpose of searching the vehicle for evidence of a drug crime. And we are aware of none. In a persuasive, but nonprecedential, opinion in *State v. Vanguilder*, we rejected the state's argument that reasonable suspicion was sufficient for the police to seize a lawfully parked vehicle and tow it to a site for the purposes of conducting a narcotics-detection dog sniff (and, based on the results, to obtain a warrant to search it). No. A19-1274, 2020 WL 4280044, at *2, *4 (Minn. App. July 27, 2020).[5] We explained that, even though seizing the defendant's vehicle had no practical impact on the defendant's liberty since he was already in custody, "it [did] not follow that the police could seize the van based on mere reasonable suspicion." *Id.* at *4. "A seizure, like a search, still requires a warrant or a valid exception to the warrant requirement, and either of these requires probable cause." *Id.* (citing *State v. Holland*, 865 N.W.2d 666, 671 (Minn. 2015)). We apply that same reasoning here.

In sum, we conclude that, because the police lacked probable cause to seize Taylor's vehicle, the district court did not err by suppressing the evidence discovered during the warranted search of the vehicle. *See Rohde*, 852 N.W.2d at 266.

Affirmed.

[5] *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions may be cited for their persuasive authority).