**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A25-0086**

State of Minnesota,
Appellant,

vs.

Todd Clifford Bowlby,
Respondent.

**Filed June 30, 2025**
**Reversed and remanded**
**Reyes, Judge**

Mille Lacs County District Court
File No. 48-CR-24-1280

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

Corey J. Haller, Mille Lacs County Attorney, James Winfield Doty, Assistant County Attorney, Milaca, Minnesota (for appellant)

Madison Bruber, St. Paul, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Schmidt, Judge.

**NONPRECEDENTIAL OPINION**

**REYES**, Judge

Appellant State of Minnesota argues in this pretrial appeal that (1) the dismissal of counts I and II meets the critical-impact test; (2) the district court erred by dismissing counts I and II of the complaint in which the state charged him with violating a harassment

restraining order (HRO) for lack of probable cause by requiring the state to prove that appellant intended to harass a protected party; and (3) the district court failed to act with impartiality. We reverse and remand.

## FACTS

In summer 2024, deputies in Mille Lacs County attempted to execute a warrant to arrest respondent Todd Clifford Bowlby for felony criminal damage to property. When the deputies could not locate Bowlby at his home, they spoke with his neighbor, who told the officers that she had seen him leaving his home hauling his fishing boat 20 minutes earlier. The deputies later saw Bowlby driving a recreational vehicle (RV) from Highway 47 into the entrance at the Isle Airport. The deputies knew that an active HRO had been issued that prohibited Bowlby from being within 250 feet of Johnson's Portside, the petitioner's place of employment, which was approximately 100 feet from the airport entrance, for two years. In addition to that prohibition, the HRO stated that "any conduct [] in violation of the specific provisions provided in the 'It is ordered' section above constitutes a violation of this [HRO]."

The deputies conducted a search of Bowlby's RV, which revealed a firearm, two boxes of .22 magnum ammunition, and a metal pipe that appeared to have a burnt leafy substance inside it. The state charged Bowlby with violating the HRO while possessing a dangerous weapon under Minn. Stat. § 609.748, subd. 6(d)(4) (2024) (Count I); violating the HRO within ten years of a previous domestic-violence conviction under Minn. Stat. § 609.748, subd. 6(c) (2024) (Count II); operating a motor vehicle after consuming alcohol or marijuana under Minn. Stat. § 171.09, subd. 1(f)(1) (2024) (Count III); operating a motor

vehicle while using cannabis on a street or highway under Minn. Stat. § 169A.36, subd. 2 (2024) (Count IV); and possession of cannabis in a motor vehicle in violation of Minn. Stat. § 169A.36, subd. 3(1) (2024) (Count V).

Bowlby moved to dismiss counts I and II of the complaint. In his motion, Bowlby argued that the state did not have probable cause to support counts I and II, because he did not know that his actions of driving down Highway 47 to enter the Isle Airport violated the HRO and there was no evidence that he was trying to "harass the petitioner[]." In opposition, the state provided a copy of the HRO to the district court as an exhibit and argued that it did not have to show that Bowlby intended to harass the petitioner to violate the terms of the HRO.

The district court granted Bowlby's motion to dismiss, determining that the evidence presented by the state did not show that Bowlby knew he was violating the HRO. The district court also reframed Bowlby's argument and stated in part that (1) "the question raised is not whether [Bowlby] *knew of*, or was within, the 250-foot restricted area but what knowledge [he] was given on how that area was to be calculated given the area included public spaces"; (2) Bowlby "knew he was not to be within 250 feet of Johnson's Portside for the purpose [of] contacting the [p]etitioning [p]arty," but he had only driven past the location and "did not stop on the shoulder of [the highway]"; (3) a "review of the location of [Bowlby's] home address, Johnson's Portside address, and the Isle Airport address revealed that [Bowlby's] home is located 0.2 miles north of the Isle Airport and Johnson's Portside . . ." and that the HRO "does not prohibit [Bowlby] from being at the Isle Airport or traveling on Highway 47"and "no matter what route [Bowlby] drove he would have to

pass close by Johnson's Portside to travel to obtain reasonable and necessary services, such as a grocery store, gas station or other necessities"; (4) Bowlby's "proximity to Johnson's Portside was incidental and [] not harassing"; and (5) and "there is no evidence to show [Bowlby] knew traveling on Highway 47 or being at the Isle Airport was a violation of the distance requirement in the Ex Parte HRO."

This appeal follows.

## DECISION

### I. The state has shown that the dismissal of counts I and II of the complaint satisfies the critical-impact test.

As a preliminary matter, we first address whether the critical-impact test is met. We conclude it has been met.

The state may appeal a pretrial order under Minnesota Rule of Criminal Procedure 28.04, subdivision 1(1). The state must prove that (1) the pretrial order "will have a critical impact on its ability to prosecute the case" and (2) "the ruling was erroneous." *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quotation omitted).

Here, the district court dismissed counts I and II of the complaint for lack of probable cause. In addition, the record indicates that the district court misapplied the law, which will be discussed further below. We therefore conclude that the critical-impact test has been met.

### II. Because the district court misapplied the law, its dismissal of counts I and II requires reversal.

The state contends that the district court imposed an additional requirement that the state present evidence that Bowlby "intended to harass" the petitioner. We agree.

A motion to dismiss for lack of probable cause should be denied when "the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial." *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976). Put differently, the district court should not dismiss a complaint if there is a fact question for the jury's determination on each element of the crime charged." *State v. Prigge*, 907 N.W.2d 635, 640 (Minn. 2018). Possibilities of innocence do not require a directed verdict of acquittal as long as "the evidence taken as a whole makes such theories seem unreasonable." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002) (quotation omitted).

"The evidence necessary to support a finding of probable cause is *significantly less* than that required to support a conviction." *State v. Harris*, 589 N.W.2d 782, 790 (Minn. 1999) (emphasis added). And "[u]nlike proof beyond a reasonable doubt or preponderance of the evidence, probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Id.* at 790-91. (quotations omitted). Appellate courts review "factual findings underlying a probable cause determination using the clear error standard, but review the district court's application of the legal standard of probable cause to those facts de novo." *State v. Abdus-Salam*, 1 N.W.3d 871, 877-78 (Minn. 2024) (quotations omitted).

In determining whether probable cause supported the complaint, the district court relied on this court's decision in *State v. Andersen*, 946 N.W.2d 627, 629 (Minn. App. 2020). In *Andersen*, the district court issued an HRO prohibiting Andersen from being within 100 feet of M.L.B.'s home but excluded M.L.B.'s address from the order. *Id.* at

629. The state charged Andersen with violating the HRO after M.L.B. saw him walking through her apartment complex toward the direction of her apartment. *Id.* at 629-30. We reversed the district court and concluded that the state had to prove that Andersen knew the location of M.L.B.'s residence. *Id*. at 638.

*Andersen* is materially distinct from this case. Andersen had not been provided with M.L.B.'s address, which would have prevented him from ever knowing if he violated the HRO. The underlying concern in *Andersen* is not just knowledge, but notice of what conduct the HRO prohibited him from engaging in. *Id.* at 636. Unlike Andersen, Bowlby knew (1) the address of the petitioner's place of employment; (2) that he could not be within 250 feet of the petitioner's place of employment; and (3) that being within the prohibited distance constituted a violation of the HRO. To sustain a charge under Minn. Stat. § 609.748, subd. 6(b), the state need only prove that Bowlby knew the HRO existed and that it prohibited him from being within 250 feet of the petitioner's place of employment. *See id.* at 632 (stating that "mens rea is the element of a crime that requires the defendant know the facts that make his conduct illegal." (quotations omitted)). The district court's application of *Andersen* to these facts is inconsistent with how this court analyzes whether a prohibited party had knowledge that they engaged in conduct that violated the HRO. *State v. Shaka*, 927 N.W.2d 762, 771 (Minn. App. 2019).

Unlike Andersen, Bowlby's lack of knowledge is not the result of information being withheld from him but is instead the consequence of his failure to ascertain the boundary set forth in the HRO and where he was prohibited from being present. Moreover, the record suggests that, at the time the violation occurred, Bowlby drove his vehicle into the entry of

the airport, which is within the area prohibited by the HRO, rather than simply driving along the highway, as the district court found.

The district court further determined that the complaint was not supported by probable cause because Bowlby did not know "how that area was to be calculated given the area included public spaces." But Bowlby did not make this argument, request the issuing court to clarify the parameters of the HRO, or seek modification of the parameters of the HRO *prior* to the violation. Thus, at the time of the alleged violation, the HRO was valid and enforceable, and it unequivocally prohibited Bowlby from being within 250 feet of the petitioner's place of employment, of which Bowlby was aware. This evidence shows that counts I and II of the complaint were supported by probable cause.

It also appears that the district court dismissed the complaint because the state did not submit evidence that Bowlby intended to violate the HRO, that Bowlby initiated contact with the petitioner, and that Bowlby's single intrusion into the prohibited area did not constitute a violation of the HRO. Bowlby argues that his transitory presence, lack of contact with the petitioner, and single intrusion shows his lack of intent. However, Minn. Stat. § 609.748, subd. 6(b), does not require the state to prove that Bowlby have multiple contacts with the area, initiate contact with the petitioner, or have the specific intent to violate the HRO to show probable cause.

We therefore conclude that the district court erred as a matter of law by dismissing counts I and II.

## III. The district court failed to act with impartiality.

The state argues that the district court lacked impartiality by relying on facts that neither party presented and posits that some of the factual findings it made were the result of the district court's own research. The state's claim has merit.

Appellate courts presume that a judge has "discharged [their] duties properly." *State v. Schlienz*, 774 N.W.2d 361, 366 (Minn. 2009). To remain impartial, judges should avoid the appearance of impropriety and act to ensure that parties have no reason to think their case is not being handled fairly. *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013). "[J]udges may not engage in independent investigations of facts in evidence—regardless of whether the evidence and investigation involve immutable facts." *State v. Dorsey*, 701 N.W.2d 238, 251 (Minn. 2005). In addition, a judge cannot "act as counsel for a party to the litigation." *State v. Malone*, 963 N.W.2d 453, 464 (Minn. 2021).

Appellate courts apply a de novo standard of review to determine whether a district court denied a party the right to an impartial fact-finder. *Dorsey*, 701 N.W.2d at 249.

### A. The district court lacked impartiality by conducting independent research and relying on facts outside of the record.

To support its argument that the district court conducted independent research, the state points to the district court's findings that:

> The evidence presented shows [Bowlby's] home address is 42414 Highway 47, Isle, MN; Johnson's Portside's address is 42099 Highway 47, Isle, MN; and the Isle Airport's address is 42150 State Highway 47, Isle, MN. A review of the location of Defendant's home address, Johnson's Portside address, and the Isle Airport address revealed that [Bowlby]'s home is located 0.2 miles north of the Isle Airport and Johnson's Portside, which are located directly across from each other on

> Highway 47. The Ex Parte Harassment Restraining Order does not prohibit [Bowlby] from being at the Isle Airport or traveling on Highway 47. Given the limited choices, review of each of the locations revealed that no matter what route [Bowlby] drove he would have to pass close by Johnson's Portside to travel to obtain reasonable and necessary services, such as grocery store, gas station, or for other necessities.

As Bowlby concedes, neither party presented evidence to the district court with information regarding the distance from Bowlby's apartment to Johnson's Portside. As a result, it appears that the district court ascertained the distance between Bowlby's home and Johnson's portside through its own independent research.

In *Dorsey*, the judge independently investigated a fact that neither party introduced into evidence during a bench trial, and then announced the results of the investigation to counsel, effectively introducing "a material fact that was favorable to the state—and which the state had not yet introduced." 701 N.W.2d 238, 251. The supreme court concluded that the judge's independent investigation of facts, "whether or not they involve immutable facts," was a basis for reversal because it deprived Dorsey of a fair trial and an impartial fact-finder. *Id.* at 251. The supreme court also expressed concern about the precedent that may be set when a judge conducts independent research of facts outside of the record, including confirmatory immutable facts, because it compromises the bedrock principle "that judges may not investigate or rely upon extra-record knowledge when sitting as the finder of fact." *Id.*

The district court's apparent investigation into the distance between appellant's home and Johnson's Portside constitutes the type of independent investigation that is prohibited by a judicial officer, as explained in *Dorsey*. While *Dorsey* addressed the right

of a criminal defendant to have an impartial judge, there is no dispute that all parties are entitled to an impartial judge. *See Hansen v. St. Paul City Ry. Co.*, 43 N.W.2d 260, 264 (Minn. 1950) (stating that judge must be fair to both sides and should refrain from comments that would injure either party to litigation). We therefore conclude that the district court committed reversible error by conducting its own investigation into facts outside of the record.

**B. The district court lacked impartiality by collaterally attacking the HRO.**

The record also shows that the district court made additional factual findings and arguments that were not presented by Bowlby and apparently relied on those findings to determine that the complaint was not supported by probable cause. This was error. Notably, the district court found:

> The Petitioning Party did not request [Bowlby] in this case remain a certain distance from his job site. No evidence has been presented to indicate the reviewing judge considered any public spaces that would or could be located within the 250-foot radius of Johnson's Portside. It is probable that had the reviewing judge known the public highway and municipal airport location the reviewing judge may not have included a distance requirement but would have limited the order to what was requested by the petitioning party or excluded Highway 47 and the Isle Airport from the distance requirement. Regardless, *the Petitioning Party, by not including a request for distance requirement from the jobsite, was not objecting to Defendant's presence along Highway 47.* Likewise, because [Bowlby's] presence on Highway 47 or at the municipal airport was not inconsistent with the Petitioning Party's request, the Ex Parte HRO Petitioning Party did not contact Law Enforcement to report seeing [Bowlby] in a prohibited location or that [Bowlby] had contacted him. (Emphasis added).

The district court also noted that Bowlby "attempted to get the HRO changed to address the 250-foot distance prohibition" after being charged with violating the HRO, but he did not pay the $75.00 filing fee. The district court's legal determination that Bowlby did not know he violated the HRO by driving on the highway because the petitioner in the HRO proceeding "did not object to Bowlby driving on the highway" is not supported by the record. The district court's comments and assumptions about the parameters of the HRO appear to be arguments that Bowlby could have but did not make to the district court that issued the HRO in a different proceeding. The district court's comments and assumptions were effectively a collateral attack on the HRO on behalf of Bowlby.

In *State v. Schlienz*, the supreme court held that the district court's on-the-record discussion with the prosecutor suggesting the specific objections the state could make in opposition to a plea-withdrawal motion disqualified the district court judge from presiding over a case because the judge's conduct "called into question the judge's impartiality." 774 N.W.2d at 369.

Similarly, the district court's actions here, specifically its sua sponte collateral attack on the HRO, call into question its impartiality. Notably, the district court based its decision, in part, on facts not in the record and arguments that Bowlby did not make. The district court therefore made erroneous factual findings and legal determinations. Bowlby does not dispute that the district court looked in the civil file, but instead, "would venture to guess that many district court judges look in civil files . . . when they coincide with criminal matters." Bowlby provides no cite to support this contention. To the extent that Bowlby's contention is true, the district court's inquiry into the civil proceeding reaches far beyond

judicial notice, in that it not did not just acknowledge the civil proceeding but formulated its own arguments and made legal conclusions based on those arguments. *See* Minn. R. Evid. 201(b), (e) (permitting courts to take judicial notice of facts "not subject to reasonable dispute . . . [and] capable of accurate and ready determination," provided the parties have an opportunity to be heard on the issue). Indeed, the district court's speculation as to what Bowlby intended to argue, its challenges and interpretation of the HRO beyond what was stated, and its determination that the petitioner would not have objected to Bowlby's conduct on the day of his arrest, were not arguments Bowlby raised in his motion to dismiss or by the petitioner in the civil proceeding.[1]

**Reversed and remanded.**

[1] We decline to address reassignment of the case to a different district court judge because neither party requested we do so.