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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1331**

State of Minnesota,
Appellant,

vs.

Alyssa Rose Knoblauch,
Respondent.

**Filed January 22, 2019
Affirmed in part, reversed in part, and remanded
Klaphake, Judge***

Mille Lacs County District Court
File No. 48-CR-17-2372

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

Joe Walsh, Mille Lacs County Attorney, Timothy S. Kilgriff, Assistant Mille Lacs County Attorney, Milaca, Minnesota (for appellant)

Christopher Sailors, Sailors Allen Law, Milaca, Minnesota (for respondent).

Considered and decided by Halbrooks, Presiding Judge; Bratvold, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant State of Minnesota challenges the district court's order dismissing two counts of receiving stolen property for lack of probable cause. In a cross-appeal, respondent Alyssa Rose Knoblauch challenges the district court's order denying her motion to suppress evidence seized during the execution of a search warrant. We affirm the district court's denial of Knoblauch's motion to suppress evidence, but reverse and remand the dismissal of the complaint because circumstantial evidence provides sufficient probable cause to believe that Knoblauch possessed stolen property.

DECISION

I. Jurisdiction

As an initial matter, respondent challenges appellant's ability to appeal a probable-cause dismissal. The state's ability to appeal a criminal case is limited. *State v. Rourke*, 773 N.W.2d 913, 923 (Minn. 2009). Under Minn. R. Crim. P. 28.04, subd. 1(1), the prosecution "may appeal a dismissal for lack of probable cause only if the dismissal is based on questions of law." *State v. Barker*, 888 N.W.2d 348, 352-53 (Minn. App. 2016) (quotation omitted). When a district court dismisses a charge solely on a factual determination that the state has not established probable cause, an appeal is precluded because the state may marshal further evidence and reinstate the prosecution. Minn. R. Crim. P. 28.04, subd. 1(1); *State v. Duffy*, 559 N.W.2d 109, 110 (Minn. App. 1997). But when a probable-cause dismissal is based on a district court's assessment of the elements of the offense, statutory construction, or another legal issue, a question of law is presented

for appeal. *State v. Tice*, 686 N.W.2d 351, 353 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

Knoblauch argues that this probable-cause dismissal is not appealable because the district court's basis for dismissal was solely factual. But the district court made a legal determination that the facts of the case were insufficient to satisfy the elements of the charged offenses of receiving stolen property. Because this was a legal determination, the order is appealable by the state. *See State v. Moe*, 498 N.W.2d 755, 758 (Minn. App. 1993).

II. The district court did not err in denying Knoblauch's motion to suppress the evidence seized during the execution of the search warrant.

Knoblauch asserts on cross-appeal that the district court erred in denying her motion to suppress evidence, arguing that a police officer's affidavit filed in support of the residential search warrant included false and misleading statements. Warrants supported by deliberately falsified or misrepresented material facts may lack probable cause. *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676 (1978). Courts use a two-prong test to determine if the warrant is invalidated on these grounds: (1) whether the affiant deliberately made statements that were false or in reckless disregard of the truth; and (2) whether the misrepresentation was material. *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010). A misrepresentation is material if, when the misrepresentation is set aside, the warrant would lack probable cause. *Id.* This court reviews the first prong of deliberate misrepresentations under the clearly erroneous standard and reviews the second prong of materiality de novo. *Id.*

Knoblauch asserts that the officer's application included a misstatement of fact concerning the identification of Knoblauch in a photographic lineup. The district court found that the officer's statement did not constitute a misrepresentation of fact. The district court noted that the warrant application does not claim that Knoblauch was identified in a photographic lineup. Instead, the warrant application included that police identified Knoblauch as a suspect through the alleged victim, D. B., and other people involved in the investigation. Because the warrant application does not include a misrepresentation of fact, we need not reach the materiality prong. The district court properly denied Knoblauch's motion to suppress the evidence seized during the execution of the warrant.

III. The district court erred in dismissing the complaint for lack of probable cause.

The state argues that the district court erred in dismissing the complaint for lack of probable cause. We review de novo the district court's dismissal for lack of probable cause based on a legal determination. *State v. Gerard*, 832 N.W.2d 314, 317 (Minn. App. 2013). "[T]he test of probable cause is whether the evidence worthy of consideration . . . brings the charge against the [defendant] within reasonable probability." *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976) (quotation omitted). "Unlike 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." *State v. Harris*, 589 N.W.2d 782, 790-91 (Minn. 1999) (quotation omitted). The district court must view the evidence in the light most favorable to the state. *State v. Knoch*, 781 N.W.2d 170, 178 (Minn. App. 2010), *review denied* (Minn. June 29, 2010). And may not "assess[] the

relative credibility or weight of . . . conflicting evidence.” *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996).

Knoblauch was charged with two counts of receiving stolen property, in violation of Minn. Stat. § 609.53, subd. 1 (2016). A person commits this crime if he or she “receives, possesses, transfers, buys, or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery.” Minn. Stat. § 609.53, subd. 1.

The district court found that there was insufficient evidence to demonstrate that the jewelry found in Knoblauch’s possession was stolen, “other than [D.B.’s] allegations after items were found pursuant to the search warrant.” But the district court also found that an intruder, who identified herself as D.B.’s “sister Alyssa,” was discovered in D.B.’s house. After learning that someone claiming to be her sister was in her home without invitation, D.B. determined that items of jewelry and silver place settings were missing. Pursuant to a search warrant, police searched Knoblauch’s house and seized numerous pieces of jewelry. A few days later, D.B. identified 29 items of jewelry found in Knoblauch’s house as belonging to her. D.B.’s statements of ownership are sufficient to establish probable cause to believe that the jewelry found in Knoblauch’s possession was stolen. The district court erred in dismissing the complaint for lack of probable cause. We therefore reverse and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.