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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1443**

State of Minnesota,  
Respondent,

vs.

Nehemiah Jovan Richardson,  
Appellant.

**Filed July 22, 2019  
Affirmed  
Kirk, Judge\***

Hennepin County District Court  
File No. 27-CR-18-6339

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi L. Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

## UNPUBLISHED OPINION

**KIRK**, Judge

On appeal from his conviction of being an ineligible person in possession of a firearm, appellant Nehemiah Jovan Richardson challenges the district court's determination that police officers had probable cause to seize his vehicle and that the subsequent search warrant was supported by probable cause. Because we conclude that probable cause supported both the seizure of the vehicle and the search warrant, we affirm.

### FACTS

In the early morning hours on November 2, 2017, police officers responded to a call regarding an assault at a hotel in Eden Prairie. When officers arrived, an employee told them that a woman—later identified as L.R.—was sitting in the lobby waiting for a ride. According to the employee, the woman said that the man she was with hit her. While the woman was waiting for her ride, a man approached the lobby desk and asked for more towels. The employee left the lobby to get the towels, but returned when he heard the woman scream and saw the same man assaulting her. The employee provided police with the man's room number, and police identified the man as Richardson. Police had previously encountered Richardson twice at the hotel with two different women.

Officers began looking for Richardson and L.R. One officer looked for Richardson's vehicle—a black SUV—while another officer went to check Richardson's hotel room. No one was in the hotel room, and Richardson's SUV was not in the parking lot. But because the door to the hotel room was ajar, an officer proceeded inside the hotel room to conduct an “exigent search.” Inside the hotel room, the officer observed a large

amount of towels on the floor and discovered four cell phones. The officer believed these to be signs of human trafficking.

While police were searching for L.R. and Richardson, they received a phone call from L.R.'s aunt around 6:30 in the morning. She told officers that she had been on her way to pick up L.R. and expressed her concerns that L.R. was involved in prostitution and that Richardson was a pimp. Police asked L.R.'s aunt to come to the police station and continued looking for L.R. Later that morning at the police station, L.R.'s aunt told officers that she had personal experience with prostitution and human trafficking and could recognize it. She also noted that although L.R. was not employed, she often had money.

At about 8:00 or 9:00 in the morning, hotel staff reported to police that L.R. and Richardson had returned to the hotel. When police arrived, they saw Richardson on the hotel elevator and arrested him. He had a cell phone, car keys, and L.R.'s ID in his pocket. At the same time, police found L.R. in Richardson's black SUV in the hotel parking lot. Instead of immediately searching the black SUV, police decided to impound it. Although the impound form stated that the reason for impoundment was domestic assault, police later explained that they impounded the vehicle because they believed it could contain evidence of human trafficking.

The night prior to drafting a search warrant application for the black SUV, an officer received an email from L.R.'s aunt. In the email, L.R.'s aunt explained that L.R. told her Richardson kept a "4-5" under the hood of his vehicle. The officer understood this to mean that there was a .45 caliber handgun under the hood of the black SUV and incorporated this information into his search warrant application. A judge later signed the search warrant,

and officers searched the vehicle. During the search, officers discovered a .45 caliber handgun and three magazines (two of which had rounds in them) under the hood of Richardson's vehicle between the hood and the insulation. The state then charged Richardson with being an ineligible person in possession of a firearm and ammunition.<sup>1</sup>

Before trial, Richardson filed a motion to suppress evidence, asserting in relevant part that police unconstitutionally seized his SUV and that the subsequent search warrant for his vehicle was not supported by probable cause. At a hearing on the motion, the state presented testimony from several officers who testified about what happened, as described above. Additionally, the officers noted that training they had received led them to believe that, due to the mobile nature of human trafficking, the black SUV may contain evidence of that crime. The district court denied Richardson's motion, concluding that officers had probable cause to impound the vehicle and that the subsequent search warrant was supported by probable cause.

Richardson's case proceeded to a jury trial where a jury found him guilty of being an ineligible person in possession of a firearm. Accordingly, the district court sentenced Richardson to a guidelines sentence of 60 months imprisonment. This appeal follows.

## **D E C I S I O N**

Richardson challenges his conviction on two grounds. First, he contends that the district court incorrectly determined that officers had probable cause to seize his vehicle.

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<sup>1</sup> Richardson is prohibited from possessing a firearm or ammunition as a result of a prior conviction.

Second, Richardson maintains that the search warrant permitting officers to search the black SUV was not supported by probable cause. We review each argument in turn.

**I. Officers had probable cause to seize Richardson’s vehicle.**

Richardson first contends that the district court incorrectly determined that officers had probable cause to seize his vehicle at the time they impounded it. We review whether a seizure is justified by probable cause de novo. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

Both the United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. A search or seizure without a warrant is per se unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 222. But if police have probable cause to search a vehicle, it is “constitutionally permissible” to impound the vehicle and search it later after a warrant is obtained. *State v. Jankowski*, 281 N.W.2d 717, 719 (Minn. 1979). And “[p]robable cause to search an automobile exists where the facts and circumstances within the officer’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a reasonable man of reasonable caution in the belief that the automobile contains articles the officer is entitled to seize.” *State v. Gallagher*, 275 N.W.2d 803, 806 (Minn. 1979).

Here, the district court concluded that at the time of impoundment, officers had probable cause to believe that the SUV contained evidence of human trafficking. In support of this conclusion, the district court pointed to a number of facts, including the observation of multiple cell phones and towels in Richardson’s hotel room, officers’ previous observations of Richardson at the same hotel with different women, the

circumstances of the assault, and the phone call from L.R.'s aunt. The district court found that testimony also established that vehicles are frequently used in human trafficking to coordinate criminal activity, and that police reasonably feared that evidence in the vehicle could have been destroyed or that the vehicle could have been driven away.

Based on these facts and the officers' testimony, a person of "reasonable caution" would conclude that there were items in the black SUV that the officers were entitled to seize. *Id.* Accordingly, the district court correctly concluded that officers had probable cause to impound Richardson's vehicle.

Still, Richardson maintains that officers lacked probable cause because there was no evidence of sexual activity in his hotel room, L.R. did not give a statement to police, and L.R.'s aunt's concerns were only suspicions and not based on objective facts. But none of these claims defeat probable cause. Although additional evidence of sexual activity was not found in Richardson's hotel room, officers did find multiple cell phones and several towels, which in their training and experience was consistent with human trafficking. *See State v. Britton*, 604 N.W.2d 84, 88–89 (Minn. 2000) (noting that this court is "deferential to police officer training and experience and recognize[s] that a trained officer can properly act on suspicion that would elude an untrained eye"). And, as the state notes, Richardson's use of the SUV to transport L.R. to and from the hotel gave police officers a substantial basis to believe that evidence of criminal activity may be found in the vehicle. Remembering that "probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity," the district court

correctly determined that officers had probable cause to impound Richardson's vehicle. *State v. Harris*, 589 N.W.2d 782, 790-91 (Minn. 1999) (quotation omitted).<sup>2</sup>

## **II. The search warrant for Richardson's vehicle was supported by probable cause.**

Richardson also contends that the search warrant for his black SUV was not supported by probable cause. When reviewing a district court's probable cause determination made upon issuing a search warrant, we apply the deferential substantial-basis standard. *State v. Rochefort*, 631 N.W.2d 802, 804 n.1 (Minn. 2001). A substantial basis means a "fair probability," given the totality of the circumstances, "that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). In evaluating a probable-cause determination, we examine not the information that police had, but the information presented in the affidavit to the judge who issued the search warrant. *Novak v. State*, 349 N.W.2d 830, 831 (Minn. 1984).

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<sup>2</sup> Richardson also contends that many cases addressing probable cause and the search of vehicles involve scenarios where the search of the vehicle occurs contemporaneously with the stop of a vehicle or is based on recent observations directly linking the vehicle to the belief that it contained contraband. But the fact that Richardson's vehicle was not searched contemporaneously with a stop does not impact the analysis regarding whether officers had probable cause to seize the vehicle. See *Chambers v. Maroney*, 399 U.S. 42, 52, 90 S. Ct. 1975, 1981 (1970) (stating that the court saw "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."). Because officers had probable cause to search the SUV, they were permitted to impound the vehicle and apply for a search warrant rather than search it immediately at the hotel without a warrant.

The United States and Minnesota Constitutions provide that no warrant shall be issued without a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Probable cause exists when “there is a fair probability that contraband or evidence of a crime will be found.” *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). And the task of the issuing judge is to make a “common-sense decision.” *Id.*

When reviewing a probable-cause determination, we use a “totality of the circumstances approach”; as such, “a collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause.” *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004) (quotation omitted). And the essential question is “whether the totality of facts and circumstances described in the affidavit would justify a person of reasonable caution in believing that the items sought were located at the place to be searched.” *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). Further, a direct connection (or nexus) has typically been required between the alleged crime and the place to be searched. *State v. Souto*, 578 N.W.2d 744, 747-48 (Minn. 1998). A “nexus may be inferred from the totality of the circumstances.” *Yarbrough*, 841 N.W.2d at 622.

Here, the search warrant affidavit outlined several of the officers’ observations. The officer detailed how a hotel clerk witnessed Richardson “pulling L.R. through the hotel” and thought she was being held against her will, and noted that surveillance camera footage from the hotel corroborated the hotel clerk’s statement. The affidavit further explained that L.R.’s aunt told police that she believed Richardson was a “pimp,” and that L.R. called her



asking to be picked-up and stating that she needed help getting away from Richardson. The officer also wrote that an internet search of L.R.'s phone number showed multiple advertisements "consistent with sex trafficking behavior." Finally, the officer described how L.R.'s aunt emailed officers indicating that L.R. stated that Richardson kept a "4-5" under the hood of his vehicle. Based on his training and experience, the officer understood this reference to be to a .45 caliber handgun. Accordingly, the officer asked to search the black SUV registered to Richardson for electronic items, evidence of human trafficking, and firearms and ammunition.

Based on its review of the affidavit, the district court concluded that the issuing magistrate correctly determined that probable cause supported the warrant. In reaching this conclusion, the district court noted that the circumstances of the assault, the call from L.R.'s aunt, the aunt's email to police stating that L.R. told her there was a gun under the hood of the car, and the fact that L.R.'s phone number showed up in online advertisements consistent with human trafficking, all supported the conclusion that probable cause supported the search warrant.

Applying the deferential substantial-basis standard of review, the district court correctly determined that probable cause supported the search warrant. The search warrant affidavit contained specific facts, including the assault at the hotel, L.R.'s aunt's concerns, and the presence of L.R.'s phone number in online advertisements that police determined were consistent with human trafficking behavior. Given these facts in the search warrant affidavit, and considering the totality of the circumstances, a "person of reasonable

caution” would believe that the items the police sought would be located in the black SUV. *Ruoho*, 685 N.W.2d at 456.

Still, Richardson contends that there was not a sufficient nexus between the evidence of human trafficking sought by police and his vehicle. But “direct observation of evidence of a crime at the place to be searched is not required,” and “[a] nexus may be inferred from the totality of the circumstances.” *Yarbrough*, 841 N.W.2d at 622. Based on the assault, L.R.’s aunt’s statements, the fact the Richardson and L.R. left the hotel and later returned, and the fact that police located L.R. in the black SUV, the totality of the circumstances support the inference of a nexus between the vehicle and the evidence sought by police.

Additionally, Richardson contends that the email from L.R.’s aunt failed to establish probable cause that a firearm would be located in his vehicle. Richardson argues that L.R.’s aunt had no personal knowledge about the firearm, so her email failed to provide a basis for police to search his vehicle for firearms and ammunition. “[S]tatements from citizen witnesses, as opposed to criminal informants, may be presumed to be credible.” *Harris*, 589 N.W.2d at 789. But “magistrate must consider veracity and basis of knowledge of persons supplying hearsay information.” *Souto*, 578 N.W.2d at 750.

Although L.R.’s aunt did not have personal knowledge of a firearm in Richardson’s vehicle, she was relaying information from L.R., who presumably did have personal knowledge of the firearm in order to be able to provide its location with specific detail. Further, other evidence in the search warrant affidavit—like the assault corroborated by hotel surveillance video and L.R.’s statements that she needed help getting away from

Richardson—provided additional facts to help the judge determine the reliability of the aunt’s information.<sup>3</sup> Accordingly, we affirm the district court’s decision that the search warrant was supported by probable cause. *See Jones*, 678 N.W.2d at 11-12 (finding probable cause existed to issue a warrant where information was based on statements from an ex-girlfriend about a conversation that occurred eight years earlier).

**Affirmed.**

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<sup>3</sup> The reviewing district court also noted that even without the aunt’s statements, there was more than sufficient probable cause to support the search warrant.