

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0424**

State of Minnesota,
Respondent,

vs.

Daniel Edward Nixon,
Appellant.

**Filed February 22, 2021
Affirmed
Rodenberg, Judge***

Ramsey County District Court
File No. 62-CR-19-75

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea M. Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

RODENBERG, Judge

Appellant appeals after he was convicted of second-degree burglary, in violation of Minn. Stat. § 609.582, subd. 2(a)(4) (2018), for breaking into the Ha Tien Super Market on May 9, 2018. He argues that: (1) police lacked probable cause to seize his vehicle, which was later searched pursuant to a search warrant; and (2) the district court erroneously admitted evidence of another burglary, also committed on May 9, 2018, without proving by clear and convincing evidence that appellant committed the unrelated burglary. We affirm.

FACTS

In May 2018, the St. Paul police department (SPPD) was investigating a string of commercial burglaries. There was a department-wide “stop-and-ID” alert (the alert) concerning the burglaries. The alert contained pictures of the suspect and the suspect’s vehicle captured by video cameras. It also contained a brief description of the burglaries: “[S]uspect has burglarized the HA TIEN MARKET . . . and Augustines . . . and possibly other businesses.” The alert described the suspect’s vehicle as “a 2001 to 2006 White Chevrolet Impala with a distinctive rear spoiler.” Officers were instructed to “create [their] own [probable cause] for a stop and ID” and to contact Sergeant M.S. if the vehicle was spotted and the suspect was identified.

Due to the nature of the investigation, officers were aware of several similarities among all of the burglaries. All were in the same general area of St. Paul; similar tools were used to gain entry; a distinctive greenish-yellow bag was used by the burglar(s); and

unique red and black gloves were worn. In addition to the alert, the SPPD regularly informed its officers of developments in the investigation.

The Ha Tien Super Market Burglary

The Ha Tien Super Market, located at 1959 Suburban Avenue in St. Paul, has a surveillance video system inside the store that recorded the May 9 burglary, as well as a surveillance video system outside that recorded the suspect, the suspect's accomplice, and the vehicle they used.

The surveillance footage inside of the market depicts the outer glass door being broken at approximately 2:11 a.m., with a hammer or other tool, and a male entering through the broken outer glass door. The inner glass door was then broken with the same tool. The district court summarized the surveillance footage as depicting a male who was "medium built, wearing a black baseball cap without a logo, a white surgical mask, blue jeans, a black hooded sweatshirt or jacket, distinctive red and black gloves, and black boots or shoes." The male was carrying a "greenish-yellow bag with black straps." He attempted to steal cash from an inner office, but was unable to gain access because the locks had been changed.

The surveillance footage outside of the market showed a "white vehicle with black lines across it" arrive in the parking lot of the Ha Tien Super Market. A male left the vehicle and headed toward the direction of the market "with the greenish-yellow bag with black straps in his hand" and then returned and put the greenish-yellow bag in the trunk of the vehicle.

Seizure of Appellant's Vehicle

On May 25, 2018, Officer M.T. of the SPPD was on patrol in the area of the commercial burglaries. According to his police report, as detailed by the district court in its findings and order after a stipulated-evidence trial, Officer M.T. was looking for a vehicle described as a “white 2001 to 2006 Chevrolet Impala sedan with black rub strip, trunk lid spoiler, and silver wheels or hub caps.” Officer M.T. was informed that this vehicle was connected to the burglaries; he was also told that the burglaries were perpetrated by “a Black male, with a medium build, short or no hair, wearing a surgical mask, black baseball cap, black hooded . . . sweatshirt or jacket, and distinctive red and black gloves.” At approximately 1:30 a.m., Officer M.T. saw a vehicle pass in front of him that matched the description of the vehicle in the alert and the other information provided by the SPPD. He followed the vehicle, ran a license plate check, and learned that the owner of the vehicle was appellant Daniel Edward Nixon.

Officer M.T. stopped the vehicle. As he approached it, he noticed the windows had an illegal tint “not in compliance with Minnesota traffic laws.” He identified the driver as being Daniel Edward Nixon. There was a front-seat passenger in the car. Because the vehicle’s windows were so dark, Officer M.T. wanted to ensure there were no other occupants in the vehicle, and he asked the driver to roll down the back window. According to the district court order, Officer M.T. “saw in plain view on the rear seat: black baseball hats, [and] a pair of unique work gloves that were red, black, and gray with yellow writing on the strap.” While speaking to appellant, Officer M.T. observed that appellant was a

“Black male, had short to no hair and medium build, was wearing a black hooded jacket or sweatshirt.” A second SPPD officer was called to the scene to assist.

Believing the driver to be the burglary suspect, and the passenger to be the accomplice, Officer M.T. asked them to step out of the vehicle. The passenger was identified as J.N., appellant’s brother. When J.N. got out of the car, Officer M.T. “saw two handheld two-way walkie-talkies on the passenger seat in plain view.” Appellant was placed in Officer M.T.’s squad car. During this time, Officer M.T. and the second officer reviewed the information provided by the SPPD, compared the red and black work gloves to the photo provided, and “agreed they were a match.”

Sergeant M.S. instructed the officers to take appellant to the police station to be photographed and identified. The Impala was seized and towed to the impound lot in a secured garage and, after obtaining a search warrant issued by a judge who found probable cause to believe that the vehicle contained evidence of crime, law enforcement searched the Impala.¹ Sergeant M.S. seized the following items from the vehicle: black baseball caps, two-way radios, a yellow sling-shot, and a pair of distinctive red and black Hardy brand mechanic’s style gloves. The following items were seized from the trunk: bolt cutters, an orange extension cord, a reciprocating saw, and a yellowish-green bag with black straps. Inside the bag, officers found a hammer, pry bar, and several reciprocating saw blades. The gloves and radios were taken to the Bureau of Criminal Apprehension

¹ Appellant does not challenge the search warrant. He challenges only the seizure of the vehicle which resulted in the search.

(BCA) for analysis. A DNA sample was taken from appellant pursuant to a warrant and was also delivered to the BCA. The DNA profile on the gloves matched appellant's DNA.

Appellant was charged with this May 9 burglary at Ha Tien, and was charged with multiple other burglaries in other files.

Appellant moved the district court to suppress evidence gathered from the search of the Impala after it was seized. The district court denied the motion, finding that police had a reasonable, articulable suspicion to stop appellant's vehicle and ample probable cause to seize and later search the vehicle pursuant to a valid search warrant.

During the same hearing, the district court addressed the state's intention to admit at trial other-crimes evidence from the similar burglaries being prosecuted. Appellant challenged the introduction of evidence of the other burglaries. The district court found that there was clear and convincing evidence of appellant's involvement in the other burglaries, but limited the admission in each case to one other incident of burglary. The district court permitted the state to present evidence in this case concerning an Arby's burglary, which was committed on the same night as the Ha Tien Super Market burglary.

Appellant waived his jury-trial rights, and this case proceeded to trial based on stipulated evidence. Appellant was found guilty of second-degree burglary and sentenced to 90 months' imprisonment.

This appeal followed.

DECISION

I. Motion to Suppress

Appellant argues that the district court erred by denying his motion to suppress evidence recovered from the Impala because police lacked probable cause to seize the vehicle. “When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Appellate courts review a district court’s factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

The United States Constitution and the Minnesota Constitution protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search or seizure without a warrant is per se unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). 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).

“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. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case.” *Id.* “[T]he totality of the circumstances includes reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons.” *Id.* “Therefore, an appellate court must

give due weight to reasonable inferences drawn by police officers and to a district court's finding that the officer was credible and the inference was reasonable." *Id.* (quotations omitted).

Appellant argues that "[b]ecause the police did not observe evidence or proceeds of a burglary, the information they had did not amount to probable cause to believe" that appellant and his brother were the burglary suspects. This argument is unpersuasive. Appellant's argument appears to ignore that the Impala itself was a major factor in the probable-cause determination. The record reflects that, at the time of the seizure, St. Paul police were investigating several commercial burglaries that appeared to be connected. To assist in the investigation, an alert was distributed to all officers. The alert identified the vehicle involved in all of the burglaries. In light of this information, Officer M.T. stopped a vehicle that matched the description. Officer M.T. testified that when he first saw the Impala, he "immediately thought, that's the vehicle," and claimed that the match was such that he was "95 percent confident" that the vehicle he stopped was the Impala depicted in the alert.

After stopping the vehicle, Officer M.T. observed that the vehicle was occupied by two males matching the description of the burglars who were sought. The fact that the Impala was occupied by two people was consistent with the alert, too. The alert contained two pictures of an alleged burglar, which showed a Black male with short hair. The fact that the Impala was occupied by two Black males with shorter hair further supported the officer's suspicions because it was consistent with information in the alert.

Moreover, after asking the driver to roll down the back window, Officer M.T. observed a black baseball cap and distinctive black and red gloves in the Impala. The gloves and hat were consistent with the gloves and hat worn by the burglar pictured in the alert. And when the Impala was stopped, appellant was wearing a black “hoody or a jacket,” which was also consistent with the attire worn by the burglar depicted in the alert. Finally, another officer arrived at the scene and that officer also concluded that the individuals in the Impala matched the description of the suspects connected to the burglaries. The entirety of the officers’ observations amply provided probable cause to believe that the Impala contained evidence of crime and that the occupants of the vehicle were the persons who were sought in connection with the string of burglaries in the general area of St. Paul where the vehicle had been stopped.

A search warrant was issued after a judge found probable cause to believe that there was relevant evidence inside the vehicle. Only after obtaining the search warrant did Sergeant M.S. search the Impala.

The seizure of the Impala and subsequent search of it pursuant to a warrant were supported by probable cause. Accordingly, the district court did not err when it denied appellant’s motion to suppress.

II. Admission of Other-Crimes Evidence

The admissibility of evidence of other crimes or acts is governed by Minn. R. Evid. 404(b).

A district court’s decision to admit [other-crimes] evidence is reviewed for an abuse of discretion. A defendant who claims the trial court erred in admitting evidence bears the burden of

showing an error occurred and any resulting prejudice. If an appellate court determines that the district court erroneously admitted [other-crimes] evidence, the court must then determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.

State v. Griffin, 887 N.W.2d 257, 261-62 (Minn. 2016) (citations omitted).

To be admissible, there must be clear and convincing evidence that appellant participated in the other crimes or bad acts and that the probative value of the incidents is not outweighed by the potential for unfair prejudice. Minn. R. Evid. 404(b). Here, the district court made a detailed oral ruling admitting the evidence of the Arby's burglary and stated the correct legal standard in its ruling.

The district court later issued a more-detailed written order explaining why evidence of the Arby's burglary was admissible at the trial concerning the May 9 Ha Tien Super Market burglary. "Because of the significant similarities in modus operandi and identity between the Ha Tien Market and Arby's incidents, the evidence supports the two burglaries were perpetrated by the same male, who later turned out to be [appellant]." The district court found, and the record supports, that appellant was found guilty of the Arby's burglary in a court trial completed before this stipulated-evidence trial. Accordingly, appellant's identity as the person who burgled the Arby's was proved beyond reasonable doubt.

The district court applied the correct legal standard in determining that the other-crimes evidence was admissible, and the record supports the district court's factual findings in arriving at that determination. Further, the district court limited the other-crimes evidence at trial to one prior crime. This reasoned decision was favorable to appellant and

avoided the possibility of unfair prejudice by the use of excessive other-crimes evidence. The district court acted within its discretion in admitting evidence of the Arby's burglary and evidence that the Arby's burglar and the Ha Tien Market burglar appeared from video recordings to be the same person using the same car, where appellant's guilt in the Arby's burglary had been proved before this stipulated-evidence trial.

In sum, appellant's conviction results from evidence obtained after the constitutionally permitted seizure of his Impala, the warranted search of the car, and error-free proceedings in the district court.

Affirmed.