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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1595**

State of Minnesota,
Respondent,

vs.

Preston Scott Sharlow,
Appellant.

**Filed October 3, 2022
Affirmed
Ross, Judge
Concurring in part, dissenting in part, Frisch, Judge**

Hennepin County District Court
File No. 27-CR-19-29094

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Police investigating a report of a missing person sought and executed a “no-knock” warrant to search Preston Sharlow’s home, where they found evidence implicating him in

the missing man's disappearance and murder. Now on appeal from his conviction of second-degree murder, Sharlow contends that the circumstances outlined in the search-warrant application failed to supply probable cause to justify the warrant and, separately, that the circumstances did not provide reasonable suspicion to justify a no-knock entry to execute the warrant. Because the facts outlined in the affidavit established probable cause that the suspicious contemporaneous events occasioning the missing man's disappearance culminated at Sharlow's house, the search warrant was justified; and because reasonable inferences from those same facts meet the low bar to allow an unannounced entry to safeguard human life, the no-knock feature of the warrant also was justified. So we affirm.

FACTS

Minneapolis police received a report in November 2019 from a woman that her son, William Albrecht, had been missing for two days. Police learned that, in the overnight hours of Thursday, November 14, Albrecht had been at a Bloomington bar that he frequented almost every night. They learned too that he argued with two men at the bar, "CJ" and "Suleyman," over an alleged \$400 cocaine debt. Police also heard that Albrecht left the bar in the early morning hours of Friday, November 15, not long after the argument and that he had asked a friend to drive him to meet a woman at her home in Bloomington. Police understood that the woman, Isabelle Braveheart, was an associate of CJ's and that the friend dropped Albrecht off at Braveheart's house at about 4:00 a.m.

Albrecht did not appear for work later that day, nor did he call his employer to explain his absence. He also did not pick up his children as planned. Several people tried to telephone Albrecht that day, and their calls were transferred immediately to his

voicemail, suggesting that his cellphone had been powered off. Albrecht did not return to the bar that night. Investigators received an unverified report that Albrecht's cellphone had "pinged" near a park in north Minneapolis. Police discovered that Albrecht's cellphone had been last used for an outgoing call at about 3:00 a.m. the morning he disappeared. His mother had not seen him since November 14. In fact, no one had seen or heard from Albrecht after he was dropped off at Braveheart's house. Police suspected foul play.

Police learned the identities of those living at Braveheart's home and examined their criminal records. They learned that appellant Preston Sharlow lived there and believed, inaccurately, that Sharlow had been convicted previously for dealing cocaine and assaulting a police officer. In fact, Sharlow's record instead included only convictions for domestic assault and other crimes.

Minneapolis police sergeant Jarrod Kunze applied for a warrant to search Braveheart and Sharlow's residence. The warrant application included most of the facts just outlined. It included the mistaken criminal-history reference stating that Sharlow had been convicted for drug dealing and assaulting a police officer. But it did not mention the unverified cellphone ping. The application indicated that police believed that the house contained specifically described items that Albrecht wore or possessed when he had been dropped off there—a baseball cap, a gold chain necklace, a jacket, a pair of pants, a pair of shoes, and an iPhone. The application also sought authority to enter the house unannounced "to prevent the loss, destruction, or removal of the objects of the search, or to protect the safety of the searche[r]s or the public" due to Sharlow's criminal history for assaulting a police officer.

The district court issued a warrant on November 19, 2019, directing police to search the home and authorizing their unannounced entry. Police executed the warrant that day. They discovered blood and other evidence that, after forensic examination, indicated that Albrecht was killed inside the house or garage. Police interrogated Sharlow, who confessed to killing Albrecht. He led officers to Albrecht's body, which he had dumped in Woodbury.

The state charged Sharlow with murder. Sharlow moved to suppress evidence gathered from his home, arguing that the warrant was not supported by probable cause, contained omissions and misrepresentations, and had an invalid no-knock provision. He also moved to suppress his confession because the questioning officer ignored his repeated requests to speak with an attorney. Sergeant Kunze testified, admitting that Sharlow's criminal history described in the warrant application inaccurately stated that Sharlow has felony convictions for cocaine distribution and possession and for assaulting a police officer. He acknowledged that Sharlow does have felony convictions for other offenses. The sergeant testified that he omitted the phone-ping reference from his warrant application because it was unverified, "fourth-hand, unsubstantiated information" and the ping had occurred two days after Albrecht's phone died. He explained that he had tried calling Albrecht's number during that time but received no response.

The district court granted the motion to suppress Sharlow's confession because the interrogating officer failed to honor Sharlow's right to speak with an attorney, but it denied the motion to suppress evidence resulting from the search. It determined that probable cause supported the search warrant because Albrecht had suddenly disappeared and was last seen being dropped off at Braveheart's house after he argued at the bar over money

with Braveheart's purportedly drug-dealing acquaintance. The district court recognized the omission and inaccuracy in the warrant application, but it found that they did not undermine its probable-cause finding. It determined that reasonable suspicion justified the no-knock authorization in the warrant because the items included in the warrant could be easily destroyed and because the case involved a missing person who could be in greater peril if police entry was announced.

Sharlow and the state agreed that the search-warrant issues were dispositive and decided to proceed with a bench trial on stipulated evidence under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. The district court assessed the stipulated evidence and found Sharlow guilty of second-degree murder. It sentenced him to serve 380 months in prison. Sharlow appeals.

DECISION

Sharlow challenges his murder conviction as relying on evidence seized during an unconstitutional search. He argues that the search warrant was not supported by probable cause that a crime was committed and that its no-knock provision was not supported by reasonable suspicion that evidence would be destroyed or that lives would be in danger. The arguments fail.

I

The warrant to search Sharlow's home is supported by probable cause. The federal and state constitutions prohibit unreasonable searches and seizures and require that warrants be issued only on probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Probable cause supporting a search warrant exists if there is a fair probability that

evidence of a crime will be found in the place to be searched. *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). We review an appellant’s contention that a warrant rests on an insufficient factual ground by examining the warrant application to determine whether a substantial basis justifies the district court’s probable-cause determination, *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001), including whether it outlines facts that connect the site with the criminal activity, *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998). We do so by reviewing the factual statements in a search warrant for clear error and the district court’s legal determinations de novo. *State v. Jenkins*, 782 N.W.2d 211, 223 (Minn. 2010). We resolve doubtful or marginal cases based “largely . . . [on] the preference to be accorded to warrants.” *Massachusetts v. Upton*, 466 U.S. 727, 734 (1984) (quotation omitted). The warrant here meets the probable-cause standard.

The facts in the warrant application establish the required probable cause and nexus to probable criminal activity. They lead to the unmistakable (and therefore “probable”) conclusion that Albrecht disappeared suddenly from all his life’s important activities and that he did so apparently at a specific location (Braveheart’s house) almost immediately after a specific circumstance (an argument at a bar with a purported drug dealer over money) and at a specific time (in the early morning hours of November 15, 2019). Sharlow is correct that the warrant application does not designate any *particular* crime yet being investigated. But he points to no facts supporting the notion that anything other than criminal activity (like false imprisonment, kidnapping, or murder) reasonably explains the circumstances of a man unexpectedly vanishing from his life—from his job, his children, his mother, his acquaintances, and his regular social scene. Probable cause requires only

that law enforcement state facts that establish “a fair probability that contraband or evidence of a crime will be found.” *Yarbrough*, 841 N.W.2d at 622 (quotation omitted). The warrant application easily meets that low standard. We add that even if, as Sharlow suggests, some alternative innocent reason might also explain Albrecht’s disappearance (again, he points to no facts supporting an innocent hypothesis), the facts in the application establish a reasonable probability that evidence—like the things Albrecht possessed or the clothes he wore when he disappeared—remained inside the house where he was last seen.

We are, like the district court, a bit perplexed by the criminal-history inaccuracy in the warrant application. But, also like the district court, we conclude that no misrepresentation or omission renders the resulting warrant and search constitutionally infirm. A defendant may seek to invalidate a search warrant by challenging the truthfulness of factual statements made in the warrant application. *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978). But the defendant can succeed only by also establishing that the misstatement or omission was material to the probable-cause determination. *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010); *State v. Doyle*, 336 N.W.2d 247, 252 (Minn. 1983). “A misrepresentation or omission is material if, when the misrepresentation is set aside or the omission supplied, probable cause to issue the search warrant no longer exists.” *Andersen*, 784 N.W.2d at 327. Our de novo review informs us that neither the alleged misrepresentation nor the omission is material to the finding of probable cause here.

Regarding the erroneous references to Sharlow’s criminal history, the district court explained that it would have reached the same probable-cause decision had the accurate information been included. Regarding the omission, Sergeant Kunze testified that the

phone-ping information was never verified and surfaced two days after Albrecht's phone stopped receiving calls. Sharlow does not persuasively explain how including unverified technical data undermines the probable-cause finding. Evaluating the application de novo, we too are convinced that neither the omission nor the misstatement materially affected the finding. The sergeant's testimony called into serious doubt the reliability of the unverified cellphone-ping information, leaving no basis to question the district court's dismissive treatment of that information. The real basis for probable cause is Albrecht's sudden disappearance at Braveheart's home in the middle of the night after he argued with Braveheart's purportedly drug-dealing acquaintance at the bar. Sharlow's criminal background adds little weight to the already troubling nature of that story. Even if Sharlow had no criminal history at all, probable cause exists because of the highly suspicious circumstances surrounding the disappearance. The erroneous criminal history is therefore immaterial to the probable-cause determination.

II

We will address Sharlow's challenge to the no-knock authorization in the warrant only on the legal issues the parties raised and only on the factual record sufficiently developed in the district court. We observe, however, that two potentially dispositive but undeveloped issues loom large at the margin. The first of these dormant issues is whether the circumstances of the entry foreclosed even the possibility that police violated Sharlow's constitutional rights by entering without knocking and announcing their presence. The second is whether suppressing the evidence would be the appropriate remedy even if the

warrant's no-knock authorization were constitutionally infirm and police violated Sharlow's constitutional rights when they acted on it.

We do not decide whether police entering an unoccupied home on a warrant unannounced violates an absent resident's rights, even though the record lacks any indication that Sharlow or anyone else was in the house when police entered. The appellate record contains no direct evidence of the entry's circumstances. Neither the prosecutor nor defense counsel asked any suppression-hearing witness about the entry. The only relevant references are in a forensic investigator's report, which includes the hearsay statement, "I was informed by on scene Detectives that law enforcement members forced the main entry door and the garage service door open during their entry and no suspects were found inside the residence," and a police report that indicates that the house was empty. One federal appellate court implicitly treated a defendant's presence in the home as a prerequisite to a constitutional violation for an officer's having failed to knock and announce entry while executing a search warrant. That court reasoned, "[E]ven if, as Barnes argues, the no-knock aspect of the warrant was invalid, we do not see what difference this made. As it happened, nobody was in the apartment at the time, anyway, so knocking would have made no difference. The knock would not have been answered, and the officers would then have entered." *United States v. Barnes*, 195 F.3d 1027, 1028–29 (8th Cir. 1999). The state supreme court similarly held "that the conduct of the police did not violate any of defendant's [constitutional] rights" when police entered an unoccupied area of the defendant's home because failing to announce their presence "did not have any greater potential for causing unnecessary shock or embarrassment than an ordinary execution of a

warrant.” *State v. Prudhomme*, 287 N.W.2d 386, 389 (Minn. 1979). Here the suppression-hearing record does not say whether Sharlow or anyone else was inside to respond if the officers had knocked and announced their presence. Because the parties did not raise the legal issue in the district court or on appeal, and because the record merely suggests but does not establish that Sharlow’s house was vacant on entry, we do not decide how vacancy might impact Sharlow’s no-knock constitutional challenge.

Nor do we decide whether suppressing the evidence would be the appropriate remedy even if the unannounced entry violated Sharlow’s rights. The United States Supreme Court’s decision in *Hudson v. Michigan* forecloses the notion that the exclusionary rule applies automatically to remedy a Fourth Amendment knock-and-announce violation. 547 U.S. 586, 599 (2006). Sharlow couched his suppression motion partly under the Fourth Amendment, implicating *Hudson*. But he also relied on the Minnesota Constitution, and the state supreme court has not decided whether the exclusionary rule likewise is unavailable to remedy an officer’s violating a home possessor’s knock-and-announce rights under the state constitution. *State v. Jackson*, 742 N.W.2d 163, 180 (Minn. 2007) (recognizing the *Hudson* holding but not reaching the question whether it applies to knock-and-announce violations under the Minnesota Constitution). No Minnesota Supreme Court opinion or precedential opinion of this court has decided the issue after *Jackson*. And in this case, the state did not raise the issue in the district court or in this court, and counsel for the state did not discuss *Hudson* until questioned about it during oral argument on appeal. We therefore lack the procedural basis

or sufficient argument to address whether the suppression remedy is even available to Sharlow.

We highlight these two undeveloped issues only to avoid confusion. That is, our focus on the discrete no-knock issue as presented by the parties—whether the circumstances support the no-knock authorization—should not be interpreted as our implicitly accepting either that failing to knock and announce entry into an unoccupied home is a constitutional violation or that a knock-and-announce violation requires evidence suppression. We turn to the limited question before us, which we confidently answer.

We reject Sharlow’s challenge to the warrant’s no-knock provision. After *Hudson*, the Minnesota Constitution remains Sharlow’s only *possible* basis on which he could arguably secure the suppression of the evidence directly and indirectly resulting from the search of his home. And the constitution requires only reasonable suspicion for an unannounced entry. *See State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000). This is not a high bar. *Id.* Officers must reasonably suspect that announcing their presence would be dangerous or would inhibit the effective criminal investigation because of the potential destruction of evidence. *Id.* The state must supply the necessary supportive facts for a warrant’s no-knock authorization, or the authorization will be nullified on review. *State v. Amundson*, 712 N.W.2d 560, 565 (Minn. App. 2006). But we determine reasonableness by looking at both the particularized facts asserted in the warrant application and the reasonable inferences that can be drawn from them. *State v. Barnes*, 618 N.W.2d 805, 811–12 (Minn. App. 2000). We review the issue de novo on the undisputed facts here. *See Wasson*, 615 N.W.2d at 320.

On our de novo review, we hold that reasonable safety concerns justified the no-knock provision of the warrant authorizing the unannounced entry. As we said above, the circumstances identified in the warrant application would allow one to reasonably infer that Albrecht's sudden and recent disappearance occurred in Sharlow's house as the result of abduction, incapacitation, or death. One might reasonably infer the worst, which is that Albrecht was already dead and that any evidence in the house would shed light only on his abduction or the circumstances of his demise. But Albrecht's disappearance was only four days old, and one might therefore also reasonably hope that Albrecht remained alive and was being detained inside against his will. Given that reasonable possibility, authorizing an unannounced entry was justified to avoid alerting Albrecht's captors of police presence, exposing Albrecht to a rash, potentially violent response. Any number of dangerous scenarios—scenarios that police certainly anticipate and occasionally experience—are foreseeable in that situation. Alerting kidnappers of a pending entry could, for example, prompt an immediate and forceful reaction against their captive or against the officers. Or it might prompt them to defend themselves, convert their captive into a hostage, and use direct threats against him seeking to negotiate a more favorable outcome. We easily balance these substantial potential harms against the potential harms that might result from an unannounced and sudden entry. These include needlessly destroying property, mistakenly entering the wrong premises, shocking or embarrassing the occupants, or instigating a violent reaction by occupants unaware that police are lawfully entering. *See Prudhomme*, 287 N.W.2d at 389. Our focus here is not on whether the police could lawfully enter, which we have already determined, but on whether they could lawfully be authorized

to enter without first affording the occupants the chance to ready themselves for the intrusion. In this context, on balance, the safety-oriented harms that might result from an announced entry are far greater than any harm that might result from an unannounced entry. The no-knock authorization was therefore eminently reasonable.

We reach this conclusion de novo without directly following the district court's reasoning. The district court endorsed the no-knock authorization in part based on its view that the physical items sought in the search could be easily destroyed and in part on Sharlow's criminal history. In our estimation, the physical items were too durable to be easily destroyed in the brief period the officers would have waited between announcing their presence and entering. And the nature of the potential danger to Albrecht or to the officers exists irrespective of Sharlow's criminal history or lack of one. We therefore agree with the district court's conclusion but not its rationale.

We are not persuaded otherwise by Sharlow's contention that the warrant affidavit supported the no-knock provision with only "boilerplate" justification. Generalized, boilerplate language is insufficient to support a no-knock provision. *State v. Botelho*, 638 N.W.2d 770, 778 (Minn. App. 2002). Applications for unannounced entry should instead be tailored to the circumstances of the case. *See id.* Although the allegedly boilerplate language in the warrant asserting that the evidence was in danger of being destroyed may not provide adequate support for the no-knock authorization, as we have stated, the potential dangers reasonably inferred from the application's specifically described circumstances certainly do. The same is so of the allegedly boilerplate assertion of the need to "protect the safety of the searche[r]s or the public." Although the concern was stated in

merely generalized fashion (and, as Sharlow suggests, was seemingly the product of cutting and pasting from warrant applications in other cases), the certainly justifiable concern about Albrecht's safety and the safety of the entering officers allays any difficulty we might otherwise have with the generalized nature of this part of the application. We do not suggest that an officer should seek or that the district court should grant no-knock entrance authority merely on generalized assertions about potential evidence destruction or danger. We say only that, in this case, reasonable inferences from the particularized facts regarding Albrecht's disappearance and the suspicious circumstances surrounding it as stated in the warrant application justified authorizing the urgent entry.

And we are also not persuaded by the thoughtful rationale in the dissenting opinion. We acknowledge that this is a close case—so close and so well contested by the dissent that we explain fully why we do not accept the dissent's conclusion. The dissent charges that we have “speculate[d] about unstated possibilities as to what has occurred or might occur in the place to be searched,” that we have based our decision only on “the reach of our imagination,” that our decision is merely a “post-hoc justification,” that we have “extrapolate[d] a basis for an unannounced entry that is contrary to the particularized factual basis set forth in the application,” that we have merely “speculate[d] about potential, unparticularized dangers to correct a defective search warrant,” and that we have “invite[d] the unauthorized practice of after-the-fact speculation to justify an otherwise plainly deficient unannounced-entry warrant.” These charges rest on the dissent's theory of judicial review of reasonable suspicion that we believe the United States Supreme Court

rejected generally 25 years ago and the Minnesota Supreme Court rejected specifically 22 years ago.

The dissent first echoes our view, outlined above, that two of the affiant’s specifically identified reasons for a no-knock entry—Sharlow’s criminal history and destruction of evidence—are insufficient grounds to justify the authorization. But we disagree with the dissent on three issues. It first maintains that a proper reasonable-suspicion review of danger justifying an unannounced entry is limited only to the specific rationale expressly stated by the affiant. It then suggests that a proper reasonable-suspicion review of danger justifying an unannounced entry cannot rest on inferences from the particularized facts in the warrant application, but only on the particularized facts themselves. And third, it asserts that the facts in the warrant application in this case provide no reasonable grounds to suspect that Albrecht still would be inside Braveheart’s house at the time of the search. We respond to each point in turn.

We first respond to the dissent’s view that we must assess the validity of an unannounced entry based only on the specific reason expressly stated by the affiant. It emphasizes that “the officer did not request and the magistrate did not authorize an unannounced entry because of potential danger to the victim; the officer requested and the magistrate authorized the unannounced entry *only* because of the false representation of Sharlow’s criminal history.” The dissent does not cite, and we are not aware of, any case that limits review of whether reasonable suspicion exists to the reasons the affiant gave when requesting the unannounced entry or the reasons the magistrate gave for granting the

request. We think that precedent undermines the dissent’s theory both generally and specifically.

We believe that the dissent’s theory is generally incorrect because a unanimous United States Supreme Court recognized a quarter-century ago that its cases “foreclose any argument that the constitutional reasonableness of [police action] depends on the actual motivations of the individual officers involved.” *Whren v. United States*, 517 U.S. 806, 813 (1996) (applying reasonable suspicion to traffic stops). A proper reasonableness analysis under the Fourth Amendment instead considers whether the “officer has a particularized and objective *basis for suspecting* legal wrongdoing” as derived from the totality of the circumstances, *State v. Lemert*, 843 N.W.2d 227, 231 (Minn. 2014) (emphasis added) (quotations omitted), not whether the acting officer *actually relied on that objective basis*. Regarding an officer’s taking action based on safety concerns, the issue is likewise whether a reasonably prudent officer under the circumstances would be justified in believing that his safety or that of others was in jeopardy. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). The dissent would limit our review to the subjective rationale asserted by the affiant rather than assess reasonableness based on a reasonable officer’s objective concerns arising from the totality of circumstances presented in the affidavit as a whole. We do not see this approach in the precedent that informs how we review de novo whether *any* police action is supported by reasonable suspicion.

We believe that the dissent’s theory is specifically incorrect because the Minnesota Supreme Court implicitly rejected the same theory in *Wasson*, a case that materially mirrors this one. That case defeats the dissent’s objection to our “extrapolation” of potential danger

based on inferences from the circumstances stated elsewhere in the warrant application. Rejecting the legal standard promoted by that case's dissenter (who proposed the same theory suggested by the dissent in this case), the *Wasson* court concluded, "If adopted, the dissent's analysis would mandate a rigid rule of announcement that ignores countervailing law enforcement interests," an approach that "is antithetical to the realities of law enforcement investigative work." *Wasson*, 615 N.W.2d at 322 (quotations omitted). For the following reasons, *Wasson*'s guidance is particularly fitting here.

This case very closely resembles *Wasson*. As in this case, the search-warrant affiant in *Wasson* sought authorization to enter a residence unannounced, relying on specific rationale that was, on appeal, judged insufficient to support reasonable suspicion for the no-knock entry; in this case the faulty bases were Sharlow's erroneous criminal history and the officer's boilerplate concerns about evidence destruction, and in *Wasson* they were generalized boilerplate concerns about drug traffickers' tendency to "carry firearms and/or other weapons" to protect their drugs and their tendency to "attempt to destroy [their controlled] substances" when they encounter police. *Wasson*, 615 N.W.2d at 319. As in this case, the district court judge in *Wasson* authorized the no-knock entry based on the affiant's specific request. *Id.* As in this case, the majority in *Wasson* considered particularized facts in the warrant application beyond those given by the affiant to support the unauthorized entry; in this case we have looked to the facts detailing the circumstances of Albrecht's disappearance, and the supreme court in *Wasson* looked to the warrant affiant's statement that the occupant continued to deal drugs from the residence after police previously removed multiple firearms from there. *Id.* at 320–21. And as in this case, in

Wasson the dissent criticized the majority for not confining the reasonable-suspicion review to the specific rationale that the warrant affiant had asserted. *See id.* at 323 (Gilbert, J., dissenting) (“This supposition made by the majority was not even made by the affiant officer.”). Adopting the review approach espoused by today’s dissent would require rejecting the review approach the supreme court modeled in *Wasson*.

Wasson also disposes of the dissent’s second contention, which is that we must look only to the particularized facts in the warrant application to determine reasonable suspicion but not to reasonable inferences derived from those facts. The *Wasson* court applied the process the dissent criticizes today, determining reasonable suspicion of danger based on an inference from particularized facts in the warrant application. The *Wasson* court reasoned that danger could occur by the occupants’ potential use of firearms inside the house, the possible presence of which could be inferred from the fact that weapons had been previously removed from the house on another warrant months earlier. *Id.* at 320–21. In this case we have similarly reasoned that danger could occur by the occupants’ potential harm to Albrecht, whose possible presence could be inferred from his sudden disappearance inside the house under suspicious circumstances four days earlier. And as in this case, this discerning of potential harm from factual inferences led the dissent in *Wasson* to criticize the majority for engaging in “speculation.” In that case, the dissenter scolded, “It is only by combining speculation and augmentation with overgeneralizations that the majority is able to conclude that the officer’s suspicion is reasonable.” *Id.* at 323 (Gilbert, J., dissenting). The dissent today similarly believes that we have “invite[d] the unauthorized practice of after-the-fact speculation to justify an otherwise plainly deficient

unannounced-entry warrant.” The process that the dissent in *Wasson* and the dissent today reprimand as judicial imagination and improper speculation is a process that precedent endorses as proper de novo appellate review of reasonable suspicion of potential harm based on inferences from the particularized facts in a warrant application as a whole—without confinement to the requesting officer’s unannounced-entry rationale.

We finally address the dissent’s third contention, which is its statement, “[m]issing from the application are facts to establish any reasonable suspicion that the victim was located in the place to be searched at the time the warrant was presented to the magistrate.” To the contrary, the circumstances provided at least reasonable suspicion to believe that Albrecht remained inside the house. The dissent has implicitly accepted this by concurring in our probable-cause decision validating the search warrant itself. The dissent recognizes that “the warrant application set forth sufficient information for the signing magistrate to conclude that there exists a fair probability that the place to be searched would reveal evidence of a crime.” The specific “evidence of a crime” identified in the warrant application includes the clothes and personal items that Albrecht possessed at his disappearance. The principal circumstance that establishes probable cause to search the house for these things is that Albrecht entered possessing them on November 15 and, at the time of the warrant application, no substantiated evidence indicated that he ever left. Certainly Albrecht (or his body) must have been *somewhere*, and there was no more evidentiary support to suspect that he was killed and his body removed from the house (a plausible explanation of his whereabouts) than to suspect that he remained captive inside (another plausible explanation). Because one reasonable inference puts him alive inside,

police had objectively reasonable safety concerns to enter without announcing their presence.

We add in summary that none of the cases relied upon by the dissent involve a police investigation seeking evidence to locate a hopefully living missing person apparently abducted at the home that police have been warranted to enter. All instead involve police efforts to find narcotics in the homes of alleged drug dealers. *See Richards v. Wisconsin*, 520 U.S. 385, 387–88 (1997) (reviewing the execution of “a search warrant in a felony drug investigation”); *Wasson*, 615 N.W.2d at 318 (“The CRI had previously purchased marijuana and methamphetamines . . . [and] observed drug paraphernalia present.”); *Garza v. State*, 632 N.W.2d 633, 635–36 (Minn. 2001) (reviewing no-knock entry on alleged “reason to believe [police] would find controlled substances and evidence of the sale and distribution of controlled substances”); *Barnes*, 618 N.W.2d at 808 (“[P]olice officers in Duluth were investigating a suspected drug selling operation.”). Even merely as to drugs, half of those cases resulted in the appellate court *validating* police authority to enter unannounced. *Barnes*, 618 N.W.2d at 812 (validating no-knock entry because “[t]he warrant application also showed that Barnes had a prior criminal record and that the level of drug trafficking was very high”); *Wasson*, 615 N.W.2d at 322 (“[W]e hold the officer presented to the magistrate facts that established a reasonable suspicion of a threat to officer safety”). Our holding today should not be interpreted to suggest that every missing-person case justifies an unannounced entry regardless of the case-specific circumstances. *See Richards*, 520 U.S. at 394 (eschewing criminal-category exception to knock-and-announce duty for drug-dealer cases). But given the fact that police authority to enter

unannounced is measured by a particularly low bar of reasonableness in cases involving the effort to locate drugs, *see id.* at 394 (“This [reasonableness] showing is not high . . .”), we have no reason to impose a higher standard in this case involving the urgent effort to locate a recently missing person.

Affirmed.

FRISCH, Judge (concurring in part, dissenting in part)

I concur with the conclusion that, given our deferential standard of review and the totality of the circumstances, the warrant application set forth sufficient information for the signing magistrate to conclude that there exists a fair probability that the place to be searched would reveal evidence of a crime. But I part ways with the majority in its conclusion that the warrant application sets forth a reasonable, articulable basis for law enforcement to conduct an unannounced-entry search. Because the factual basis set forth in the warrant application to justify an unannounced entry was either false or not otherwise particularized, law enforcement had no constitutional basis to conduct an unannounced-entry search of the residence.

The Warrant Application

On November 19, 2019, Sergeant Jerrod Kunze of the Minneapolis Police Department submitted a search-warrant application to the signing magistrate to search the identified premises for the following items: a blue baseball cap, a gold necklace chain, a gray jacket, blue pants, white shoes, and an iPhone. The stated grounds for the warrant were that the “property or things above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.” The application then set forth “facts establishing the grounds for issuance of the search warrant” as follows.

- Sgt. Kunze was assigned to investigate a missing person (the victim).
- On November 14, witnesses described “an altercation over four hundred dollars owed by [the victim] to ‘CJ,’ who is known . . . to be a cocaine dealer. Also

present was Isabelle Carrie Brave Heart . . . [who] is a known associate of both ‘CJ’ and [the victim].” The altercation occurred at a Bloomington bar.

- “On November 15 at about 4 a.m., witnesses transported [the victim] to [the identified premises] to meet with Isabelle.”
- Later that morning, multiple people including Sgt. Kunze attempted to contact the victim by telephone. The victim’s phone was not active and went “straight to voicemail.”
- The victim’s mother provided documentation showing that the victim’s last call on his phone occurred on November 15 at about 3:00 a.m., with no further activity on the phone.
- The “friend” who dropped the victim off at the identified premises “is in daily contact with him” and had not “seen or heard from him” since dropping the victim off at the identified premises.
- Staff at the Bloomington bar notified Sgt. Kunze that the victim frequents the bar almost every day but they had not seen the victim since November 14.
- The victim “has children with whom he is in almost daily contact, and had visitation scheduled on November 15. The mother of the children has not seen or heard from [the victim] since November 14.”
- The victim was scheduled to work on November 15 and 16 and “did not show up for work, did not call in, and calls to his phone went directly to voicemail.”
- On November 16, the victim’s mother reported him missing.

- Sgt. Kunze searched a law-enforcement information database, which showed two occupants of the identified premises, Isabelle Braveheart, “the person with whom [the victim] was meeting,” and appellant Preston Scott Sharlow.
- “Sharlow has an extensive felony conviction history including cocaine possession and distribution and assault of a Police Officer.”
- Sgt. Kunze submitted the warrant application “to order a search of the premises in order to find the missing person . . . or to discover evidence which will prove, or disprove, [the victim] has become the victim of a crime.”
- “An unannounced entry is necessary to prevent the loss, destruction, or removal of the objects of the search, or to protect the safety of the searches or the public because, Preston Sharlow, a resident of the address has previous convictions for felony assault of a Police Officer.”

Sgt. Kunze requested issuance of the search warrant “without announcement of authority” “to search the above described premises for the described property and thing(s).” Finally, Sgt. Kunze declared under penalty of perjury that everything set forth in the warrant application was true and correct. On November 19, the magistrate signed the warrant.

Analysis

The United States and Minnesota Constitutions require a reasonableness inquiry into the necessity of an unannounced entry. *See Wilson v. Arkansas*, 514 U.S. 927, 931-34 (1995); *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000). Law enforcement “must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective

investigation of the crime by, for example, allowing the destruction of evidence.” *Wasson*, 615 N.W.2d at 320 (quotation omitted). The demonstration of reasonable suspicion involves “a strong showing that an unannounced entry is a necessity.” *State v. Martinez*, 579 N.W.2d 144, 147 (Minn. App. 1998), *rev. denied* (Minn. July 16, 1998). Such reasonable suspicion must be based on “more than an unarticulated hunch.” *Wasson*, 615 N.W.2d at 320. And “we require the police to inform the issuing magistrate of the circumstances that they believe justify the unannounced entry and to obtain specific advance authorization for an unannounced entry.” *Id.* We “reject boilerplate language to support a no-knock warrant.” *Id.* at 322.

The state argues on appeal that an unannounced entry was justified for three reasons: (1) the district court “correctly found Sharlow had an extensive criminal history that included crimes of violence, which allowed for reasonable fear for the safety of the officer and the public”; (2) the items to be searched “could be hidden or destroyed”; and (3) “the officer could reasonably fear the victim could continue to be assaulted or in danger if police announced their presence.” I address each rationale in turn.

Sharlow’s Criminal History

The representations in the warrant application regarding Sharlow’s criminal history are false. The application contains declarations that Sharlow “has an extensive felony conviction history including cocaine possession and distribution and assault of a Police Officer” and that Sharlow “has previous convictions for felony assault of a Police Officer.” These representations are untrue. It is undisputed that Sharlow has never been convicted

of assaulting a police officer or felony cocaine possession and distribution. The parties agree that these false representations must be excised from the application entirely.

The district court determined that these misrepresentations were not material because Sharlow “has an extensive criminal history including crimes of violence and resisting arrest.” This finding is clearly erroneous. *See In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (providing that fact findings are clearly erroneous “when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole” (quotation omitted)). Sharlow has no convictions for resisting arrest. And Sharlow’s four prior felony convictions—for driving while impaired, violating an order for protection, and twice violating no-contact orders—are not crimes of violence as defined under Minnesota law. *See Minn. Stat. § 624.712*, subd. 5 (2018) (defining “crime of violence,” which does not include driving while impaired, violating orders for protection, or violating no-contact orders).

These false representations are significant. The sole factual basis provided in the portion of the application seeking the unannounced entry expressly and exclusively points to Sharlow’s “previous convictions for felony assault of a Police Officer,” which is false. The application does not particularize any other facts in support of the request for an unannounced entry. Although the state argues that Sharlow has other criminal convictions, the state does not cite to any authority establishing that Sharlow’s actual criminal history is of a nature that would justify a search without announcement of entry. *See State v. Eason*, 629 N.W.2d 625, 635-36 (Wis. 2001) (finding that “vague and somewhat outdated” arrest records are insufficient to establish reasonable suspicion for unannounced entry),

cited with approval in State v. Botelho, 638 N.W.2d 770, 780 (Minn. App. 2002). And Sharlow’s actual criminal history does not afford a basis from which officers could reasonably infer danger associated with announcement of entry. I cannot conclude that the unannounced-entry warrant is valid in the absence of a true and accurate, particularized factual basis in the application as to why Sharlow posed a danger to the police or the public necessitating an unannounced entry.

Loss or Destruction of Evidence

The allegation in the application that an unannounced entry was necessary to “prevent the loss, destruction, or removal of the objects of the search” is boilerplate language that we have squarely rejected as a basis to authorize an unannounced-entry search. *See Botelho*, 638 N.W.2d at 780 (“[T]he officer articulated his concern for the destruction of evidence using boilerplate language This type of language has been consistently rejected by the supreme court as insufficient to justify an unannounced entry.”). To be sure, the application contains no allegation that the identified property—hat, necklace, jacket, pants, shoes, and phone—is even susceptible to loss, destruction, or removal, let alone a reasonable, articulable basis to suggest that such evidence is subject to immediate destruction with an announced entry. And at oral argument, the state agreed that the specific items listed on the application are not readily susceptible to such concerns. This argument too does not support an unannounced entry.

Danger to the Victim

The state’s argument that the executing officers could “reasonably fear the victim could continue to be assaulted or in danger if police announced their presence” is entirely

speculative and not based on any particularized factual allegation in the warrant application. “*Richards*, *Wasson*, and *Garza* require a *particularized* showing of dangerousness.” *Id.* at 779 (citing *Richards v. Wisconsin*, 520 U.S. 385 (1997); *Wasson*, 615 N.W.2d 316; *Garza v. State*, 632 N.W.2d 633 (Minn. 2001)). The application is devoid of any particularized showing of dangerousness to the victim.

To be clear, the officer did not request and the magistrate did not authorize an unannounced entry because of potential danger to the victim; the officer requested and the magistrate authorized the unannounced entry *only* because of the false representation of Sharlow’s criminal history. Only when confronted with a challenge to the validity of the warrant did the state assert that a hypothetical danger to the victim could have separately justified an unannounced entry.

This post-hoc justification raises two important issues: (1) the extent to which we, as a reviewing court, may extrapolate a basis for an unannounced entry that is contrary to the particularized factual basis set forth in the application itself, and (2) whether the application contains a sufficient factual basis to support the asserted danger to the victim stemming from an announcement of entry. I conclude that we are not permitted to speculate about potential, unparticularized dangers to correct a defective search warrant and, even if we could, the facts as set forth in this warrant application do not particularize dangerousness sufficient to justify an unannounced entry.

As to the first issue, I conclude that the after-the-fact inference of hypothetical danger to the victim is constitutionally infirm and cannot save this defective warrant. Our job as a reviewing court is not to speculate about unstated possibilities as to what has

occurred or might occur in the place to be searched. *See State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998) (limiting a reviewing court’s consideration to information contained in the challenged warrant application). Our responsibility as a reviewing court is to determine, from the four corners of the documents presented to the signing magistrate, whether the application establishes a reasonable, articulable basis to suspect that “knocking and announcing their presence, under the *particular* circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime.” *Wasson*, 615 N.W.2d at 320 (emphasis added) (quotation omitted). While we as a reviewing court may engage in a “case-by-case analysis” and make “reasonable inferences” from a warrant application, the application must nevertheless contain “details specific to this case” sufficient to support “the inference that knocking and announcing might impose a danger.” *State v. Barnes*, 618 N.W.2d 805, 812 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001). Any such inferences must be grounded in something more concrete “than an unarticulated hunch.” *Wasson*, 615 N.W.2d at 320. Thus, without any details in the application setting forth particularized harm to the victim, I conclude that we, as a reviewing court, cannot infer danger to the victim as a rationale to support an unannounced entry.

As to the second issue, I conclude that the application itself does not set forth a sufficient factual basis to establish a reasonable fear of danger to the victim if police were to announce their presence. In reaching this conclusion, I highlight both the facts missing from the application and the facts included in the application. Missing from the application are facts to establish any reasonable suspicion that the victim was located in the place to

be searched at the time the warrant was presented to the magistrate. The application does not list the victim among the particulars sought at the residence. The application does not specify that the victim was in peril, being assaulted, or, as the state argues, “continu[ing] to be assaulted.” The application does not contain allegations that the victim faced increased danger with an announced entry. The application does not set forth any connection between the place to be searched and the altercation at the bar. And Sgt. Kunze included no statement in the application that, based on his training and experience, he suspected that announcement of entry would increase the danger to the victim. Law enforcement certainly would have included such information in the application if it were supported by the investigation.

The facts that are particularized in the application do not give rise to a reasonable inference connecting announcement of entry to danger to the victim. The pertinent “details specific to this case” in the application, *Barnes*, 618 N.W.2d at 812, are that, the day before his disappearance, the victim was involved in a drug-related altercation with someone unconnected to the place to be searched, and the victim was last seen at the place to be searched four days before the warrant was presented to the magistrate. These facts do not reasonably lead to an inference that the victim was located inside of the residence or was otherwise in danger when the warrant issued, or, even if the victim were located in the place to be searched, that announcement of entry would present increased danger to the victim. That a person was last seen four days prior at the location to be searched is not a sufficient basis to justify an unannounced-entry search of that location. Such an inference would effectively create a “criminal-category exception to the knock-and-announce

requirement” for missing-persons cases, a practice rejected in *Richards* in the context of drug investigations. *Richards*, 520 U.S. at 393-94. Minnesota does not recognize any categorical exception to the knock-and-announce requirement. Instead, our caselaw requires that the application contain a *particularized* description of the circumstances necessitating an unannounced entry and expressly prohibits after-the-fact conjecture on the basis of unarticulated hunches. There is nothing in this application that points to “something that objectively supports the suspicion at issue.” *Wasson*, 615 N.W.2d at 320. The absence of *any* information in the application suggesting any danger to the victim at the place to be searched, at the time of the search, is fatal to the validity of the unannounced-entry authorization.

In addition, the description in the application of the victim’s drug-related altercation with “CJ” the night before he was last seen cannot as a matter of law, and does not as a matter of fact, establish a reasonable, articulable basis for an unannounced entry. As a matter of law, the connection between the victim and his involvement with drugs cannot justify an unannounced entry. Minnesota courts have repeatedly held that to “substantiate the need for a no-knock warrant an officer must establish *more* than that drugs are involved.” *Id.* (emphasis added); *see also Garza*, 632 N.W.2d at 636, 638 (holding that the allegation that “Persons involved in Drug trafficking will destroy evidence if given prior warning” lacks sufficient particularity to establish “dangerousness, futility or destruction of evidence”); *Botelho*, 638 N.W.2d at 779-80 (citing cases). As a factual matter, the application does not indicate that any resident of the place to be searched was involved in the bar altercation or provide any detail about the altercation other than its

drug-related subject matter. The particularized facts as set forth in the application therefore did not afford a basis from which the signing magistrate could reasonably have inferred danger to the victim associated with an announcement of entry.

I am concerned that the court's decision will invite the unauthorized practice of after-the-fact speculation to justify an otherwise plainly deficient unannounced-entry warrant. Law-enforcement officers unquestionably face significant potential danger any time they are charged with the responsibility of searching a private place pursuant to a warrant. Danger can almost always be extrapolated or inferred, especially in cases involving potential crime victims. But to gain an unannounced entry, the constitution demands more than the reach of our imagination—it requires that law enforcement particularize the risk of danger or destruction of evidence in the warrant application itself. That did not happen here.¹

For these reasons, I would hold that the authorization for an unannounced entry is constitutionally invalid and reverse the ruling of the district court.²

¹ The absence of constitutional integrity in this case is deeply troubling. Apart from the fabrication of facts to induce the magistrate to authorize an unannounced entry, law enforcement also interrogated Sharlow for *three hours* after he made multiple requests for counsel. That constitutional violation necessitated the later suppression by the district court of a coerced confession. Law enforcement also failed to comply with the obligation to produce its physical investigatory file, despite the demand to do so, asserting that the file was later destroyed in the fire at the Minneapolis Police Department Third Precinct building. Although not squarely addressed by the district court, these and other inexcusable transgressions give rise to serious and unfortunate credibility questions.

² Although both parties initially agreed that suppression is the proper remedy for a defective warrant, at oral argument, the state noted that the factual record to properly consider this question was underdeveloped. I agree that we lack a developed record to determine the proper remedy.