STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1412

State of Minnesota,
Appellant,

vs.

Donald Newton MacElree,
Respondent.

Filed April 3, 2023
Reversed and remanded
Cochran, Judge

Scott County District Court
File No. 70-CR-21-7412

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for appellant)

Drake D. Metzger, Jasmin Quiggle, Metzger Law Firm, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this prosecution pretrial appeal, the state challenges a district court order granting respondent's motion to suppress evidence and dismissing two counts of second-degree driving while impaired (DWI) on the ground that police arrested respondent without

probable cause. Because the record establishes probable cause for the arrest, we reverse and remand.

FACTS

On the evening of June 3, 2021, police officers in the city of Jordan received a harassment complaint. The complainant, J.L., alleged that his neighbor across the street, respondent Donald MacElree, had parked multiple vehicles in front of J.L.'s home, including two vehicles parked on either side of J.L.'s car. J.L. alleged that the vehicles on either side of his car were parked so close that he could not get into his car. J.L. also alleged that, while parking the vehicles, MacElree threatened to "tear [J.L.] apart" and knock his teeth out.

At around 9:25 p.m., police officers responded to J.L.'s harassment complaint. J.L. showed the officers videos taken by his doorbell camera that seemed to confirm J.L.'s allegations. The videos showed the same man, later identified as MacElree, moving at least two vehicles and parking them in front of J.L.'s home. The timestamps on the videos reflected that MacElree drove and parked the vehicles between approximately 8:55 and 9:05 p.m.

At about 9:48 p.m., while the officers were still on the scene, MacElree and a companion approached the responding officers. The officers were standing near the parked vehicles. One of the officers noticed that MacElree "smelled strongly of alcohol." He asked MacElree if he had been drinking. MacElree responded with an expletive, claimed that his companion had driven the vehicles, and aggressively insisted that he had not driven anything. The officer did not ask MacElree to perform any field sobriety tests because of

his "agitated state." But the officer placed MacElree under arrest for suspicion of DWI. A breath test later showed that MacElree had an alcohol concentration of 0.28.

Appellant State of Minnesota charged MacElree with two counts of second-degree DWI, in violation of Minn. Stat. § 169A.20, subds. 1(1), (5) (2020), and one count of fifth-degree assault, in violation of Minn. Stat. § 609.224, subd. 1(1) (2020).

MacElree filed a motion to suppress evidence and dismiss the two DWI counts for lack of probable cause to justify his arrest. In an accompanying memorandum, MacElree argued that the officer lacked probable cause to arrest him for DWI because he was not driving erratically, he did not demonstrate "other physical indicia of impairment," the officer did not administer field sobriety or breath tests before his arrest, and he could have consumed alcohol "in the interim" between moving the vehicles and interacting with the officers some time later.

The state filed a brief opposing MacElree's motion. The state argued that the officer had probable cause to arrest MacElree for DWI because the officer observed multiple signs of impairment, including a strong odor of alcohol and MacElree's belligerent and uncooperative demeanor. In support of its position, the state filed several exhibits including: the complaint and supplemental police reports; videos taken by J.L.'s doorbell camera; and body-worn camera videos from multiple officers on the scene. The district court received these exhibits without objection from MacElree.

In a four-page written order, the district court granted MacElree's motion and dismissed the DWI charges. The district court acknowledged that J.L. "told the officers that he saw [MacElree] drive the vehicles across the street and [the] officers identified the

person in the doorbell videos as [MacElree] driving." But the district court went on to explain that it could not "assume that [MacElree] did not consume alcohol between the time that he parked the cars and when he encountered police." Therefore, there was "no way to prove that [MacElree] was under the influence of alcohol at the time he operated the car[s]." On that basis, the district court determined that the officer did not have probable cause to arrest MacElree for DWI and dismissed the two DWI counts against him.

The state appeals.

DECISION

The state challenges the district court's order granting MacElree's motion and dismissing the two DWI counts. In a prosecution pretrial appeal, we will reverse the district court only "if the state can clearly and unequivocally show both that the [district] court's order will have a critical impact on the state's ability to prosecute the defendant successfully *and* that the order constituted error." *State v. Dixon*, 963 N.W.2d 724, 728 (Minn. App. 2021) (emphasis added) (quotation omitted), *aff'd*, 981 N.W.2d 387 (Minn. 2022). With regard to the first requirement, MacElree concedes and we agree that the district court's order has a critical impact on the state's ability to prosecute MacElree. We therefore turn directly to the question of whether the district court erred by dismissing the DWI charges against MacElree for lack of probable cause. Because the relevant facts are undisputed, we review the district court's probable-cause determination de novo. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012).

"Probable cause to arrest a person for DWI exists when the facts and circumstances available at the time of arrest reasonably warrant a prudent and cautious officer to believe

that an individual was driving while under the influence." *Reeves v. Comm'r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. App. 2008). In making this determination, an officer may rely on their objective observations and experience to determine whether an individual shows any signs of intoxication, including erratic driving, the odor of alcohol, and an uncooperative attitude. *Id.*; *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004), *rev. denied* (Minn. June 15, 2004). "An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence." *Kier*, 678 N.W.2d at 678 (quotation omitted).

The level of proof required to establish probable cause for a warrantless arrest is "more than mere suspicion but less than the evidence necessary for conviction." *State v. Onyelobi*, 879 N.W.2d 334, 343 (Minn. 2016) (quotation omitted). In making a probable-cause determination, courts must look to "the totality of the circumstances to determine whether the police have probable cause to believe that a crime has been committed." *State v. Perkins*, 582 N.W.2d 876, 878 (Minn. 1998). "The inquiry is objective, and the existence of probable cause depends on all of the facts of each individual case." *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). Accordingly, we examine whether the district court considered all relevant facts known to the arresting officer at the time of MacElree's arrest and whether those facts objectively establish that the officer had probable cause to arrest MacElree for DWI.

The district court determined that the officer lacked probable cause to arrest MacElree for DWI because MacElree could have "consume[d] alcohol *between* the time that he parked the cars and when he encountered police." (Emphasis added.) Therefore,

in the district court's view, "there [was] no way to prove that he was under the influence of alcohol at the time he operated the car[s]."

The state argues that the district court erred in its legal analysis because (1) the officer observed sufficient indicia of intoxication to establish probable cause to arrest MacElree for DWI, and (2) the district court "assume[d] facts not in the record" when it found that MacElree could have consumed alcohol after parking the vehicles and before encountering the police. The state also notes that MacElree never suggested to the police that he only drank alcohol *after* driving the vehicles. *See State v. Shepard*, 481 N.W.2d 560, 563 (Minn. 1992) (noting in a DWI case that "if the drinking had occurred after the accident, [the driver] would have said so since that fact obviously would have helped"). We agree with the state that the district court erred in its legal analysis.

The undisputed facts are sufficient to support the officer's probable-cause determination under the applicable legal standard. The record reflects that MacElree drove at least two different vehicles near in time to when his neighbor reported being harassed, that MacElree was belligerent and generally combative with both his neighbor and police, and that the officer who arrested MacElree smelled a "strong" odor of alcohol coming from MacElree about 45 minutes after he drove the vehicles.[1] For the following reasons, we

[1] The criminal complaint also states that the officer observed "a wet area in front of [MacElree's] pants that appeared consistent with [MacElree] urinating upon himself." The state offers this statement as evidence of another sign of intoxication that supports probable cause for the arrest. MacElree appears to dispute this claim, asserting that "[his] pants appear dry and not stained" in body-worn camera video of the incident. We do not rely on the statement in the criminal complaint in reaching our decision.

conclude that these facts reasonably warranted the officer's belief that MacElree drove under the influence of alcohol. *See Reeves*, 751 N.W.2d at 120.

First, police observed multiple signs of MacElree's intoxication. Only one objective indication of intoxication is required to establish probable cause to believe that a person is under the influence of alcohol. *Kier*, 678 N.W.2d at 678. Here, police noticed a strong odor of alcohol coming from MacElree *and* observed his belligerent and combative behavior. *See Reeves*, 751 N.W.2d at 120 (identifying the odor of alcohol as an indication of intoxication); *Kier*, 678 N.W.2d at 678 (identifying "an uncooperative attitude" as an indication of intoxication). Significantly, MacElree also exhibited belligerent behavior—as evidenced by the neighbor's doorbell videos—when he shouted threats at his neighbor.

Second, the record reflects that MacElree drove two vehicles and parked them near the neighbor's car close in time to when he was belligerent to his neighbor. But, when asked by police whether he was driving, MacElree was evasive and untruthful. He asserted that his companion had driven the vehicles instead, a claim directly contradicted by the doorbell videos showing MacElree driving and parking the vehicles in front of his neighbor's home. And, when asked if he had been drinking, MacElree did not deny consuming alcohol but insisted that he had not been driving. Taken together, the relevant facts known to the officer—the strong smell of alcohol, the belligerent behavior, the driving of vehicles, and the untruthful and evasive responses to questions about drinking and driving—are sufficient to establish probable cause for the officer to believe that MacElree drove and parked the vehicles while under the influence of alcohol. *See Costillo v. Comm'r of Pub. Safety*, 416 N.W.2d 730, 733 (Minn. 1987) (considering defendant's lying to police,

belligerent behavior, and strong odor of alcohol, among other facts, as part of the totality of the circumstances supporting probable cause for DWI arrest).

In concluding otherwise, the district court did not properly apply the probable-cause standard. Under the probable-cause standard, as distinct from proof beyond a reasonable doubt or by a preponderance of the evidence, the state need only show "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). And "[p]robable cause to arrest a person for DWI exists when the facts and circumstances available at the time of arrest reasonably warrant a prudent and cautious officer to believe that an individual was driving while under the influence." *Reeves*, 751 N.W.2d at 120. Here, the district court did not appear to properly consider whether the facts and circumstances known to the officer at the time of MacElree's arrest reasonably warranted the belief that MacElree was under the influence when he drove and parked the vehicles near his neighbor's car. *See id.* Instead, the district court focused on the absence of evidence as to what MacElree was doing between when the neighbor observed him driving and when the officer spoke with MacElree about 45 minutes later. As a result, the district court mistakenly concluded that the state had not established probable cause for MacElree's arrest. But, applying the proper legal standard, the facts and circumstances known to the officer at the time of MacElree's arrest support a conclusion that the officer had probable cause to arrest MacElree for DWI, regardless of the time gap.

We are not persuaded otherwise by MacElree's arguments to the contrary. MacElree first argues that the officer did not have probable cause to arrest him for DWI

because he showed no signs of intoxication when he moved the vehicles, and he actually parked the vehicles "quite skillfully" as opposed to driving erratically—a typical sign of intoxication. *See id.* But this argument fails to account for *all* of the relevant facts and the totality of the circumstances leading up to MacElree's arrest, including his belligerent behavior both at the time that he moved the cars and when he spoke with officers, the "strong" smell of alcohol that police observed when talking with MacElree, MacElree's evasiveness about whether he had been drinking, and his untruthful claim that his companion had driven and parked the vehicles. *See Williams*, 794 N.W.2d at 871 (explaining that "the existence of probable cause depends on *all of the facts* of each individual case" (emphasis added)). This argument is therefore unavailing.

Along similar lines, MacElree also argues that officers could not rely on the indicia of intoxication they observed 45 minutes *after* MacElree parked the vehicles as the basis for probable cause to arrest him for DWI. To support this argument, MacElree relies on *Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801, 803 (Minn. App. 1985). In *Dietrich*, this court affirmed the district court's order rescinding the revocation of a driver's license on the basis that the state failed to establish "reasonable and probable grounds to believe that" the defendant had been driving under the influence of alcohol. 363 N.W.2d at 803. The evidence showed that the defendant was driving a car involved in a collision and that an officer observed that the defendant was under the influence when the officer went to the defendant's home later that day, but "the evidence [did] not establish the necessary connection between the two events." *Id.* Specifically, there was no evidence to link the time of the collision to the time when the officer determined that the motorist was under

the influence. *Id.* Here, by contrast, the record is more than sufficient to establish the necessary connection in time—video evidence shows exactly when MacElree was driving and exactly when police observed indicia of his intoxication. No inference as to the timing of the sequence of events is required. MacElree's reliance on *Dietrich* is therefore misplaced.

In sum, we conclude that the district court erred by determining that the officer did not have probable cause to arrest MacElree for DWI and by granting MacElree's motion to dismiss the DWI counts against him on that basis.

Reversed and remanded.