

*This opinion is nonprecedential except as provided by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
A22-1425**

State of Minnesota,
Appellant,

vs.

Khyan Anwau Whitley,
Respondent.

**Filed February 13, 2023
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-22-619

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

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Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and
Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Respondent Khyan Anwau Whitley admitted to investigators that she was driving her car when it caused a crash that killed one victim and injured two more people. But the district court suppressed her confession because it came after a warrantless search of her car when it was parked in her driveway. Appellant State of Minnesota challenges that ruling, arguing that suppression of this evidence has a critical impact on its ability to bring a case against Whitley, Whitley's car was not on property afforded the constitutional protections of the home (referred to as curtilage), and even if it was, the search was justified by the exigency exception to the warrant requirement. Though suppression of this evidence does seriously jeopardize the state's ability to successfully prosecute Whitley, we hold that Whitley's car was in the curtilage of her home when it was parked in her driveway. And exigent circumstances did not justify the warrantless search. As a result, we affirm.

FACTS

On November 13, 2021, police responded to a motor-vehicle crash in Minneapolis. Officers and first responders found a vehicle with major damage and three injured passengers. A witness heard the crash, observed a black Dodge Charger fleeing the scene, collected a license plate that came off the fleeing vehicle, and gave police this information and the license plate. Officers learned that the vehicle was registered to Whitley at her home in Minneapolis.

Investigators did not follow up on this information until three weeks later, the day after one of the victims succumbed to injuries from the accident and died at the hospital. Investigators went to Whitley's house and located a black Dodge Charger with extensive

front-end damage in Whitley's driveway. A tarp partially covered the Charger. The police officers pulled up the tarp to view the license plate on the car that matched the license plate recovered at the scene of the accident. Investigators then knocked on the front door of the house, spoke with Whitley's son who told them she was not home, and towed the vehicle.

The next day, investigators met with Whitley, who admitted that the damage on the front end of her car was because she was driving the vehicle at the time of the November 13 accident. She stated that she fled the scene due to not having a driver's license or insurance, drove the vehicle home, and covered it with the tarp.

The state charged Whitley with one count of criminal vehicular homicide and one count of criminal vehicular operation.¹ Whitley filed a motion to suppress the evidence obtained as a result of the police entering her driveway and lifting the tarp off of her car parked there, arguing that this intrusion amounted to a warrantless search in violation of the Fourth Amendment, making the evidence inadmissible. The state opposed this motion, arguing that the vehicle was not in the curtilage of Whitley's residence, and even if it was, exigent circumstances justified the warrantless search. The district court granted Whitley's motion.

The state appeals.

DECISION

I. The district court's order granting Whitley's motion to suppress had a critical impact on the state's case.

The state may appeal pretrial orders from the district court when the state can show that "the district court's alleged error, unless reversed, will have a critical impact on the

¹ These crimes violate Minnesota Statutes section 609.2112, subdivision 1(a)(7) (2020) and Minnesota Statutes section 609.2113, subdivision 2(7) (2020), respectively.

outcome of the trial.” Minn. R. Crim. P. 28.04, subd. 2(1). To do so, the state bears the burden of showing that (1) the district court’s ruling was erroneous and (2) the ruling will have a critical impact on the state’s ability to prosecute the case. *State v. Zais*, 805 N.W.2d 32, 35-36 (Minn. 2011) (quotation omitted). The state does not have to show that conviction is impossible after the pretrial order, only that the prosecution’s likelihood of success is seriously jeopardized. *State v. Underdahl*, 767 N.W.2d 677, 683 (Minn. 2009).

Here, the state argues that a critical impact exists because of the exclusion of Whitley’s statement that she was the person driving the car during the crash. Whitley contends that the state still has testimony from the witness who heard the accident, the detached license plate found at the scene, the name and address of the Charger’s registered owner (which it could determine from the license plate found at the scene), and the testimony of the officers who observed the damaged Charger at Whitley’s house.

Because the sum of the evidence cited by Whitley cannot demonstrate that she was the driver during the collision, we agree with the state. In order to successfully prosecute the two crimes the state charged, it must prove that Whitley was the driver who caused the collision and that she left the scene.² Excluding Whitley’s testimony jeopardizes the state’s ability to prove these two elements.

To convince us otherwise, Whitley cites *Hunt v. Commissioner of Pub. Safety* for the proposition that because an automobile is registered to an individual, that provides

² Minn. Stat. § 609.2112, subd. 1(a)(7) (stating that a person is guilty of criminal vehicular homicide “where the driver who causes the collision leaves the scene of the collision”); Minn. Stat. § 609.2113, subd. 2(7) (stating that a person is guilty of criminal vehicular operation resulting in great bodily harm “where the driver who causes the accident leaves the scene of the accident”).

strong circumstantial evidence that they were driving it. 356 N.W.2d 801, 803 (Minn. App. 1984). But the circumstantial evidence in *Hunt* went beyond registration: Hunt was near the car when it crashed and there was an envelope addressed to him in the car. *Id.* at 802-03. And each of the other cases that Whitley cites to support this proposition include circumstantial evidence of a defendant near the vehicle that they are alleged to have operated. *State v. Hughes*, 355 N.W.2d 500, 501 (Minn. App. 1984) (motorcycle rider claiming he was not driver found unconscious six to eight feet from crashed motorcycle), *rev. denied* (Minn. Jan. 2, 2015); *State v. Quinn*, No. A10-2279, 2011 WL 5119120, at *1 (Minn. App. Oct. 31, 2011) (driver of crashed car fled scene and was found hiding in nearby woods, less than a mile from the accident), *rev. denied* (Minn. Feb. 14, 2012). Because there is no circumstantial evidence that Whitley was near her car at the time of the accident, without Whitley's confession that she was the one driving her car, the state's ability to prove this prong of each charge is jeopardized. Accordingly, the district court's grant of Whitley's motion to suppress had a critical impact on the state's case.

II. The district court properly determined that Whitley's car was parked within the curtilage of the home, protected by the Fourth Amendment.

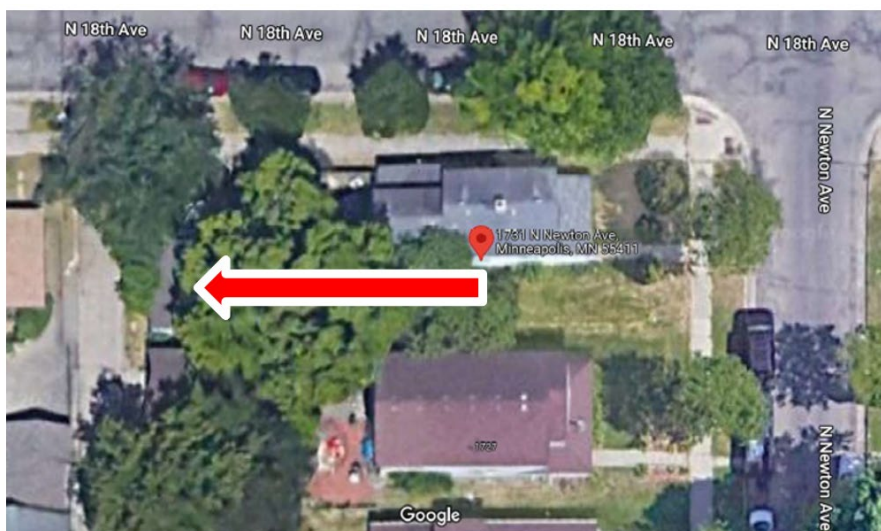
Because the district court's suppression of Whitley's confession had a critical impact on the state's ability to prosecute her, we next evaluate the merits of the state's appeal. We begin with the argument that Whitley's driveway was not protected as curtilage under the Fourth Amendment. When considering the denial of a pretrial motion to suppress, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Molnau*, 904 N.W.2d 449, 451 (Minn. 2017). And we review these issues aware that the state bears the burden of establishing that challenged evidence

was obtained in accordance with the constitution. *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 13-14 (Minn. 1965).

The United States and Minnesota Constitutions prohibit law enforcement from entering constitutionally protected areas without a warrant, with certain exceptions. U.S. Const. amend IV; Minn. Const. art. I, § 10. An individual's home is a constitutionally protected area, and an area outside the home may be considered part of the home itself if it constitutes curtilage. *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018). Curtilage is "the area around the home in which the activity of home life extends," which the Supreme Court describes as a familiar concept "easily understood from our daily experience." *Oliver v. United States*, 466 U.S. 170, 182 n.12 (1984).

To determine whether an area outside the home is curtilage, this court looks to whether the area in question is so intimately tied to the home itself that it should be placed under the home's umbrella of Fourth Amendment protection. *United States v. Dunn*, 480 U.S. 294, 301 (1987). The Supreme Court has identified four factors to guide this analysis: (1) the proximity to the home; (2) whether the area is fenced with the home; (3) what the area is used for; and (4) any steps taken to obscure activities in the area from passersby. *Id.* at 302. Because this determination is a legal conclusion, we review the district court's decision de novo. *Molnau*, 904 N.W.2d at 451.

We turn first to the proximity-to-the-home factor. *Dunn*, 480 U.S. at 301. The district court determined that Whitley’s driveway was in close proximity to her home.³ The court did so without making any findings about the length of the distance from the driveway to the house, and neither party’s brief provides a precise distance. But the record includes photos. These establish that Whitley’s house sits on a small corner lot in the city and the photo below from the record shows that the garage is a short distance from the



house: (Arrow added).⁴ The district court’s determination that this first *Dunn* factor weighs in favor of curtilage protection is supported by the record, as well as by caselaw. In *State v. Chute*, the Minnesota Supreme Court stated: “The backyard and driveway of a home are often considered to be within the curtilage of a home.” 908 N.W.2d 578, 585 (Minn. 2018) (cataloguing cases that hold that the driveway and backyard are curtilage in

³ “When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). Here, the parties agreed that the district court would use a stipulated set of exhibits as the record for the suppression decision, thus there is no dispute over the facts.

⁴ The arrow points to Whitley’s garage. Whitley’s driveway runs perpendicular to the red arrow and under the trees, emptying onto 18th Avenue.

state and federal courts). The *Chute* court determined that a trailer parked on a dirt driveway was in close proximity to a single-family home in a Saint Paul suburb. *Id.* Whitley’s house is on a small urban lot where the driveway is in close proximity to the house.

Still, the state relies on two nonprecedential cases to persuade us otherwise. In one, this court stated that driveways have not been deemed curtilage as a matter of law.⁵ But neither the district court nor this court rely upon an ‘automatic’ curtilage status for a driveway. And the second case—in addition to being nonprecedential—involved a large rural property, which is factually at odds with this Minneapolis lot.⁶

Turning to the second *Dunn* factor (whether the driveway area is fenced within the home), it is undisputed that the driveway is not entirely fenced. 480 U.S. at 302. The driveway is bordered as follows: a fence on the left, trees on the right, the garage on one end, and the street on the other. The district court found that because the driveway is not in the fenced area of Whitley’s backyard and the driveway leads directly to a public street, Whitley has a reduced expectation of privacy in her driveway. We agree. This factor weighs against classifying the driveway as curtilage.

The third *Dunn* factor, what the area is used for, favors classifying the driveway as curtilage. *Id.* The district court determined that because Whitley’s driveway is solely and exclusively used by her, it is subject to her exclusive control and right to exclude, and as a result, this factor weighs in her favor. We agree with this analysis because parking a car

⁵ *State v. Higgins*, No. A14-1000, 2015 WL 5194079, *4 (Minn. App. Sept. 8, 2015), *rev. denied* (Minn. Nov. 25, 2015).

⁶ *State v. Lindeman*, No. A20-0080, 2021 WL 318055, *3 (Minn. App. Feb. 1, 2021), *rev. denied* (Minn. April 28, 2021).

in your driveway is an everyday activity connected to home life. *Dunn* held that the barn in question “was not being used for intimate activities of the home” because “the use to which the barn was being put could not fairly be characterized as so associated with the activities and privacies of domestic life.” 480 U.S. at 302-03. In *Dunn*, the barn was not being used as a barn, but rather to manufacture controlled substances, while here, the driveway was being used as a driveway—a place to park a car. *Id.* Such a regular day-to-day activity deserves the protection of the Fourth Amendment.

The state argues that a driveway is used to park vehicles, not for “the privacies of life,” *Chute*, 908 N.W.2d at 585, because people park their cars in public places often. But when police officers searched the car, it was in Whitley’s private driveway, not on the street or in a public parking lot. And our conclusion is supported by *Chute*, where the Minnesota Supreme Court found that a driveway regularly used by cars bringing persons to the back entrance of the house and a garage, where it was likely that the back door was the occupant’s main route of entering the house, related to the home and was associated with the privacies of life. *Id.* As a result, it was curtilage. *Id.* In sum, because parking a vehicle in a home’s driveway is an activity and privacy of domestic life, this factor favors curtilage classification.

Finally, the fourth *Dunn* factor—any steps taken to obscure activities in the area from passersby—favors curtilage classification as well. *Id.* at 302. The district court found that Whitley “clearly took steps to obscure the activities in her driveway” from passersby. We agree. Whitley’s driveway was surrounded on three sides, and she used a tarp to cover her car. Still, the state argues that because the driveway is not obscured from a passerby in the alley (who could peek between the trees) or on the street, the driveway is outside the

curtilage. But the supreme court has held that the curtilage of a home “need not be completely shielded from public view” because homeowners may expose portions of the curtilage of their homes to public view while still maintaining some expectation of privacy in those areas. *Chute*, 908 N.W.2d at 585. And this court should not only apply curtilage designation to those who can afford to obscure their entire property from view. Because Whitley partially obscured her driveway from view, this final factor weighs in favor of curtilage designation.

Given the weighing of the *Dunn* factors, the district court properly held that Whitley’s driveway is within the curtilage of her home and thus receives the same Fourth Amendment protection. As a result, entry onto the driveway to investigate the Charger required a warrant, unless an exception applied.

III. The district court properly determined that the exigency exception to the warrant requirement did not apply.

Because Whitley’s driveway is curtilage, we next consider whether the exigency exception to the warrant requirement justifies the officers’ act of entering the driveway and lifting up the tarp. The state has the burden of showing the existence of exigent circumstances. *Welsh v. Wisconsin*, 466 U.S. 740, 749-50 (1984). In reviewing whether a valid exception to the warrant requirement justified a warrantless search or seizure, appellate courts review the district court’s factual findings for clear error and its legal conclusions de novo. *State v. Stavish*, 868 N.W.2d 670, 677 (Minn. 2015).

A warrantless search is permissible “when the delay necessary to obtain a warrant might result in the loss or destruction of the evidence.” *State v. Richards*, 552 N.W.2d 197, 203 (Minn. 1996). The state, citing *Cupp*, argues that because the Charger, the “murder weapon,” could be driven away at any moment, it meets this test. *See Cupp v. Murphy*,

412 U.S. 291, 296 (1973) (holding that where a limited search is necessary to preserve highly evanescent evidence, an exigency exception applies to the Fourth Amendment warrant requirement).

We disagree. The Charger was parked in Whitley's driveway three weeks after the accident occurred, distinguishing it from the evanescent evidence in *Cupp* where samples from under a suspect's fingernails containing traces of skin, blood, cells, and fabric from his murdered wife's nightgown could have disappeared quickly. *Id.* at 292. And unlike *Cupp*, where police could not have prevented the suspect from destroying the evidence while police waited for a search warrant, the police could have surveilled Whitley's car to prevent destruction attempts until a warrant was obtained.

The additional cases that the state cites to support its argument are distinguishable. In *State v. Ferraro*, the Minnesota Supreme Court found that the exigency exception applied because of the "inherent mobility of the van" the suspect was driving that contained stolen goods. 290 N.W.2d 177, 179 (Minn. 1980). But Ferraro's vehicle was stopped alongside a busy highway, the contraband was in plain view, and Ferraro was in the driver's seat of the van, potentially able to escape with evidence. *Id.* This is not the case here, where police had no reason to believe Whitley was about to drive away. And in *State v. Lussier*, exigent circumstances justified a warrantless entry and search for evidence of a sexual assault that could be destroyed by washing the suspect's body and clothing. 770 N.W.2d 581, 588 (Minn. App. 2009), *rev. denied* (Minn. Nov. 17, 2009). Whitley's car was stored outside and within view of officers, who could see if any destruction attempts were made. Finally, though practically there may be little difference between searching a car and immobilizing it until obtaining a warrant, *Chambers v. Maroney*,

399 U.S. 42, 52 (1970), officers did not need to immobilize the car while they waited for a warrant because the car was parked, under a tarp, and driverless, while *Chambers* had two robbery suspects driving a car before it was stopped by police about two miles from the robbery location. *Id.* at 44. Accordingly, these cases are distinguishable and do not influence our analysis. Thus because the delay necessary to obtain a warrant would not have resulted in the loss or destruction of the Charger, there was no exigency exception to the Fourth Amendment warrant requirement here. *Richards*, 552 N.W.2d at 203.⁷

In sum, because the district court’s pretrial suppression ruling jeopardizes the state’s ability to make its case against Whitley, we allow this appeal. However, because Whitley’s driveway is curtilage and the exigency exception does not apply, we affirm.

Affirmed.

⁷ The state further argues that exigent circumstances did not exist until a victim of the crash succumbed to their injuries and died three weeks after the crash, therefore the delay between the crash and the officers’ search of Whitley’s car is a “red herring.” But the length of time that passed since the accident does not favor the state. Because the police could have surveilled the car once they found it while waiting for a warrant three hours after the crash or three weeks after the crash, there was no danger of potential evidence destruction.