

*This opinion is nonprecedential except as provided by  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  
A23-0647**

State of Minnesota,  
Appellant,

vs.

Tyrone Deshawn Williams,  
Respondent.

**Filed December 11, 2023  
Affirmed  
Hooten, Judge\***

Ramsey County District Court  
File No. 62-CR-21-645

Keith Ellison, Attorney General, Thomas R. Ragatz, Assistant Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for appellant)

Daniel P. Repka, Repka Law, LCC, St. Paul, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Hooten, Judge.

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

## NONPRECEDENTIAL OPINION

**HOOTEN**, Judge

In this pretrial appeal, the state challenges the district court's order suppressing evidence of a firearm discovered during a warrantless search. The state argues that the district court erred when it determined the search was not a lawful search incident to arrest. Because the evidence in the record failed to establish that the arresting officers had probable cause to arrest respondent, we affirm.

### FACTS

Appellant State of Minnesota charged respondent Tyrone Deshawn Williams with one count of felony possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (2020), and one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subds. 1, 4 (2020). Williams moved to suppress the firearm evidence, arguing that it was obtained as the result of an unlawful search. The district court held hearings on Williams's motion at which one witness, St. Paul Police Officer Vladimir Krumgant, testified and one exhibit, the officer's body-worn camera footage, was received into evidence. The district court found the relevant facts to be as follows.

At around 5:47 p.m. on February 2, 2021, Officer Krumgant responded to a call regarding "a domestic" and a single motor vehicle collision. He received information that the driver of the vehicle fled on foot and "was going to shoot it out with the police."<sup>1</sup>

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<sup>1</sup> Krumgant testified he received this information from dispatch and agreed that all dispatch communications are recorded. The state did not introduce the recording of the call Krumgant received from dispatch into evidence.

Krumgant testified that after a patrol officer aired on the radio that they had observed the individual, he drove to the location reported by the patrol officer. Body-worn camera video footage shows Officer Krumgant exiting his squad car and approaching Williams with his gun unholstered, stating, “hands, show us your hands, St. Paul Police. Get your hands up.” The officers handcuffed Williams.

The body-worn camera footage shows Williams carrying a cooler and two duffel bags, each strapped to his body. Officers removed the duffel bags and placed them on the ground out of Williams’s reach. Officers opened and searched the cooler while Officer Krumgant conducted a pat-down of Williams’s sweatshirt. Krumgant testified that Williams questioned the officers regarding their reasons for the stop. The body-worn camera footage shows that, in response to Williams’s questions, one officer stated that there had been a report of an accident, a report of “a domestic,” and a report that the driver had left the scene of the accident. Williams told officers that the woman he was with hit him, that he lost control of the vehicle, and crashed. He denied hitting her.

Officers walked Williams toward a squad vehicle, while Krumgant and the other officers discussed the basis for the call. One officer stated, “accident with injuries and a domestic . . . they said he had a [firearm].” An officer handed one of the duffel bags to Krumgant. Krumgant used his hands to briefly feel the outer surface of the top of the bag, gripped the bag’s zipper, and then paused. Officers then discussed whether to search the bag without a warrant. Krumgant decided to search the duffel bag, opened a smaller zippered bag inside the duffel bag, and discovered a firearm.

Krumgant was questioned about the initial report he received at the hearing. Krumgant testified, “it was a—initially, as a domestic, and there was a motor vehicle collision. And then it was an update that the driver fled on foot from the accident.” Krumgant was asked to describe the “nature of the domestic” reported in the call. Krumgant testified that “it was something in terms of that the [individual] and a woman got into an altercation.” Krumgant testified that he did not see Williams holding a firearm at the stop and agreed that it was not alleged a firearm was used in the domestic. Krumgant also agreed, in his testimony, that he did not ask Williams for permission to search the duffel bag and that he did not secure a search warrant prior to searching the bag. Krumgant also testified that Williams did not, at any point during the interaction, reach for the duffel bag.

The district court granted Williams’s motion to suppress. The district court determined that, while the state argued the search of the bag was a lawful search incident to arrest, the state had failed to meet its burden of demonstrating that Williams’s arrest was lawful. The district court explained that “neither the [body-worn camera] recording nor Krumgant’s testimony provide any additional evidence” as to the conduct underlying the initial report and, therefore, the state failed to demonstrate that the officers had probable cause to arrest Williams.<sup>2</sup> The district court explained that “it is the state’s burden to show

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<sup>2</sup> The district court considered, pursuant to the state’s argument before it, whether police had probable cause to believe Williams violated either Minn. Stat. § 169.09 (2020) or Minn. Stat. § 609.2242, subd. 1. Counsel for the state conceded at oral arguments that the police did not have probable cause to arrest Williams for the alleged violation of Minn. Stat. § 169.09 (2020).

that an exception to the warrant requirement applies” and “based on the evidence and arguments in the record, the [c]ourt cannot conclude that the burden has been met.” The state appeals.

## DECISION

“When the [s]tate appeals a district court’s pretrial order, the [s]tate must . . . show both that the trial court’s order will have a ‘critical impact’ on the [s]tate’s ability to prosecute the defendant successfully and that the order constituted error.” *State v. Mosley*, 853 N.W.2d 789, 889 n.5 (Minn. 2023) (quotation omitted); *see also* Minn. R. Crim. P. 28.04, subd. 2(2)(b). Because the district court suppressed the firearm evidence against Williams, and the state would be unable to prosecute Williams on this charge without it, the parties do not dispute, and we accept, that the ruling has a critical impact on the state’s case. In 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. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence obtained during an unconstitutional search or seizure must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). Warrantless searches and seizures are unreasonable under both federal and state law unless a recognized exception to the warrant requirement applies. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 474 (1971); *State v. Milton*, 821 N.W.2d 789,

798-99 (Minn. 2012). The state bears the burden of showing that such an exception applies. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

In this case, the state defended the search of Williams’s duffle bag as a search incident to arrest. “A search incident to a lawful arrest is a well-recognized exception to the warrant requirement.” *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015) (citing *Arizona v. Gant*, 556 U.S. 332, 338 (2009)). Under this exception, after a person has been lawfully arrested, police are authorized to search the person’s body and the area within his or her immediate control. *State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000) (citing *Chimel v. California*, 395 U.S. 752, 763 (1969)). The search can occur before the arrest, but the police must have probable cause for the arrest at the time of the search.<sup>3</sup> *In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997). We review a district court’s probable cause determination de novo. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The issue before us is whether there is sufficient evidence in the record to support an honest and strong suspicion that Williams had committed domestic assault at the time of the search.<sup>4</sup> Probable cause to arrest without a warrant exists “when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a *specific* individual has committed a crime.” *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009); *In re Welfare of G.M.*, 560 N.W.2d at 695.

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<sup>3</sup> The district court’s order does not clearly establish when Williams was placed under arrest and the parties’ briefs to this court do not address this point. As such, our analysis assumes Williams was not under arrest at any point prior to the search and focuses instead on whether the police had probable cause at the time of the search.

<sup>4</sup> The district court did not reach the issue of whether the duffle bag was in Williams’s immediate control, and, in light of our decision, we need not address it.

The state argues that police had probable cause to arrest Williams for violation of Minn. Stat. § 609.2242, subd. 1, pursuant to Minn. Stat. § 629.341 (2020).<sup>5</sup> A person commits domestic assault, in violation of Minn. Stat. § 609.2242, subd. 1, when he “commits an act with intent to cause fear in another of immediate bodily harm or death” or “intentionally inflicts or attempts to inflict bodily harm upon another.” The state argues police had probable cause to arrest Williams for domestic assault based on the girlfriend’s report that Williams had assaulted her; Williams’s location near the scene of the incident shortly thereafter; one officer’s observation of damage to the vehicle at the scene of the accident; and the police officer’s knowledge that the suspect had left the scene of the accident. We are not persuaded.

First, there is nothing in the record to support the state’s assertion that police had a report from the girlfriend that Williams assaulted her. The only citation to the record the state provides to support this assertion is a citation to a memorandum of law filed with the court. But the arguments of counsel are not evidence. *State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004). Rather, the only evidence in the record before us regarding an allegation of assault is Williams’s statement that the girlfriend had hit him. The state did not introduce evidence, through Krumgant’s testimony or otherwise, any information Krumgant—or any other officer—had regarding any alleged act committed by Williams which would give rise

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<sup>5</sup> For a search incident to arrest to be lawful “the crime for which there is probable cause to arrest must be a crime for which a custodial arrest is authorized.” *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998). Section 629.341 allows police to make warrantless arrests for nonfelony domestic abuse even though the assault did not take place in the presence of an officer.

to probable cause to arrest for domestic assault. *See* Minn. Stat. § 609.2242, subd. 1; *see also State v. Dickey*, 827 N.W.2d 792, 798 (Minn. App. 2013) (“A police officer may convey to an arresting officer probable cause to arrest arising from information not known to the arresting officer.”); *State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982) (imputing pooled knowledge of law enforcement to the acting officer).

The only evidence presented by the state as to the officers’ knowledge, Krumgant’s testimony, is likewise insufficient to conclude that the totality of the circumstances known to the officers gave rise to probable cause to arrest Williams for domestic assault. Krumgant testified, when asked what was reported to him,

it was a—initially, as a domestic, and there was a motor vehicle collision. And then it was an update that the driver fled on foot from the accident. . . . There was also an update as we were en route, indicating that the person who fled on foot in the accident was going to shoot it out with the police.

When asked about the nature of the domestic, Krumgant testified, “I don’t recall entirely. But it was something in terms of that the [individual] and a woman got into an altercation.” Krumgant also described the scene of the accident and testified, “when we drove past it, there was a vehicle in the middle of the street and a woman frantically on the phone.” There is nothing in the evidence to suggest the woman was injured, or that Krumgant observed any other indicia at the scene which would support probable cause to arrest Williams for domestic assault. The evidence presented merely establishes that the officers knew of—and were investigating—“a domestic” and “an altercation” but nowhere in the record is it alleged that Williams had assaulted the girlfriend, or otherwise committed acts in violation of Minn. Stat. § 609.2242, subd. 1.



Almost the entirety of the state's brief to this court focuses on the credibility of the girlfriend's report to dispatch. The state did not introduce into evidence the substance of the girlfriend's statements to the dispatcher; the body-worn camera footage of any of the officers; the content of the bystander's call to dispatch reporting the accident; or any other meaningful evidence regarding the alleged conduct to which the officers were responding. The state does not articulate how, in light of the state's failure to introduce any evidence regarding the girlfriend's report, the girlfriend's credibility has any bearing on whether police had probable cause to arrest Williams. Regardless of the credibility of such a report—because the state failed to introduce evidence of the reported conduct, we cannot conclude that the police had probable cause to arrest.

When reviewing a district court's probable cause determination, this court conducts an "objective assessment of the strength of an officer's . . . belief that a person's conduct satisfies the elements of an offense, accounting for such factors as the source, nature, and reliability of the information upon which the officer bases his or her suspicion or belief." *State v. Williams*, 794 N.W.2d 867, 873 (Minn. 2011). Absent any evidence in the record as to what the alleged conduct was, we cannot conclude the officers objectively believed Williams's conduct satisfied the elements of domestic assault. While we agree, and the parties do not dispute, that there were circumstances present in this case which provided officers with reasonable suspicion to stop Williams, mere suspicion without more is

insufficient for a warrantless arrest.<sup>6</sup> Based on the totality of the circumstances apparent in the record before us, probable cause is lacking.

We note that when the existence of probable cause to execute a warrantless arrest is challenged “it is obligatory upon the state not only to fully and fairly disclose all the facts and surrounding circumstances of the arrest but also to sustain the burden of proving compliance with Fourth Amendment rights.” *Fagin v. State*, 933 N.W.2d 774, 779 (Minn. 2019) (quotation omitted). To meet this obligation and the burden of proof in this case, the state relied entirely on the testimony, and body-worn camera footage, of just one of the arresting officers. In sustaining Williams’s motion to suppress, the district court held that the state, which had the burden of proof of proving the legality of the search incident to arrest, failed to present sufficient evidence to sustain that the officers had probable cause to arrest Williams for a domestic assault.

Based on the record before us, we cannot conclude the district court erred in determining police did not have probable cause to arrest Williams. Because this is the only argument the state presented to this court, we must conclude that the state has failed to meet its burden to prove that the warrantless of Williams’s bag was constitutionally permissible. The evidence discovered as a result of the unconstitutional search must be suppressed.

**Affirmed.**

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<sup>6</sup> Williams does not dispute that the facts demonstrate that there was reasonable suspicion supporting a *Terry* stop. See *Terry v. Ohio*, 392 U.S. 1, 19 (1968); *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004)