

*This opinion is nonprecedential except as provided by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
A24-0241**

State of Minnesota,
Appellant,

vs.

Damieon Artez Marshall,
Respondent.

**Filed September 9, 2024
Reversed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-22-12332

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

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Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant State of Minnesota challenges the district court's order suppressing blood-test results and dismissing a charge for driving-while-impaired (DWI) against respondent Damieon Artez Marshall. The district court determined that the search warrant

authorizing a blood sample from Marshall lacked probable cause because it relied on information in a warrant application obtained from an unlawful search of Marshall's vehicle. Because the warrant application relies on facts that did not derive from the search of Marshall's vehicle and which were independently sufficient to establish probable cause for the warrant, we reverse.

FACTS

These facts summarize the evidence received at the suppression hearing, including the first law-enforcement officer's testimony and the body- and dash-camera videos.

On October 24, 2021, around 2:50 a.m., an Eden Prairie police officer was on patrol and observed "a white [sport-utility vehicle] SUV . . . with dark tinted windows." The officer followed the SUV and, after checking the vehicle's registration, determined that the registered owner had a felony arrest warrant. The officer activated his squad car's emergency lights to initiate a traffic stop. Marshall moved the SUV over toward the curb, drove slowly past a parking-lot entrance, and stopped on the other side of the parking-lot entrance. Just before Marshall stopped the SUV, the officer activated his emergency siren.

The officer approached the driver's side window, which Marshall rolled down. The officer smelled the "odor of burnt marijuana" coming from the SUV. The officer identified Marshall and returned to his squad car. Dispatch confirmed the warrant for Marshall's arrest for violating an order for protection (OFP). Another officer arrived on the scene.

Marshall exited the SUV at the first officer's request. As the first officer spoke with Marshall outside the SUV, he smelled the odor of marijuana coming from Marshall's person. The first officer asked whether there was marijuana in the car, and Marshall said

“no.” The first officer then asked, “When was the last time it was in there?” and Marshall responded, “It was not . . . never in there . . . like four hours ago we all was just chilling.” The first officer inferred that “chilling” “implied that [Marshall] was using marijuana hours earlier.” The first officer observed that Marshall’s pupils were “constricted,” which made him “concerned about impairment” by a drug other than marijuana.

The first officer told Marshall that there was an “active warrant for [his] arrest.” The first officer arrested Marshall, who asked whether he should “get [his] belongings out of the car.” The first officer said, “I’ll get those for you.” Marshall asked, “Can [someone] come get my car?” The first officer said, “No, not until we search it because of the odor of marijuana.”

The first officer seated Marshall in the squad car and searched Marshall’s SUV. In the “main area” of the SUV “where [Marshall] was sitting,” the first officer “observed there was some marijuana debris” and “a cup” with “a cough syrup or medicine odor, along with pop inside of it.” The first officer also found a backpack with “an empty prescription bottle” that “appeared to be a cough syrup.” The other officer found another prescription bottle in the backseat. The first officer returned to the squad car and conducted a horizontal gaze nystagmus (HGN) test, noting how Marshall’s pupils “react[ed] to light.”¹ The first officer saw the “presence of nystagmus, which led [him] to believe there might be . . . [a] narcotic involved.”

¹ An HGN test “detects one’s rapid eye movement.” *State v. Ards*, 816 N.W.2d 679, 681 (Minn. App. 2012).

The first officer brought Marshall to the police station, read Marshall his *Miranda* rights, and asked if he would agree to “a full drug recognition evaluation” (DRE). Marshall agreed. Based on the DRE, the first officer suspected that Marshall was impaired by a stimulant, a narcotic analgesic, and cannabis.²

The first officer applied for a warrant to obtain a blood or urine sample from Marshall. In the accompanying affidavit, the first officer stated the following:

Stopped vehicle for the window tint and observed the registered owner had a felony warrant from Hennepin County regarding an OFP violation. After making contact with driver, I observed him to have constricted pupils and a strong odor of marijuana coming from his person. I confirmed the driver was the registered owner and dispatch later advised the warrant was valid through Hennepin County. The driver was arrested for the warrant. *A search of the vehicle was conducted due to the odor of marijuana and located marijuana debris and two Styrofoam cups with what appeared to be pop and a medicine like odor coming from it. I observed two empty bottles of a prescription liquid medication laying on the floor prescribed to the driver.* I later transported the driver to the police department where I conducted a DRE evaluation. As a result of the DRE evaluation conducted, I believed the subject is under the influence of a stimulant, a narcotic and cannabis substances.

(Emphasis added.)

The district court issued the warrant, and, after chemical testing, Marshall’s blood-test results showed the presence of oxycodone, oxymorphone, and cannabis.

² During the DRE, the first officer observed that Marshall had “a lack of convergence with one eye coming in and stopping and the other one actually moving outward”; small pupils “at the low end of the DRE range in normal room light”; “body and eyelid tremors”; and “bloodshot eyes.”

The state charged Marshall with fourth-degree DWI under Minn. Stat. § 169A.20, subd. 1(7) (2020), for operating a vehicle under the influence of a controlled substance.³ Marshall moved to suppress “all evidence specified in the notice by the prosecuting attorney” and to dismiss the case, arguing that there was “no reasonable suspicion for the expansion of the stop” and “no probable cause for the search of [Marshall] and/or [his] vehicle.”

The district court held an evidentiary hearing. The first officer testified as summarized above, after which the district court orally granted Marshall’s motion to suppress and dismiss. The district court concluded that “constricted pupils and the smell of marijuana on the person” did not “create a fair probability that contraband or evidence of a crime will be found in the car.” The district court also rejected the state’s arguments that Marshall consented to the search of his backpack, reasoning that Marshall asked only “if the officer could retrieve his stuff from the car.”⁴ The district court therefore concluded that the items found in the search of the SUV should be suppressed and excluded from the warrant affidavit.

³ The state also charged Marshall with fourth-degree DWI under Minn. Stat. § 169A.20, subd. 1(2) (2020), fourth-degree DWI under Minn. Stat. § 169A.27, subd. 1 (2020), and careless driving under Minn. Stat. § 169.13, subd. 2(a) (2020), but the state dismissed these charges at the evidentiary hearing.

⁴ The district court also rejected the state’s argument that the cough-syrup bottle, “the cups in the car,” and the “two prescription bottles would have inevitably been discovered in the course of an inventory of the car as the car was being impounded.” The state does not raise this issue on appeal.

The district court did not consider the result of the HGN test in the back of the squad car but concluded that the DRE was “fruit of the poisonous tree” because it “would never have happened but for the smell of the cups, the cough syrup, [and] the eye check.” The district court determined that the search-warrant affidavit should have excluded any reference to the “marijuana debris and two Styrofoam cups with what appeared to be pop and a medicine like odor coming from it,” the “empty bottles of a prescription liquid medication,” and the DRE. The district court ruled that the “warrant as rewritten is inadequate and would not be signed by a reasonable magistrate reviewing just the evidence that is admissible”; therefore, the district court suppressed Marshall’s blood-test results and dismissed the case.

The state appeals.

DECISION

I. The district court’s suppression of Marshall’s blood-test results satisfies the “critical impact” requirement for a pretrial appeal by the state.

Under Minnesota Rule of Criminal Procedure 28.04, subdivision 1, the state may appeal from a pretrial order under certain circumstances. “[I]n any pretrial appeal by the [s]tate, the state must clearly and unequivocally show both that the trial 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. Rambahal*, 751 N.W.2d 84, 89 (Minn. 2008) (quotations omitted).

The state argues that “the suppression of [Marshall’s] blood-toxicology reports” will have a critical impact on the state’s prosecution because it “will entirely prevent [the state]

from prosecuting” Marshall for DWI. Marshall’s brief to this court does not address critical impact.

Caselaw instructs that the state shows critical impact under rule 28.04, subd. 1, “where the lack of the suppressed evidence completely destroys the state’s case, but also in those cases where the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution.” *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987). To determine the impact of the suppressed evidence, appellate courts “must consider the state’s evidence as a whole.” *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998).

The state argues that “the only way” it can prove beyond a reasonable doubt that Marshall “committed the crime of operating a motor vehicle with a schedule I or II controlled substance in his body” is through “the toxicology report analyzing the substances in [Marshall’s] blood while driving.” We agree. The state charged Marshall with DWI under Minn. Stat. § 169A.20, subd. 1(7), which makes it a “crime for any person to drive . . . any motor vehicle” when “the person’s body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.” A chemical test of Marshall’s blood showed the presence of oxycodone, oxymorphone, and cannabis. While cannabis is specifically excluded as a controlled substance by Minn. Stat. § 169A.20, subd. 1(7), oxycodone and oxymorphone are schedule II controlled substances. *See* Minn. Stat. § 152.02, subd. 3(b)(1)(ii) (2020).

Thus, the blood-test results in the toxicology report are the state’s only evidence of schedule II substances. Because the district court suppressed the blood-test results and then dismissed the entire complaint against Marshall, the state has shown that the district court’s

order has critically impacted the state’s ability to prosecute Marshall for DWI. *See State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001) (“Dismissal of a complaint satisfies the critical impact requirement.”).

II. The district court erred by suppressing the blood-test results.

The state argues that the district court erred in suppressing Marshall’s blood-test results because the warrant authorizing law enforcement to obtain a blood sample was supported by probable cause. Marshall urges us to affirm the district court’s suppression order.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, [appellate courts] 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). “A factual finding is clearly erroneous only when, after reviewing all the evidence,” the appellate court is “left with the definite and firm conviction that a mistake occurred.” *State v. Pauli*, 979 N.W.2d 39, 51 (Minn. 2022) (quotation omitted). If the facts are undisputed, then appellate courts review the district court’s entire order de novo. *Gauster*, 752 N.W.2d at 502.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. If a search is conducted pursuant to a warrant, the warrant must be supported by probable cause for the search to be reasonable. *State v. Wiggins*, 4 N.W.3d 138, 145 (Minn. 2024). Appellate courts review the warrant application and supporting affidavits to determine whether, under the totality of the circumstances set forth in them, probable cause exists. *Id.* “Probable cause exists when

there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Onyelobi v. State*, 932 N.W.2d 272, 281 (Minn. 2019) (quotation omitted).

In its ruling suppressing the blood-test evidence, the district court concluded that law enforcement did not have probable cause to search Marshall’s SUV based only on the smell of burnt marijuana and the first officer’s observation of Marshall’s constricted pupils. It consequently also concluded that the evidence obtained from that search—marijuana debris, the medicine-like odor emanating from the foam cups, and the empty prescription bottles for liquid medication—were not properly included in the warrant application because they were obtained unlawfully.

The state makes several arguments in its brief as to why the search of Marshall’s SUV was permissible or why the evidence obtained need not be excluded from the warrant application.⁵ But we decline to address these arguments because we conclude that the warrant application includes other facts that did not derive from the challenged search of Marshall’s SUV and which are independently sufficient to establish probable cause for the search warrant.

In Minnesota, even if the application for a search warrant includes information that the issuing magistrate should not have considered, the warrant nonetheless may be

⁵ The state makes four primary arguments in support of its request to reverse the district court’s decision to suppress the blood-test results: (1) the exclusionary rule does not apply to the search of the SUV because it was a lawful search under then-existing precedent; (2) the first officer had probable cause to search the SUV under the automobile exception to the warrant requirement; (3) the first officer had Marshall’s consent to retrieve his backpack; and (4) the blood-sample search warrant is valid under the independent-source doctrine. We need address only the fourth argument because it resolves the issue on appeal.

supported by probable cause based on facts that were obtained independently of the tainted information. For instance, “if it is established that the affiant deliberately falsified or recklessly disregarded the truth in his affidavit, then the trial court should set aside the false statements . . . and decide whether the affidavit still establishes probable cause.” *State v. Doyle*, 336 N.W.2d 247, 250 (Minn. 1983) (citing *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978)). Similarly, and as alleged here, if a warrant application includes information that was impermissibly obtained in violation of a defendant’s Fourth Amendment rights, exclusion of the evidence obtained through the search warrant is not required if the application also contains lawfully acquired evidence that is independently sufficient to support issuance of the warrant. *State v. Hodges*, 287 N.W.2d 413, 415-16 (Minn. 1979). Thus, if we redact from the blood-sample search-warrant application all information obtained from the search of Marshall’s SUV, and if the facts that remain nevertheless establish probable cause, then we may conclude that the warrant was valid regardless of any taint on the redacted information.

The search-warrant application used to obtain Marshall’s blood sample rested on three main facts apart from the information obtained from the SUV search: Marshall’s “constricted pupils” that suggested the use of narcotics, the “strong odor of marijuana” coming from Marshall, and the results of the DRE suggesting that Marshall was “under the influence of a stimulant, a narcotic and cannabis substances.”

The district court acknowledged, and the parties do not dispute, that the first officer’s observations of Marshall’s constricted pupils and the odor of marijuana on his person were permissible in the warrant application and were not obtained in the SUV

search. But the district court concluded that the results of the DRE derived from the SUV search, and it therefore did not include them in its probable-cause analysis of the search warrant. The district court stated: “And so the question is whether that DRE examination is still fruit of the poisonous tree, and I find that it is. The request for the DRE at the station would never have happened but for the smell of the cups, the cough syrup, the eye check”

We conclude, however, that the district court erred by excluding the DRE results when evaluating probable cause for the warrant because the DRE was permissibly included in the warrant application based on the independent-source doctrine. The “independent source doctrine . . . will countenance introduction of otherwise illegally-seized evidence if the police could have retrieved it on the basis of information obtained independent of their illegal activity.” *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011) (quotation omitted).

Marshall’s constricted pupils, the odor of burnt marijuana on Marshall’s person and from the SUV, and Marshall’s statement about “chilling” from which the officer inferred recent marijuana use—all of which the first officer observed before the SUV search—more than adequately supported the officer’s initial suspicion that Marshall was impaired and more than adequately supported the officer’s request that Marshall participate in the DRE following his arrest on the outstanding warrant. The record thus establishes that law enforcement could have—and very likely would have—sought to determine whether Marshall had been driving while impaired by requesting a DRE, regardless of whether his SUV had been searched. Accordingly, it was error for the district court to reject the DRE results in its evaluation of probable cause for the search warrant.

Having determined that the DRE was, at a minimum, validly supported by the first officer's observations of Marshall's constricted pupils, the odor of marijuana on his person and from the SUV, and Marshall's recent use of marijuana, we finally consider whether the facts in the warrant application—minus the information derived from the SUV search—are sufficient to establish probable cause for blood-sample search warrant.

“Probable cause exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Onyelobi*, 932 N.W.2d at 281 (quotation omitted). Considering the validly obtained information in the search-warrant affidavit, we are satisfied that they establish a fair probability that a sample of Marshall's blood would disclose evidence of a crime. We therefore conclude that the search warrant was supported by probable cause irrespective of whether the application properly included information obtained from the SUV search. We therefore reverse the district court's decision to suppress the blood-test results.

Reversed.