This opinion is nonprecedential except as provided by Minn.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
A24-0647

State of Minnesota,
Appellant,

vs.

Rashard Dujuan Ross,
Respondent.

Filed December 9, 2024
Appeal dismissed
Wheelock, Judge
Dissenting, Reyes, Judge

Hubbard County District Court
File No. 29-CR-22-85

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

Jonathan Frieden, Hubbard County Attorney, John A. Olson, Assistant County Attorney, Park Rapids, Minnesota (for appellant)

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Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant State of Minnesota challenges the district court's pretrial order precluding its use of particular DNA evidence. Because we determine that the state did not show that preclusion of the evidence will have a critical impact on its ability to prosecute the case, we dismiss the appeal.

FACTS

Because this is a pretrial appeal, the details of respondent Rashard Dujuan Ross's encounter with law enforcement during the evening of January 20, 2022, are limited to information contained in the complaint. On that evening, law enforcement from the Hubbard County Sheriff's Department initiated a traffic stop of a vehicle after it repeatedly crossed over the highway's center line. Law enforcement observed four people in the vehicle, including Ross, who was sitting in the back seat with another person. Law enforcement determined that the driver was intoxicated, observed drug paraphernalia and residue consistent with controlled substances in the center console of the vehicle, and recovered drug paraphernalia and controlled substances from the driver's person after a search incident to arrest for driving while intoxicated.

Law enforcement asked Ross to step out of the vehicle, conducted a pat-down search of Ross for weapons, and searched the vehicle. Law enforcement then discovered two lockboxes: the first was in the rear driver-side door and contained residue consistent with a controlled substance, and the second was on the floor of the vehicle between where the two rear passengers had been seated. The second lockbox contained hollowed-out pens with burnt ends and residue consistent with controlled substances, a paper bindle containing a substance consistent with methamphetamine, and a bottle of methadone. Based on this search, Ross was placed under arrest for possession of a controlled substance. During a search of Ross's person incident to his arrest, law enforcement found bundles of cash totaling $5,837 and a digital scale with residue of a controlled substance. In a search of the vehicle, law enforcement later found a firearm with a round in the chamber and a magazine of ammunition "under the rear-seat cushion in the middle of the vehicle, in a location that would have been under Ross's right side."

On January 21, 2022, the state charged Ross with unlawful possession of a firearm and ammunition in violation of Minn. Stat. § 624.713, subd. 1(2) (2020), and fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2020). On January 31, 2022, the state submitted the firearm and substances to the Minnesota Bureau of Criminal Apprehension (BCA) for forensic testing. In May 2022, Ross appeared before the district court and requested a continuance of the omnibus hearing because the parties were waiting for the BCA to complete DNA testing of the firearm. Four more hearings took place on or before February 2023, and at each hearing, the matter was continued because the BCA still had not tested the firearm.

At a hearing on April 24, 2023, counsel for the state reported that the BCA was "still working on cases for DNA from January 1, 2022," and that the BCA estimated "it would be another three to four months for DNA testing to be complete." Counsel for the state also said that, if the state could collect a DNA sample from Ross, the BCA could avoid further delays by immediately comparing Ross's DNA sample to any profile found on the firearm. The district court noted that, at the end of the previous hearing in February, the state had discussed filing such a discovery motion. Counsel for the state acknowledged that it had not yet filed the motion. The district court requested that the state do so to move the process along. Ross did not object.

The state filed a motion for a buccal swab pursuant to Minn. R. Crim. P. 9.02, subd. 2(1),[1] on June 21, 2023—18 months after the state submitted the firearm to the BCA for testing. The district court granted the motion and directed Ross to travel to Hubbard County to provide a buccal-swab sample within 30 days. Ross complied with this order.

In July 2023, a BCA report showed that the national DNA index system matched the DNA profile from the firearm in this case with a DNA sample from Texas's database and that the match indicated the DNA on the firearm was Ross's DNA. Counsel for the state informed the district court of this result at a hearing in September 2023 and stated they expected that the BCA would produce a report with the results from Ross's buccal-swab sample soon.

At an October 30 hearing, counsel for the state informed the district court that the buccal-swab sample had been collected, but it was incorrectly submitted to the database, and therefore the BCA could not use the sample. Ross's attorney then requested that the district court dismiss the case because Ross was prejudiced by the length of time the case had been pending. The district court ordered the state to collect another buccal-swab sample from Ross within 30 days and stated that, if the state failed to do so, the court would consider Ross's dismissal request.

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[1] In July 2024, we issued a precedential opinion holding that a search warrant is required to obtain a saliva sample for comparative DNA analysis and that, thus, a discovery order alone for a buccal swab is not sufficient process. *State v. Steeprock*, 10 N.W.3d 683, 692-96 (Minn. App. 2024), *rev. granted* (Minn. Nov. 19, 2024). However, we note that the procedure used to obtain a sample is irrelevant to the issues presented here.

In a written order issued on November 9 that reflected its ruling at the October 30 hearing, the district court ordered Ross to submit a new sample and directed the state to send law enforcement to Hennepin County to obtain the sample by December 1, 2023. The order also provided that the state or Ross could request sanctions or other appropriate relief should either party fail to comply with the order. On December 20, Ross notified the district court that the state did not collect a new DNA sample from him and that he would be requesting sanctions against the state.

At the next hearing, which took place on January 22, 2024, two years after the offense date, Ross's attorney told the district court that law enforcement had contacted Ross and arranged to collect a sample after the November 9 order was issued, but no law enforcement came to the appointment or called to reschedule. Counsel for the state explained that the investigator assigned to collect the sample was scheduled to testify in a trial beginning on November 29, but was not called to testify until December 1, and was therefore unable to collect a sample on December 1 as planned. Counsel for the state asserted that they did not believe the state could obtain a sample after December 1 under the November 9 discovery order and requested another 30 days to collect a sample. Counsel for the state argued that Ross would not be prejudiced by this extension because he was not in custody. They also asserted that a DNA sample from Ross would likely match the DNA profile on the firearm in this case, given that Ross's sample from a Texas conviction matched through the national database.

In response to the district court's inquiries, counsel for the state admitted that the state knew that no sample had been collected in early December and agreed that they should have notified the district court right away but instead waited to address it at the hearing in late January. The district court observed that someone other than the assigned investigator could have collected the sample and that the state was "just kicking the can, kicking the can, and now you want to kick it again." In response to another question from the district court, counsel for the state confirmed that the state had not taken any action to collect a sample after December 1 because the order's deadline had expired. When asked to respond, Ross's attorney argued that the investigator could have traveled to Hennepin County after testifying in the morning or made arrangements for someone else from the office or from Hennepin County to collect a sample. Ross's attorney requested sanctions because, although the BCA's backlog, not the state, was responsible for the first year of delays, "the last six months . . . have been not related to the BCA at all and certainly not related to any fault of Mr. Ross." The district court took the request for sanctions against the state under advisement.

On April 15, 2024, the district court issued its order granting Ross's "motion to preclude the State from the use of DNA evidence that they failed to collect by the deadline of December 1, 2023," and denying Ross's "motion to dismiss the Complaint in the interest of justice." The district court's order stated that the state "had failed to travel to Hennepin to obtain a sample" after the district court's order dated November 9, 2023, and before the hearing on January 22, 2024. The district court reasoned that the state had "provided no reasonable justification for failing to collect a sample," had "filed no request for an extension of the collection deadline," and had "filed nothing concerning any effort to collect a DNA sample from [Ross] at any time between the date of this Order and the deadline on December 1, 2023." The district court then noted that "the matter remained unresolved" while the court "reluctantly granted" additional continuances.[2] The district court stated that it issued this order "to not delay these proceedings further."

The state appeals.

DECISION

The state challenges the district court's pretrial order precluding it from using any DNA evidence it failed to collect by the December 1 deadline, arguing that the order has a critical impact on the state's ability to successfully prosecute the case and was issued in error. The state maintains that critical impact exists because, although the firearm was found near where Ross sat in the back seat of the vehicle, there were three other individuals in the vehicle and the DNA evidence would nearly eliminate doubt that another of those individuals possessed the firearm. The state also argues that the district court abused its discretion in imposing the sanctions because it did not identify what grounds it had to sanction the state, nor did it justify the sanctions it issued, which the state interprets as precluding all DNA evidence. Ross argues that the state did not prove critical impact because, at the time the district court issued its order, the state did not have Ross's DNA sample or a report for the district court to exclude. Additionally, Ross points out that it is impossible for a prohibition on the admission of nonexistent evidence to have any impact,

[2] The record reflects that the district court granted two continuances between the January hearing and the order at issue in this appeal at Ross's request, one to consider an offer from the state to resolve the case and one because of a scheduling conflict.

let alone critical impact, on the state's ability to prosecute a defendant. We agree with Ross.

The state may appeal a pretrial order under Minnesota Rule of Criminal Procedure 28.04, subdivision 1(1). Before an appellate court will review the merits of a pretrial order, however, the state must make a clear and unequivocal threshold showing that the appealed order "will have a critical impact on its ability to prosecute the case." *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005); *accord State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998). The state satisfies the critical-impact requirement "not only when excluding the evidence completely destroys the state's case, but also when excluding the evidence significantly reduces the likelihood of a successful prosecution." *McLeod*, 705 N.W.2d at 784 (quotation omitted). "Whether exclusion of a particular piece of evidence will significantly reduce the likelihood of a successful prosecution depends in large part on the nature of the state's evidence against the accused." *Id.* When considering critical impact, appellate courts examine the state's admissible evidence as a whole. *Id.* at 785.

The pretrial order on appeal precludes nonexistent evidence—namely, "DNA evidence that [the state] failed to collect by the deadline of December 1, 2023."[3] Because there was no evidence for the district court to exclude when it issued its order, the nature

[3] Nothing in this opinion should be construed as interpreting the scope of the district court's pretrial order. We do not decide or imply what evidence from the state's list of evidence, if any, is precluded by the order. Our opinion is limited to determining that the state did not "clearly and unequivocally" show critical impact as is required for our review of the pretrial order.

of the potential evidence is speculative and we are unable to determine its significance.[4]

We note that, even if the DNA evidence on the firearm were a match for DNA from Ross, as the state argues and the dissent suggests, this would at most show only that Ross touched the firearm at some point and the state would still need to prove constructive possession, i.e., Ross's dominion and control over the firearm at the time of his arrest, as an element of the charged offense. *See State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975) (stating that the constructive-possession doctrine applies when the state "cannot prove actual or physical possession at the time of arrest but . . . the defendant at one time physically possessed the [contraband] and did not abandon his possessory interest in the

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[4] The dissent asserts that critical impact may be met even when the evidence at issue and its potential value cannot yet be determined, relying on two precedential cases. However, these cases are distinguishable. In *State v. Stroud*, this court concluded that the state showed critical impact because the effect of the order was to suppress DNA evidence that may link the defendant to the charged offense. 459 N.W.2d 332, 335 (Minn. App. 1990). In *Stroud*, the only non-DNA evidence connecting the defendant to the crime was his access to the building where the crime occurred on the day of the offense, his resemblance to a general description of the attacker, a blood-type match, and his possession of a knife like the one used in the attack. *Id.* at 334. Importantly, the defendant wore a jacket over his head during the crime so that the victim could provide only a general description of her attacker. *Id.* at 333. Here, instead of only one witness who barely saw the attacker, there are multiple law enforcement officers who can testify that they arrested Ross after removing him from the vehicle and that they found a firearm in the vehicle near where he sat. The second case the dissent cites is *In re Welfare of L.E.P.*, which involved the exclusion of a recording of a sexual-assault interview and examination of a child victim. 594 N.W.2d 163, 165, 168 (Minn. 1999). The supreme court concluded that excluding the recording satisfied critical impact *because* it was unclear whether the child would testify or whether she would recant if she did testify and that, therefore, the recording was necessary to the state's case. *Id.* at 169. *L.E.P.* is distinguishable because, in that case, the state relied on testimony from the child's mother and the examining nurse, both of whom had only heard reports of the assault from the child, *id.* at 164-65, whereas here, the state can present the firearm and testimony from law enforcement to the fact-finder to support its case. *See McLeod*, 705 N.W.2d at 785 (examining state's admissible evidence as a whole when considering critical impact).

[contraband]"; rather, the defendant "continued to exercise dominion and control over it up to the time of the arrest"). If, as here, law enforcement finds the contraband "in a place to which others had access," then the state must show that "there is a strong probability *(inferable from other evidence)* that defendant was *at the time* consciously exercising dominion and control over it." *Id.* at 611 (emphases added). Circumstantial evidence is "evidence from which the factfinder can *infer* whether the facts in dispute existed or did not exist"; "[i]n contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact *without inference* or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (emphases added) (quotations omitted). The DNA evidence collected from the firearm could not prove actual possession; instead, at most, it could be circumstantial evidence of Ross's constructive possession of the firearm at the time of his arrest.

The state's list of prospective witnesses and exhibits includes three witnesses from the county sheriff's office; three witnesses from the BCA lab; squad video; photos; evidence recovered from the searches of Ross and the vehicle (controlled substances, firearm, digital scale); a BCA lab receipt; and four BCA lab reports about DNA, drug chemistry, and latent prints. In light of the speculative significance of the DNA evidence, the indirect connection of the potential evidence to the crime charged, and the state's prospective evidence available, we conclude that the state has not made a clear and unequivocal threshold showing that the appealed order will have a critical impact on the state's ability to prosecute its case against Ross.[5]

Because the state has not clearly and unequivocally shown critical impact, we conclude that the pretrial order is not properly before this court. However, because the dissent reaches the merits of the pretrial order, we elect to address it here and conclude that, under *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979), the district court did not abuse its discretion by precluding the state from using DNA evidence "that they failed to collect by the deadline of December 1, 2023," as a sanction. One way for a district court to ensure compliance with the rules of discovery is by imposing sanctions for violations of discovery rules and orders. Minn. R. Crim. P. 9.03, subd. 8. The decision to impose sanctions for such violations "is a matter particularly suited to the judgment and discretion

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[5] We do not disagree with the dissent that the state's argument has merit; nevertheless, we conclude that the state has not made a clear and unequivocal showing of critical impact on the facts here. The dissent reasons that the DNA test results would provide direct evidence of possession because Ross's DNA from the Texas database matched the profile found on the firearm in this case. Even if we agree that the potential DNA evidence would show that Ross touched the firearm at some point in time, it does not provide the level of support the dissent suggests because it does not establish the element of possession required to prove the offense here. But given that the state failed to collect a usable DNA sample, there was nothing to exclude at the time the district court issued its order, and we are not persuaded that the state's speculation clearly and unequivocally shows critical impact. Although we make no comment as to the merits of the state's case, we note that possession may be, and often is, proved without DNA evidence. *See, e.g.*, *State v. Ortega*, 770 N.W.2d 145, 150-51 (Minn. 2009) (explaining joint constructive possession); *State v. Lorenz*, 368 N.W.2d 284, 287 (Minn. 1985) (stating that possession charges encompass theories of independent and joint possession); *State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004) (stating that circumstantial evidence may prove constructive possession). Furthermore, to the extent the state and the dissent appear to suggest that the exclusion of DNA evidence creates critical impact per se, caselaw does not support that proposition. Instead, we apply precedent to the specific facts of this case, which demonstrates that the potential DNA evidence would have an indirect connection to Ross's charge.

of the [district] court," and therefore, appellate courts will reverse the imposition of sanctions only if there has been an abuse of discretion. *State v. Patterson*, 587 N.W.2d 45, 50 (Minn. 1998).

The state argues that the district court did not have authority to issue sanctions, but we disagree. The district court issued a discovery order requiring the state to obtain a DNA sample prior to December 1, and the state failed to comply with the order; therefore, the district court had authority to issue sanctions pursuant to Minnesota Rule of Criminal Procedure 9.03, subdivision 8. Next, the state argues, and the dissent reasons, that the district court did not cite or explicitly address the *Lindsey* factors in its order and thus the order must be reversed. But caselaw demonstrates that this does not preclude our review if we can discern the district court's determinations on each factor from the order, and we can discern the district court's determinations here. *See, e.g.*, *State v. Westrom*, 6 N.W.3d 145, 156-57 (Minn. 2024) (affirming the district court's sanction, stating that a district court "should consider" the *Lindsey* factors prior to issuing the sanction, and discerning the district court's determinations on the factors given the circumstances before the district court at the time of the sanction); *State v. Cruz*, 997 N.W.2d 537, 547, 551 (Minn. 2023) (affirming the district court's sanction despite it not citing or addressing the *Lindsey* factors prior to issuing the sanction).

There are four factors that a district court should consider before issuing sanctions for violating discovery rules: "(1) the reason why disclosure was not made; (2) the extent of prejudice to the opposing party; (3) the feasibility of rectifying that prejudice by a continuance; and (4) any other relevant factors." *Lindsey*, 284 N.W.2d at 373. A review of the district court's order here demonstrates that the district court concluded that all four *Lindsey* factors were neutral or weighed in favor of sanctions, and we agree. First, the state could not disclose the evidence here because it failed to collect the DNA sample, and the district court explains in its order "that the state has provided no reasonable justification for failing to collect a sample." Second, this decision prejudices the state, but this case has continued for years and the state had ample opportunity to collect a usable sample, which the district court explains in its order. Third, although the state requested a continuance to obtain the DNA sample, granting a continuance would have condoned the state's inaction for more than two years in not obtaining a usable sample and its disregard of the November 9 order—and a continuance, therefore, would not have corrected the problem, as the district court points out in its order. Finally, the events leading to the charge are over two years old and the district court received an alternate request from Ross to dismiss the complaint entirely, but it declined to do so. We recognize that precluding evidence is a severe sanction, but we conclude that the district court considered the *Lindsey* factors and did not abuse its discretion when it sanctioned the state as it did, given the facts of this case.

Appeal dismissed.

REYES, Judge (dissenting)

Appellant State of Minnesota argues that (1) the district court's order suppressing DNA evidence linking respondent Rashard Dujuan Ross to a firearm has a critical impact because it significantly reduces the likelihood of a successful prosecution and (2) the district court erred by failing to provide any legal support for its order. Because the state can show critical impact from the exclusion of any DNA evidence and the district court's order lacks any legal support or analysis, including the required factors under *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979), I would reverse and remand. I therefore respectfully dissent.

I. The state has shown that the exclusion of DNA evidence linking respondent to the firearm will have a critical impact on its case because it will significantly reduce the likelihood of a successful prosecution.

The state argues that the district court's order granting sanctions has a critical impact on the state's ability to prosecute the case successfully because, although officers found the firearm near where respondent sat, the DNA evidence would significantly reduce any doubt that one of the other three individuals in the vehicle possessed the firearm. The state's argument has merit.

The state can appeal a pretrial order under Minnesota Rule of Criminal Procedure 28.04, subdivision 1(1). The state must first prove, as a threshold issue, that the pretrial order "will have a critical impact on its ability to prosecute the case," and then second prove that "the ruling was erroneous." *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quotation omitted); *see State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (providing order in which appellate courts review state's arguments). The state can meet the critical-impact requirement if "excluding the evidence *significantly reduces the likelihood of a successful prosecution*." *McLeod*, 705 N.W.2d at 784 (emphasis added) (quotation omitted). "Whether suppression of a particular piece of evidence will significantly reduce the likelihood of a successful prosecution depends in large part on the nature of the state's evidence against the accused." *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995). The court must consider all the admissible evidence available to the state as well as the quality of the suppressed evidence, including its probative value, chronological proximity to the alleged crime, effect on the evidence as a whole, clarity, amount of detail, and origin. *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999).

Here, the state has proved critical impact because the DNA evidence, which was likely to match respondent given the positive results from the Texas database, would be the only evidence that directly tied him to possession of the firearm. The state's remaining evidence includes indirect circumstantial evidence of three witnesses from the county sheriff's office; three witnesses from the BCA lab; a squad video; photos; evidence recovered from the vehicle, such as controlled substances, the firearm, and a digital scale; four BCA lab reports; and records of four other convictions. But none of this evidence shows respondent in direct possession of the firearm at the time of his arrest, and it does not directly connect him to the firearm. Only the DNA evidence could tie respondent directly to the firearm. *See State v. Schwartz*, 447 N.W.2d 422, 427 (Minn. 1989) (concluding that DNA evidence has vital importance to prosecution in murder case). "DNA testing reveals distinctive patterns in an individual's genetic makeup and provides a statistical correlation between a defendant's DNA and that of a sample recovered in a criminal investigation." *State v. Stroud*, 459 N.W.2d 332, 334-35 (Minn. App. 1990).[1] While the other evidence that could be presented by the state may establish respondent's proximity to the firearm and his prior criminal history, it does not establish whether he possessed the firearm, which is an element of the offense that the state must prove beyond a reasonable doubt. *See State v. Harris*, 895 N.W.2d 592, 601-02 (Minn. 2017) (concluding state must prove more than mere proximity and ease of accessibility to a firearm to prove constructive possession of a firearm). Indeed, the state must prove respondent exercised dominion and control over the firearm at the time of his arrest. *Id.* Based on this record, the only other evidence that could establish respondent's control of the firearm is the presence of his DNA on the firearm. As a result, the district court's suppression of the DNA evidence is premature at a minimum.

In addition, without the DNA evidence, the state would have to rely solely on circumstantial evidence of constructive possession with three other possible alternative perpetrators. While the state could argue joint possession, it still would be subject to the circumstantial-evidence standard, which allows appellate courts to consider whether there is a reasonable, alternative hypothesis other than guilt. *State v. Silvernail*, 831 N.W.2d

[1] *See also State v. Nickson*, No. A16-1286, 2017 WL 2535698, at *1-3 (Minn. App. June 12, 2017) (concluding state presented direct evidence of possession when DNA evidence showed defendant's DNA profile as predominant match on firearm magazine found where defendant sat in vehicle with five occupants); *State v. Jiggets*, No. A12-2216, 2014 WL 349609, at *1, *3 (Minn. App. Feb. 3, 2014) (concluding physical evidence of defendant's DNA as predominant match on firearm is direct evidence of possession when officers located firearm while executing search warrant in apartment bedroom closet when five other people were present). These decisions have been cited for their persuasive value only as permitted by Minn. R. Civ. App. P. 136.01, subd. 1(c).

594, 598-99 (Minn. 2013). Without the DNA evidence directly tying respondent to the firearm, the state will have a significantly reduced likelihood of success under the circumstantial-evidence test. *See State v. Olhausen*, 681 N.W.2d 21, 26 (Minn. 2004) (describing the circumstantial-evidence test as "stricter standard"). The state therefore meets the critical-impact standard.

Respondent argues that there is no critical impact on the state's ability to prosecute the case because it cannot "quantify the effect of non-existing evidence." This argument fails for several reasons. First, this court has concluded previously that the state can establish critical impact even if it does not yet have DNA testing results. *See Stroud*, 459 N.W.2d at 334-35. *Stroud* is particularly instructive. There, the respondent remained incarcerated during the pretrial proceedings and demanded a 60-day speedy trial, and the state requested a continuance of 12-16 weeks to obtain DNA test results, well beyond the 60-day limit. *Id.* at 334-35. The district court denied the state's continuance request and ordered trial to begin as scheduled. *Id.* at 334. This court concluded that the district court's denial of the state's request for a continuance to obtain DNA evidence critically impacted the state's case and that the district court abused its discretion by denying the continuance because it did not prejudice the respondent, despite his incarceration and his speedy-trial demand. *Id.* at 335. Notably, we concluded that the state had proved critical impact *even though it had not yet obtained the DNA evidence*. *Id.* ("Here, the DNA evidence *may* confirm physical evidence which *allegedly* links appellant to the charged offense." (emphasis added)).

The same is true here. DNA evidence is crucial to the state's ability to prove a required element of a crime, especially in those cases that lack direct evidence and involve multiple suspects like in *Stroud*, *Nickson*, and *Jiggets*, especially if the DNA results show respondent being a predominant match to the fingerprints on the firearm. In fact, it was the DNA evidence in both *Nickson* and *Jiggets* that this court emphasized could establish whether the state presented sufficient evidence to the jury to sustain the convictions. *Nickson*, 2017 WL 2535698, at *4; *Jiggets*, 2014 WL 349609, at *2. Conversely, in *Harris*, the supreme court found that the state did not prove constructive possession in part because Harris's fingerprints were not a predominant DNA profile on the firearm found in the vehicle with multiple occupants, and ultimately affirmed this court's reversal of his conviction. 895 N.W.2d at 601-03. Decades of precedent acknowledge the importance of DNA evidence as well as how the suppression of such evidence will significantly reduce the likelihood of a successful prosecution.

The supreme court has similarly held that not knowing what the evidence will be does not preclude a critical-impact analysis. In *L.E.P*, the supreme court stated that "[t]he lack of certainty about whether [victim] K.M.P. will testify *and what her testimony will be if she does testify* should not [ ] stand in the way of our reaching a conclusion as to critical impact." 594 N.W.2d at 169 (emphasis added). Appellate courts can still conclude that exclusion of potential evidence can have a critical impact on the state's case. Moreover, the determination of the critical impact of evidence in a case in which a trial has not occurred, is "by its nature, forward-looking." *McLeod*, 705 N.W.2d at 786.

Second, granting a party's motion to exclude evidence even before it is obtained would encourage litigants to file motions to exclude potentially damaging evidence even before it is discovered or confirmed. This is completely contrary to the goal of litigating cases on the merits. We generally discourage overly strict application of rules and technicalities over consideration of the interest of justice. Discovery rules are based on the proposition that the ends of justice will best be served by a system of liberal discovery which gives both parties the maximum possible amount of information to prepare their cases and reduce the possibility of surprise at trial and is "designed to enhance the search for truth." *State v. Patterson*, 587 N.W.2d 45, 50 (Minn. 1998) (quotation omitted); *see also State v. Crawford*, 104 N.W. 822, 822 (Minn. 1905) ("Granting or refusing of . . . new trial for errors of law should not be determined by mere technical conformity with or infringement of rules of practice and evidence.").

Third, the parties knew in 2023 that the DNA found on the firearm matched a male and that a national DNA index system matched the DNA profile from the firearm with respondent's DNA sample from a Texas database. The parties therefore knew with a high degree of certainty that the results of the DNA testing by the BCA would show a match between respondent and the firearm in the vehicle in which he was a passenger. The state has therefore shown that the district court's order excluding the DNA would have a critical impact on its ability to prosecute its case.

II. The district court abused its discretion by ordering sanctions to exclude the DNA evidence because it failed to provide any legal support for its decision, failed to cite to the *Lindsey* factors, and failed to apply the *Lindsey* factors.

The state argues that the district court failed to provide any legal support for its order to preclude the DNA evidence and that the sanctions were too severe. The state's argument is persuasive.

When reviewing a district court's imposition of sanctions under the discovery rules, appellate courts must (1) determine what discovery rule the party violated and then (2) review whether the district court abused its discretion when imposing the sanction. *See State v. Cruz*, 997 N.W.2d 537, 546-47 (Minn. 2023). In a pretrial order to suppress, appellate courts review a district court's factual findings under the clearly erroneous standard and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). For a district court's findings of fact to be adequate, appellate courts must be able to identify (1) the decision the district court made and (2) its basis for that decision. *See Hagen v. Schirmers*, 783 N.W.2d 212, 217-18 (Minn. App. 2010).

When deciding what sanctions to impose, a district court must consider the four *Lindsey* factors: "(1) the reason why disclosure was not made; (2) the extent of prejudice to the opposing party; (3) the feasibility of rectifying that prejudice by a continuance; and (4) any other relevant factors." *Lindsey*, 284 N.W.2d at 373; *see also State v. Westrom*, 6 N.W.3d 145, 156 (Minn. 2024), *cert. denied*, No. 24-271, 2024 WL 4529836 (U.S. Oct. 21, 2024).

"Preclusion of evidence is a severe sanction which should not be lightly invoked." *Lindsey*, 284 N.W.2d at 374. Notably, the supreme court has held that a district court abuses its discretion by failing to consider the *Lindsey* factors because it prevents appellate courts from being "confident that the sanction was not disproportionate to the purpose it was meant to serve." *In re Welfare of M.P.Y.*, 630 N.W.2d 411, 418 (Minn. 2001).

This court must reverse and remand for at least two reasons. First, this court cannot conduct a meaningful review to satisfy the first step. The district court's one-and-one-half page order does not contain any findings or provide any legal analysis of what rule the state may have violated, nor does it explain how they may have violated it. Importantly, the district court's order did not consider the other evidence the state could present at trial, the admissibility of that evidence, and whether the suppressed DNA evidence would aid the state in establishing a critical element of the charged offense. *See State v. Zais*, 805 N.W.2d 32, 36 (Minn. 2011) (holding that state showed critical impact because suppression of wife's statement bore directly on whether state could establish elements of disorderly conduct); *State v. Ronnebaum*, 449 N.W.2d 722, 724 (Minn. 1990) (stating that district court's suppression of confession "in . . . case[s of child sex abuse] of this sort" will significantly reduce likelihood of successful prosecution); *Scott*, 584 N.W.2d at 416 (holding that suppression of Scott's confession critically impacted prosecution of case despite state's ability to present testimony from two potential eyewitnesses who identified Scott as the shooter). It is therefore evident from the supreme court's prior decisions addressing critical impact that a principal consideration was not just the state's ability to produce other evidence, but whether that evidence would help to establish the elements of the charged offense in that particular case. *See McLeod*, 705 N.W.2d at 786 (concluding that *Spreigl* evidence was critical to state's prosecution despite having the testimony of victim, because state's ability "to demonstrate [McLeod's] pattern or design [of abuse] is particularly important in child sexual abuse cases" in which evidentiary issues impact state's ability to prove case).

Respondent admits that he did not know what other evidence the state had to support its charges against him. But even if the state were able to present other admissible evidence, it does not mean that the suppression of the DNA evidence will not significantly reduce the state's ability to successfully prosecute the case, or more specifically, establish respondent's possession of the firearm. *See Ronnebaum*, 449 N.W.2d at 724 ("Even if . . . state's case is as strong as . . . court of appeals says it is, that does not mean that . . . suppression of . . . confession will not significantly reduce . . . likelihood of . . . successful prosecution."). Given that the district court's order contains no findings, fails to cite to any caselaw, and provides no legal analysis, we are therefore unable to review the district court's findings or application of the law, and it is not our role to speculate. "An appellate court exceeds its proper scope of review when it bases its conclusions on its own interpretation of the evidence and, in effect tries the issues anew and substitutes its own findings for those of the trial judge." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted).

Second, the district court failed to cite to, much less analyze, the *Lindsey* factors. As noted above, a district court abuses its discretion when it fails to make the required *Lindsey* findings. *M.P.Y.*, 630 N.W.2d at 418 (remanding because district court failed to explain why "a continuance was not a feasible solution"); *see also Stroud*, 459 N.W.2d at 335, 336 (concluding district court abused its discretion by denying state's request for continuance to obtain DNA evidence because there was no prejudice to incarcerated respondent who made speedy-trial demand, requiring reversal and remand). Notably here, directly relating to the state's request for a continuance, respondent was not incarcerated, never made a speedy-trial demand, and waived the timeline for an order from the district court on the admissibility of the DNA evidence. *Stroud*, 459 N.W.2d at 334, 335 (this court concluding district court abused its discretion by denying state's request for continuance because it did not prejudice respondent despite his incarceration, 60-day speedy-trial demand, and that state made its request well after the 60 days). Reversal and remand is therefore necessary to allow the district court to apply the *Lindsey* factors and create a sufficient record for review.