

*This opinion is nonprecedential except as provided by  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  
A24-1273**

State of Minnesota,  
Respondent,

vs.

Andres Sanchez,  
Appellant.

**Filed July 14, 2025  
Reversed and remanded  
Johnson, Judge**

Hennepin County District Court  
File No. 27-CR-19-28594

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

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Sharon E. Jacks, Assistant Public Defenders, St. Paul, Minnesota (for appellant)

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

**NONPRECEDENTIAL OPINION**

**JOHNSON, Judge**

Andres Sanchez was convicted of a controlled-substance crime based on evidence that law-enforcement officers found 38.9 grams of methamphetamine in his home and 4.8 grams of methamphetamine in his vehicle. Sanchez moved to suppress the evidence on

the ground that the warrant that authorized the searches of his home and his vehicle was obtained with information derived from a warrantless ion-swab test of the knob and deadbolt of the door to his apartment. The district court denied the motion. We conclude that the district court erred because the warrantless ion-swab test was conducted in violation of the Fourth Amendment to the United States Constitution and article I, section 10, of the Minnesota Constitution. Therefore, we reverse and remand for a new trial.

### **FACTS**

In September 2019, Officer Muro of the Minneapolis Police Department received a tip from a confidential informant that Sanchez was selling methamphetamine in one-ounce (approximately 28-gram) quantities and was keeping drugs in the trunk of his vehicle. An investigation revealed that Sanchez was selling drugs between the hours of 9:00 p.m. and 2:00 a.m. at two restaurants in south Minneapolis. As part of the investigation, Officer Muro entered the apartment building where Sanchez lived, used ion pads to swab Sanchez's door knob and deadbolt, and submitted the ion pads for testing, which led to a positive result for trace amounts of methamphetamine and cocaine.<sup>1</sup>

Officer Muro then applied for a warrant authorizing searches of Sanchez's home and vehicle. Officer Muro's warrant application described the tip received from the

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<sup>1</sup>The district court record includes an affidavit of a forensic scientist stating that, as a general matter, ion mobility spectrometry (IMS) is "an analytical technique for the presumptive detection of various molecules or 'analytes.'" The forensic scientist stated that IMS technology "can be combined with confirmatory techniques, such as gas chromatography-mass spectrometry (GC-MS) or liquid chromatography-mass spectrometry (LC-MS) techniques, to detect and identify controlled substances such as cocaine, methamphetamine, fentanyl, etc."

confidential informant and the subsequent investigation. The warrant application described the ion-swab test he performed on the knob and deadbolt of Sanchez's apartment door and stated that the test result was positive for trace amounts of methamphetamine and cocaine.

A district court judge approved the application and signed a warrant. When police officers executed the warrant, they found 38.9 grams of methamphetamine, drug paraphernalia, and approximately \$8,000 in cash in Sanchez's apartment, and they found 4.8 grams of methamphetamine and approximately \$2,600 in cash in his vehicle.

In November 2019, the state charged Sanchez with a first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subd. 1(1) (2018), based on the allegation that he possessed with intent to sell a mixture containing 17 grams or more of cocaine or methamphetamine.

In April 2023, Sanchez moved to suppress the evidence obtained in the searches of his apartment and his vehicle. Sanchez argued that the swab of his apartment door knob and deadbolt was a search for purposes of federal and state constitutional law, that the search was unconstitutional because it was not authorized by a search warrant, and that the subsequent application for a warrant to search his home and his vehicle did not support a finding of probable cause without the information derived from the ion-swab test. In response, the state argued that the ion-swab test was not a search or, in the alternative, was a less intrusive search that, under state constitutional law, requires only a reasonable, articulable suspicion of criminal activity. Sanchez filed eight exhibits with his motion

memorandum. It appears that the parties submitted the probable-cause issue based solely on the documents filed with the district court administrator, without a hearing.

In July 2023, the district court filed a thorough 38-page order denying Sanchez's motion to suppress. The district court reasoned that the ion-swab test of Sanchez's apartment door knob and deadbolt was not a search for purposes of the Fourth Amendment to the United States Constitution. The district court reasoned that the ion-swab test *was* a search for purposes of article I, section 10, of the Minnesota Constitution but that the search was valid because Officer Muro had a reasonable, articulable suspicion of criminal activity. The district court concluded that the application for the search warrant was supported by probable cause but expressly noted that, without the results of the ion-swab test, the warrant application would not allow for a finding of probable cause.

In December 2023, Sanchez waived his right to a jury trial and his other trial rights, and the parties agreed to a stipulated-facts trial. *See* Minn. R. Crim. P. 26.01, subd. 3. In February 2024, the district court filed an order finding Sanchez guilty. In May 2024, the district court imposed a sentence of 65 months of imprisonment but stayed execution of the sentence and placed Sanchez on probation for five years. Sanchez appeals.

## **DECISION**

Sanchez argues that the district court erred by denying his motion to suppress evidence.

### **A.**

The Fourth Amendment to the United States Constitution guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures.” U.S. Const. amend. IV. The Fourth Amendment further provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” *Id.* The Minnesota Constitution contains nearly identical language. *See* Minn. Const. art. I, § 10. In light of the Fourth Amendment’s protections, a search of a home that is performed without a warrant is presumed to be unreasonable and, thus, invalid, unless there is a recognized exception to the warrant requirement. *Kentucky v. King*, 563 U.S. 452, 459 (2011); *State v. Lohnes*, 344 N.W.2d 605, 610 (Minn. 1984).

In *State v. Edstrom*, 916 N.W.2d 512 (Minn. 2018), the supreme court considered “whether a warrantless narcotics-dog sniff in the hallway outside [a suspect’s] apartment violated [his] right to be free from unreasonable searches under the United States or Minnesota Constitution.” *Id.* at 514. The supreme court reasoned that, for purposes of federal constitutional law, a dog sniff “immediately outside” a suspect’s apartment door was not a search because the dog’s sniff did not occur within the curtilage of the suspect’s apartment and because the dog sniff did not invade the suspect’s reasonable expectation of privacy. *Id.* at 517-23. Accordingly, the supreme court concluded that no search occurred for purposes of federal constitutional law. *Id.* at 523. The supreme court further reasoned that, for purposes of state constitutional law, the dog sniff *was* a search, but, “because of the minimally intrusive nature of a dog sniff,” an officer may conduct the procedure based on a “reasonable, articulable suspicion of criminal activity . . . , provided they are lawfully present in the place where the sniff is conducted.” *Id.* (citing *State v. Davis*, 732 N.W.2d 173, 180-82 (Minn. 2007)). Because officers had a reasonable, articulable suspicion of

criminal activity, the supreme court concluded that the dog-sniff procedure was valid for purposes of state constitutional law. *Id.* at 524.

In June 2024, approximately one month after Sanchez’s sentencing, this court applied *Edstrom* to an ion-swab test of an apartment door but reasoned that ion-swab tests are different from dog-sniffs. In *State v. McNeal*, 7 N.W.3d 837 (Minn. App. 2024), we held that an officer’s warrantless ion-swab test of the handle and lock of the door to a suspect’s apartment was a search for purposes of both federal and state constitutional law because the apartment door handle and lock were within the curtilage of the suspect’s home. *Id.* at 839, 842-43. We reasoned that the door handle and lock were “*physically attached to and indivisible from appellant’s home*” and noted that “the officer’s search . . . required a *physical contact* by swab of the apartment door handle and lock, the entry mechanism to the home.” *Id.* at 842. We further reasoned that, “[a]lthough members of the public and law-enforcement officers generally have an implied license to approach a home, physically knock on the front door, and wait briefly to be received, they have no implied license to remove material from the door handle and lock for laboratory testing.” *Id.* at 843 (citing *Florida v. Jardines*, 569 U.S. 1, 9 (2013)). As a consequence, we concluded that the officer’s ion-swab test was invalid without a search warrant. *Id.*

On appeal in this case, Sanchez naturally cites and relies on *McNeal*. He argues that the district court erred by reasoning that the ion-swab test is not a search for Fourth Amendment purposes and by reasoning that a warrant is not required for purposes of either federal or state constitutional law. Sanchez also argues that, without the results of the ion-swab test, the warrant authorizing searches of his home and vehicle lacked probable cause.

Sanchez argues further that his conviction must be reversed because the district court, in its order finding him guilty, relied on the evidence that should have been suppressed.

In response, the state acknowledges the precedential *McNeal* opinion, respectfully asserts that *McNeal* was wrongly decided, and preserves its argument that an ion-swab test is not a search that requires a search warrant. To the extent that the state is asking the court to reconsider *McNeal* or to issue an opinion that is inconsistent with *McNeal*, we decline the invitation to do so because the facts of this case are indistinguishable from those of *McNeal*, we are bound by *McNeal*, and we adhere to the well-established doctrine of *stare decisis*. See *State v. Chauvin*, 955 N.W.2d 684, 689-90 (Minn. App. 2021), *rev. denied* (Minn. Mar. 10, 2021); *State v. Peter*, 825 N.W.2d 126, 129 (Minn. App. 2012), *rev. denied* (Minn. Feb. 27, 2013); *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010).

## **B.**

The state argues in the alternative that Officer Muro's ion-swab test is justified by the consent of the property manager of Sanchez's apartment building. The district court did not consider the issue of consent because the state did not present the argument to the district court. But in a criminal case, the respondent may "raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003). In his reply brief, Sanchez does not

argue that *Grunig* does not apply or that the state's consent argument is forfeited. Thus, we will consider the merits of the state's alternative responsive argument.

As stated above, a search of a home that is performed without a warrant is presumed to be unreasonable and, thus, invalid, unless there is a recognized exception to the warrant requirement. *King*, 563 U.S. at 459; *Lohnes*, 344 N.W.2d at 610. "The state bears the burden of establishing the applicability of an exception." *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

One exception to the warrant requirement is the consent of a person with actual authority to give consent to the search. *Id.* at 249-50. "[A] third party has actual authority to consent to a search if she 'possess[es] common authority over or other sufficient relationship to the premises or effects sought to be inspected.'" *Id.* at 250 (quoting *United States v. Matlock*, 415 U.S. 164, 171 (1974)). In *Licari*, the supreme court concluded that the manager of a storage facility did not have actual authority to consent to a search of the interior of a person's rented storage unit. *Id.* at 252. Similarly, in *State v. Dotson*, 900 N.W.2d 445 (Minn. App. 2017), this court concluded that the property manager of an apartment building did not have actual authority to consent to an officers' search of the interior of an occupied apartment. *Id.* at 449-52. In *State v. Luhm*, 880 N.W.2d 606 (Minn. App. 2016), this court concluded that a property-management company of a secured, multi-unit condominium building had actual authority to consent to officers' entry into the common areas of the building, including the hallways. *Id.* at 610, 613-15.

The state argues that the consent exception applies to Officer Muro's ion-swab test on the ground that "the door knob and the deadbolt of [Sanchez's apartment] were



contained in, and accessible by, a common hallway” such that Officer Muro “only needed to enter the common hallway” and “did not need to enter the apartment itself.” The state argues that the property manager of Sanchez’s apartment building had common authority over the door knob and deadbolt of the door to Sanchez’s apartment “because they are part of the common areas that landlords and property managers have a duty to maintain,” because a property manager “can repair, replace, or refurbish those items without the tenant’s consent,” and because a property manager may “use those items to enter the apartment, even without the tenant’s consent” for purposes permitted by a lease or by law.

In his reply brief, Sanchez opposes the state’s alternative argument by arguing that the knob and deadbolt of his apartment door are not part of the building’s common area but, rather, are within the curtilage of his home. Sanchez also argues that the state did not satisfy its burden of proof on the consent exception because it presented no evidence in the district court concerning the scope of the property manager’s authority.

As stated above, a property manager’s authority to consent is limited to that for which the manager “possess[es] common authority” or has some “other sufficient relationship.” See *Licari*, 659 N.W.2d at 250 (quoting *Matlock*, 415 U.S. at 171). “Common authority exists if there is ‘mutual use of the property by persons generally having joint access or control for most purposes,’ which makes it reasonable to believe that one person among several persons ‘has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.’” *Luhm*, 880 N.W.2d at 614 (quoting *Matlock*, 415 U.S. at 171 n. 7). Common authority is “not to be implied from the mere property interest a third party has

in the property . . . but rests rather on mutual use of the property by persons generally having joint access or control for most purposes.” *Matlock*, 415 U.S. at 171 n.7. In general, a property manager does not have actual authority “to consent to a warrantless police search of the premises occupied by a tenant” because, even if the property manager “might reserve rights of access,” the property manager “typically does not have rights of use” of those premises. *Licari*, 659 N.W.2d at 251.

As noted by Sanchez, the state did not introduce any evidence in the district court concerning the property rights of the property manager of Sanchez’s apartment building or any evidence as to whether the property manager had mutual use of the knobs and deadbolts of apartment doors. In the absence of such evidence, we cannot conclude that the property manager’s use of Sanchez’s door knob and deadbolt was broad enough to give the property manager authority to consent to an ion-swab test. *See id.* at 251-52 (analyzing evidence of “access rights reserved by [property manager] under appellant’s rental agreement”); *Luhm*, 880 N.W.2d at 614-15 (analyzing evidence of “condominium building’s written rules and regulations” concerning use of common areas).

Our consent analysis is informed in significant part by *McNeal*, even though consent was not at issue in that case. The *McNeal* opinion reasoned that the handles and locks of the door to the suspect’s apartment were within the curtilage of the apartment and, thus, were “so intimately tied to the home itself that they should be accorded constitutional protection.” 7 N.W.3d at 842 (quotation omitted). Because Sanchez had the same constitutionally protected interest in the privacy of the knob and deadbolt of the door to his apartment, we must assume, absent evidence to the contrary, that Sanchez had sole use of

those items such that the property manager did not have actual authority to consent to Officer Muro's ion-swab test. *See Licari*, 659 N.W.2d at 251 (reasoning that "a landlord is not seen as having actual authority to consent to a warrantless police search of the premises occupied by a tenant"); *Dotson*, 900 N.W.2d at 450 (reasoning that "landlords do not have actual authority to consent to a warrantless search of an area occupied by a tenant").

We note the state's argument (based solely on Officer Muro's warrant application) that Officer Muro "obtain[ed] permission from property management to conduct an ion swab of [Sanchez's] door," which suggests a more specific and direct form of permission than in *McNeal*, in which the officer entered the common area of the suspect's apartment building by using a security code, which he had acquired from "another officer who had obtained it from the building's landlord." *See McNeal*, 7 N.W.3d at 839. Sanchez did not have an opportunity to cross-examine Officer Muro about that statement. In any event, the difference is immaterial. The question is not whether the property manager purported to give consent to an ion-swab test of Sanchez's apartment door knob and deadbolt; the question is whether the property manager had authority to give such consent. Without evidence of the property manager's use of the door knobs and deadbolts in Sanchez's apartment building, we cannot conclude that the property manager had such authority.

Thus, the consent exception to the warrant requirement does not justify Officer Muro's warrantless ion-swab test of Sanchez's apartment door knob and deadbolt. Consequently, the district court erred by denying Sanchez's motion to suppress. The state does not dispute that the invalid ion-swab test led to the admission of inadmissible evidence

at the stipulated-facts court trial or that Sanchez was prejudiced by the district court's reliance on inadmissible evidence. Therefore, Sanchez is entitled to a new trial.

**Reversed and remanded.**