

*This opinion is nonprecedential except as provided by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
A24-1980**

State of Minnesota,
Appellant,

vs.

Waylon Sieber Kurts,
Respondent.

**Filed August 4, 2025
Appeal dismissed
Segal, Judge***

Rice County District Court
File No. 66-CR-23-832

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

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Considered and decided by Bentley, Presiding Judge; Frisch, Chief Judge; and Segal, Judge.

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

NONPRECEDENTIAL OPINION

SEGAL, Judge

In this pretrial appeal, appellant State of Minnesota challenges the district court's order excluding evidence. The state argues that exclusion of the evidence will have a critical impact on its ability to successfully prosecute respondent Waylon Sieber Kurts for terroristic threats-reckless disregard,¹ and that the district court abused its discretion when it determined that the evidence was not relevant and that any probative value was substantially outweighed by the risk of unfair prejudice. By way of a cross-appeal, Kurts challenges the district court's denial of his motion to exclude evidence related to a prior incident. Because the state fails to establish critical impact, we dismiss both the appeal and cross-appeal.

FACTS

In April 2023, a custodian at a private college in southern Minnesota found two empty boxes for high-capacity firearm magazines. The boxes were found in a trash can in a common area of one of the college's dormitory buildings. One package was for a 60-round rifle magazine, and one was for a 24-round pistol magazine. Kurts was a student at the college at the time, and the trash can was located near the door to Kurts's dorm room.

¹ In 2015, the legislature amended the headnote for the threats-of-violence statute, Minn. Stat. 609.713 (2022), replacing the phrase "terroristic threats" with "threats of violence." See 2015 Minn. Laws ch. 21, art. 1, § 109, at 234. We use the pre-amendment terminology of "terroristic threats" because that is the wording used by the state in its complaint against Kurts.

The custodian reported the discovery of the boxes to campus public safety staff. The boxes were identified as belonging to Kurts, and staff confirmed that he had discarded them.

Campus public safety staff, along with police, conducted searches of Kurts's dorm room. The searches revealed numerous items, including a tactical vest, an empty ammunition box (1500 count), two empty boxes for 60-round rifle-magazine drums, a tactical knife, six propane cannisters, three rifle-magazine carriers, a 24-round extended pistol magazine, three smoke-grenade packages, fireworks, lighter fluid, a battery with wires, a lockpick set, tripwire components, a note with radio frequencies, a note with instructions on creating a "Shoothouse,"² a portable ham radio, medical equipment, a gas mask, a notebook with a drawing of a flashbang-style grenade, and a receipt for a 60-round assault-rifle magazine and a 9mm pistol magazine. They also found notebooks containing a hand-drawn map of an on-campus recreational facility, detailed plans to steal ammunition from Walmart, and a note to inquire about the properties and dangers of "liquor of ammonia."

Police obtained a search warrant for Kurts's car and his cell phone. In his car, officers found a spent shell casing, a receipt for a tactical flashlight, and a notebook with writings on combat and guns. The notebook contained a drawing of a "T-box" on a face with the caption, "One shot to the T-box equals death instantly," and a page titled, "Things to be Good at." The page included comments to the effect that "7/10 people shot with a handgun survive. Shoot a lot"; "Within 7 yards make every shot as fast as you can prep

² According to the complaint, a shoothouse is an indoor firing range typically used to train the military and police in close-quarters combat.

trigger”; and “train” to “[s]hoot a person” in three areas: upper thoracic, T-zone on face, and pelvis.

In the search of Kurts’s cell phone, officers found photos of firearms and shooting, along with text messages between Kurts and another person, N.M., discussing firearm performance, building firearms, and purchasing firearm parts. The text messages included an exchange between Kurts and N.M. (the October 24 text messages) where Kurts asked if the packaging used by a firearms company had the company’s motto on it, “serious about firearms.” N.M. responded that he looked at the packaging and it just has the company’s name but that he “[w]ouldn’t order it to the s[ch]ool with contraband round” because it could “put a flag up” that was “[w]orth avoiding.” N.M. explained to Kurts that “[t]hey won’t just freak out, they’ll mark ya as suspicious” and that the “idea is to fit in lol,” at least “when it comes to stuff that scares liberals.” Kurts messaged back that it should be fine because the school “move[s] a decent amount of mail,” but that he will have the order sent to an alternate address. The phone search also revealed messages between Kurts and N.M. sent four days later (the October 28 text messages), that included a photo sent by Kurts of himself with a box in a common area on campus with a text stating: “Kids’ve got no idea what’s in here, haha.”

As relevant to the appeal, there was one prior interaction between Kurts and campus public safety staff in December 2022, when a public safety officer saw Kurts using a flashlight to peer into vehicles in a campus parking lot and testing door handles (the December 2022 incident). When the officer asked Kurts what he was doing, Kurts said

that he was trying to act suspicious to test the officer's response. Kurts also initially lied about his identity.

The state charged Kurts with “terroristic threats-reckless disregard risk,” along with three other counts. Two of the other counts—conspiracy to commit second-degree assault with a dangerous weapon and conspiracy to commit threats of violence—were dismissed for lack of probable cause following a contested omnibus hearing. The district court declined to dismiss the terroristic-threats count and a count for conspiracy to commit theft premised on the alleged plan to steal ammunition from Walmart.³ As to the charge of terroristic threats, the district court found there was sufficient evidence that Kurts's “disposal of two packages for high-capacity magazines in a trashcan accessible to students and staff at [the] College was done in conscious disregard” of his knowledge “that there was a substantial and unjustifiable risk that knowledge of his possession of firearm parts on campus would cause fear of firearm-related violence.”

Kurts moved for clarification of the terroristic-threats count in response to the state's argument that the threats included both Kurts's act of disposing of two empty high-capacity magazine boxes in the dormitory trash can and his act of stockpiling equipment to carry out a mass casualty event at the school. Kurts asserted that the act of “stockpiling equipment” in his dorm room could not constitute a threat because this conduct was never communicated to anyone. The district court denied Kurts's motion, reasoning that the court had already identified the threat as being limited to the act of disposing of the boxes for

³ The district court granted a motion by Kurts to sever the terroristic-threats and conspiracy-to-commit-theft counts for trial.

high-capacity firearm magazines in a dormitory trash can where the items could be seen by staff and students.

Kurts then filed a motion to exclude evidence against him, arguing lack of relevance and that any probative value of the evidence was outweighed by unfair prejudice. In the motion, Kurts sought exclusion of, among other things, the materials found during the searches of his dorm room, car, and cell phone. He argued that this evidence was not relevant because it was not known by staff or students at the college until *after* he had disposed of the boxes and thus could not have contributed to a reasonable apprehension of fear at the time the boxes were discovered. He also sought to exclude references to the December 2022 incident.

The district court agreed with Kurts that the evidence found during the searches of his dorm room and car should be excluded for lack of relevance and prejudice. But the district court denied Kurts's motion as to the October 28 text messages found on Kurts's cell phone⁴ and the December 2022 incident. The district court reserved ruling on the admissibility of the remaining cell phone data.

The state appeals from the district court's exclusion of the evidence discovered during the searches of Kurts's dorm room and car, and Kurts cross-appeals from the district court's denial of his motion to exclude evidence of the December 2022 incident.

⁴ The district court noted that Kurts had withdrawn his objection to the admission of the October 24 text messages and thus did not rule on that piece of evidence.

DECISION

In its appeal, the state argues that exclusion of the evidence found during the searches of Kurts's dorm room and car will have a critical impact on its ability to successfully prosecute Kurts and that the district court abused its discretion by excluding the evidence. The state maintains that the evidence is relevant to understanding the context of the alleged threat. The state further argues that the district court defined the scope of the threat too narrowly and that the threat did not end with the discovery of the firearm-magazine boxes in the dorm trash can. It asserts that the threat was "ongoing" such that the materials found in Kurts's dorm room and car were part of the threat and that the public safety staff and officers involved in the search were among the victims of that ongoing threat. Finally, the state challenges the district court's determination that the risk of prejudice outweighs the probative value of the evidence.

Before we reach the merits of the state's argument on the district court's evidentiary ruling, we must determine the threshold question of whether the state has "clearly and unequivocally" demonstrated that the ruling will have a "critical impact" on the state's ability to prosecute the terroristic-threats charge. *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995) (quotation omitted); *State v. Schnorr*, 403 N.W.2d 719, 720 (Minn. App. 1987) (applying critical-impact analysis to evidentiary ruling). "In the absence of critical impact, [appellate courts] will not review a pretrial order." *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999).

"Critical impact has been shown when the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *Zanter*, 535 N.W.2d at

630 (quotation omitted). To meet this standard the “state is not required to show that conviction is impossible without the suppressed evidence—only that success of the prosecution will be seriously jeopardized.” *L.E.P.*, 594 N.W.2d at 168.

“When analyzing critical impact, an appellate court should first examine all the admissible evidence available to the state in order to determine what impact the absence of the suppressed evidence will have.” *Id.* But instead of “stop[ping] there, . . . [t]he court should go on to examine the inherent qualities of the suppressed evidence itself, its relevance and probative force, its chronological proximity to the alleged crime, its effect in filling gaps in the evidence viewed as a whole, its quality as a perspective of events different than those otherwise available, its clarity and amount of detail and its origin.” *Id.* (citation omitted).

The offense of terroristic threats-reckless disregard is set out in Minn. Stat. § 609.713, subd. 1:

Whoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, vehicle or facility of public transportation or otherwise to cause serious public inconvenience, *or in a reckless disregard of the risk of causing such terror or inconvenience* may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. As used in this subdivision, “crime of violence” has the meaning given “violent crime” in section 609.1095, subdivision 1, paragraph (d).

(Emphasis added).

The supreme court defined the elements of threats of violence-reckless disregard in its recent opinion in *State v. Mrozinski* as follows:

(1) through words or actions, [the defendant] communicates an intention to injure another or their property; (2) the threat is to commit a statutorily defined crime of violence; (3) in context, those words or conduct create a reasonable apprehension that [the defendant] will follow through with or act on the threat; and (4) [the defendant] makes the violent threat in conscious disregard of a substantial and unjustifiable risk that [the defendant's] words or conduct will cause extreme fear.

971 N.W.2d 233, 240 (Minn. 2022).

Keeping the elements of the offense in mind, we turn to the first step in the critical-impact analysis—an examination of the admissible evidence. Despite the state's failure to provide an outline of the admissible evidence, we know that the district court declined to exclude from evidence the October 28 text messages (the photo of Kurts with a box in a common area on campus and the message, "Kids've got no idea what's in here, haha"). And the district court also referenced in its order that Kurts had withdrawn his objection to the admission of the October 24 text messages (the discussion about sending packages from a weapons manufacturer to campus).⁵ Finally, the district court also declined to exclude evidence related to the December 2022 incident (the interaction between Kurts and campus public safety staff in the campus parking lot). The state's case thus includes at least these pieces of evidence in addition to the discarded high-capacity magazine boxes.

We do not delve further into the evidence available to the state, however, because the question of "critical impact" is best resolved by addressing the "inherent qualities of the evidence," in particular its relevance. *See L.E.P.*, 594 N.W.2d at 168. The state argues

⁵ The district court reserved ruling on the admissibility of the remaining contents found on Kurts's phone.

that the excluded evidence is relevant because it “goes directly to the third element” of the offense, that the evidence provides the context for Kurts’s threat and shows a basis for reasonable apprehension that he would act on the threat.

As stated in *Mrozinski*, evidence concerning the context of a communication is relevant for determining whether the communication creates a “reasonable apprehension that the defendant will carry through with or act on the threat.” 971 N.W.2d at 239. But *Mrozinski* does not provide authority for treating, as relevant, evidence discovered only *after* a threat has been conveyed. And we are not otherwise persuaded that the supreme court’s discussion of context in *Mrozinski* should be accorded such a broad reading. We thus reject the state’s theory on this point.

The state also argues that the threat did not end with the disposal of the boxes in the dorm trash can but was part of an ongoing threat that included the investigation and “the reactions of the campus public safety officer, upon opening defendant’s dorm room as part of a campus room search protocol.” The problem with this argument, however, is that the offense of terroristic threats requires a *communication* “through words or actions” of “an intention to injure another or their property.” *Id.* at 240. The items were discovered through involuntary searches of Kurts’s dorm room and car—areas not open to general members of the campus community. And the state provides no evidence that Kurts voluntarily showed or intended members of the campus community to see the items in his dorm room or car, which arguably might support that Kurts thereby indirectly “communicated” a threat. On this record, we fail to understand how observation of items during an involuntary search can constitute a *communication* by Kurts. And, here again,

the state fails to provide any legal support for its argument beyond “mere assertion.” *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (quotation omitted) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”).

The state points to a statement in the district court’s order that college public safety staff would be “informed of possession of any firearms or ammunition on campus.” The state relies on this statement apparently to argue that the district court determined that the communication requirement was satisfied as to the dorm room and car evidence. But the reference in the district court’s order was contained in the court’s analysis of the December 2022 incident. The December 2022 incident occurred *before* Kurts disposed of the ammunition boxes on campus and included actions by Kurts *intended* to get the attention of campus public safety, to see what their reaction would be. As noted above, the state provided no evidence that Kurts sought to show the contents of his dorm room or car to anyone.

Finally, the state argues that the evidence is admissible because it was part of the “crime scene.” The state cites cases that discuss the admissibility of objects connected to a crime scene, including *State v. Hallmark*, 927 N.W.2d 281, 298 (Minn. 2019), and *State v. Zornes*, 831 N.W.2d 609, 624 (Minn. 2013). But these cases do not provide support for the admissibility of crime-scene evidence in the absence of relevance. To the contrary, the cases analyze the admissibility of crime-scene evidence within the relevance framework. For example, in *Hallmark*, the supreme court found no abuse of discretion in

the district court’s decision to allow the contents of a backpack into evidence because the items connected the defendant to the murder weapon, which had traces of the defendant’s DNA. 927 N.W.2d at 299. And in *Zornes*, the supreme court reached a similar conclusion because the challenged evidence—“a folding knife, utility knife, scissors, screwdriver, and hammer”—was directly tied to the defendant and the same types of weapons were used in the crime. 831 N.W.2d at 624-26.

In short, based on the arguments asserted by the state in this appeal, we agree with the district court’s determination that the evidence found in Kurts’s dorm room and car as part of the investigation into the disposal of the boxes is not relevant to the terroristic threats-reckless disregard charge. If the evidence is not relevant, its exclusion cannot have a critical impact on the state’s case.

Our ruling should not be interpreted as discounting the concerning nature of the evidence or the possibility that it could be relevant for purposes other than those presented by the state here.⁶ We merely decide that it is not relevant to the charge of terroristic threats-reckless disregard on this record and the arguments asserted by the state. *See Mrozinski*, 971 N.W.2d at 245 (holding that proof of a specific intent on the part of the defendant is not required under the First Amendment to establish a threats of violence-reckless disregard claim).

⁶ In this regard, we note that the state did not seek to differentiate among the items of evidence found in the dorm room or car and limited its argument to the theories that the evidence is relevant as context for the third (reasonable apprehension) element of the offense and that the threat was ongoing and included the searches of Kurts’s dorm room and car.

Because the evidence is not relevant, we conclude that the state has failed to “clearly and unequivocally show” that the exclusion of the evidence will have a critical impact on its ability to prosecute the case. *Zanter*, 535 N.W.2d at 630 (quotation omitted); *see L.E.P.*, 594 N.W.2d at 168. We therefore dismiss the state’s appeal. Based on our determination that the state has failed to show critical impact, we decline to review Kurts’s cross-appeal and also dismiss that appeal. *See State v. Kim*, 374 N.W.2d 814, 816 (Minn. App. 1985), (declining review of the defendant’s cross-appeal after determining that the state failed to show critical impact), *aff’d*, 398 N.W.2d 544 (Minn. 1987).

Appeal dismissed.