

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-2009**

State of Minnesota,
Appellant,

vs.

Daniel Roy O'Day,
Respondent.

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

Crow Wing County District Court
File No. 18-CR-24-2136

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

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for appellant)

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Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Segal,
Judge.*

SYLLABUS

A person commits felony tax evasion under Minn. Stat. § 289A.63, subd. 1 (2018),
if they (1) had an obligation to file a tax return or pay taxes due, (2) did not satisfy their

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

tax obligation, and (3) failed to do so with the purpose to evade or defeat their tax obligation. The state does not need to prove an additional evasive act.

OPINION

BJORKMAN, Judge

In this pretrial prosecution appeal, appellant State of Minnesota challenges the district court's order dismissing all charges against respondent Daniel Roy O'Day for lack of probable cause. The state argues that the district court erred by interpreting the phrase "willfully attempts in any manner to evade or defeat a tax" in the tax-evasion statute to require evidence of an affirmative act—separate from the failure to file a tax return or pay taxes owed—demonstrating an intention to evade or defeat a tax. Because the district court erred by concluding that probable cause does not support the charges against O'Day, we reverse and remand.

FACTS

The complaint alleges that in early 2023, the Minnesota Department of Revenue (the department) received a tip that O'Day had not been filing state income taxes for himself and his company, O'Day Transportation. The department's subsequent investigation revealed that from 2006 to 2014, O'Day was a W-2 employee and consistently filed tax returns and paid state income taxes. O'Day last paid taxes in 2014, filing as "Single-Head of Household," and listing his occupation as "Appliance Delivery."

In 2015, O'Day became self-employed and registered O'Day Transportation with the Minnesota Secretary of State. The registration expired in 2016, and O'Day never renewed it. But the department uncovered information that O'Day Transportation

continued to operate and received income after that time. The department obtained 1099 tax forms from Forward Final Mile (Forward), which contracted with O'Day Transportation to pick up, deliver, and install appliances Forward shipped to its hub in Brainerd. The 1099s show Forward paid O'Day Transportation \$609,709.44 in 2020, \$846,025.57 in 2021, and \$897,320.81 in 2022. 1099G forms from 2021 and 2022 reveal that O'Day also received \$107,980.48 from casino winnings. O'Day did not report or pay income taxes on the 1099 income or casino winnings.

The department also obtained O'Day's bank records, discovering that he commingled personal and business expenses in four separate accounts. From its investigation, the department determined that O'Day had sufficient income to require filing of state income tax returns and payment of taxes during the relevant time period, and that he owed approximately \$97,000 in unpaid income taxes.

In 2024, the state charged O'Day with ten counts of felony tax evasion for conduct that occurred from 2019-2023.¹ Five counts charged O'Day with "willfully attempt[ing] in any manner to evade or defeat a tax law by failing to file . . . State Income Tax return[s] when required to do so." The other five counts charged O'Day with "willfully attempt[ing] to evade or defeat a tax law by failing to remit . . . income taxes when required to do so."

O'Day moved to dismiss the charges for lack of probable cause, arguing that there was "no evidence that [he] attempted to evade or defeat the tax," and that the complaint only alleged "mere passive failure to timely file the returns and/or pay the taxes." The state

¹ The offense dates correspond to tax years 2018-2022.

argued that the felony-level offense “is complete by willfully failing to file or pay when required,” and that “intent [was] for the jury to decide.”

The district court granted O’Day’s motion and dismissed all of the charges, reasoning that the “legislature intended for a felony charge to be supported by something more than just an individual knowingly failing to file or pay their taxes.” According to the district court, this “something more” is “other evidence to support a willful attempt to evade,” and “the State has not provided evidence of any such behavior.” The state filed a motion to reconsider, which the district court denied.

The state appeals.

ISSUES

- I. Does the phrase “willfully attempts to evade or defeat a tax” as used in Minn. Stat. § 289A.63, subd. 1, require the state to prove the defendant’s failure to file or pay taxes due and an additional evasive act to establish felony tax evasion?
- II. Did the district court err by dismissing the charges for lack of probable cause?

ANALYSIS

The state’s ability to appeal in a criminal case is limited. *State v. Lugo*, 887 N.W.2d 476, 481 (Minn. 2016) (noting state’s right to appeal is “strictly construed because such appeals are not favored”). Under Minn. R. Crim. P. 28.04, subd. 1(1), the state has the right to appeal “probable cause dismissal orders based on questions of law.” But the rule precludes the state from appealing probable-cause dismissals “premised solely on a factual determination.” Minn. R. Crim. P. 28.04, subd. 1(1). Whether a probable-cause dismissal is legal or factual in nature “is a threshold jurisdictional question.” *State v. Ciurleo*, 471 N.W.2d 119, 121 (Minn. App. 1991).

In *State v. Gray*, the supreme court concluded that a probable-cause dismissal was appealable because it was based, in part, on the district court’s interpretation of the statute governing admission of a defendant’s confession. 987 N.W.2d 563, 566-67 (Minn. 2023). Likewise, the district court here based its dismissal, in part, on its determination that Minn. Stat. § 289A.63, subd. 1, requires the state to prove both a failure to satisfy a tax obligation and another act or behavior indicating a willful attempt to evade the obligation. Because the district court’s dismissal order is at least partly based on its interpretation of the law, it is appealable.²

I. To establish a felony violation of Minn. Stat. § 289A.63, subd. 1, the state is not required to prove that the defendant committed an evasive act in addition to failing to file or pay taxes due.

Minnesota Statutes section 289A.63, subdivision 1, establishes criminal offenses for failing to file tax returns and pay taxes. The statute provides that a person may commit tax evasion in one of two ways:

(a) A person required to file a return, report, or other document with the commissioner, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor. A person required to file a return, report, or other document *who willfully attempts in any manner to evade or defeat a tax by failing to file it when required, is guilty of a felony.*

² The parties frame the jurisdictional issue as whether the district court’s decision has a “critical impact” on the state’s case. *See State v. Serbus*, 957 N.W.2d 84, 87 (Minn. 2021); Minn. R. Crim. P. 28.04, subd. 2(2). We agree with the parties that dismissal of all charges generally satisfies the critical-impact requirement. *See State v. Gosewisch*, 921 N.W.2d 796, 798 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019). But Minn. R. Crim. P. 28.04, subd. 1(1), compels a different jurisdictional analysis of probable-cause dismissals, which we apply above.

(b) A person required to pay or to collect and remit a tax, who knowingly, rather than accidentally, inadvertently, or negligently, fails to do so when required, is guilty of a gross misdemeanor. A person required to pay or to collect and remit a tax, *who willfully attempts to evade or defeat a tax law by failing to do so when required, is guilty of a felony.*

Minn. Stat. § 289A.63, subd. 1 (emphasis added). In both instances, liability is premised on a person's failure to satisfy a tax obligation. The distinction between the gross misdemeanor and felony penalty levels turns on the difference between “knowingly” failing to do so and “willfully attempt[ing] to evade or defeat” their tax obligation. *State v. Larson*, 605 N.W.2d 706, 717 (Minn. 2000).

The parties disagree about whether the phrase “willfully attempts to evade or defeat a tax” requires the state to prove—in addition to the failure to file a return or pay a required tax—that the defendant committed a separate willful act to establish a felony-level violation. The state argues that “willfully attempts to evade or defeat a tax” defines the intent required to support a felony violation. According to the state, the first element of the tax-evasion offense—the actus reus of the crime—is the failure to file or pay taxes when required to do so. The mens rea offense element—which requires the defendant to know the facts that make their conduct illegal—is the knowing failure to do so (gross misdemeanor) or the willful failure to do so by attempting to evade or defeat the tax obligation now or in the future (felony). *See State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016) (defining mens rea). O’Day focuses on the word “attempt,” arguing that its inclusion demonstrates that additional “affirmative action” is required to elevate the crime of evading a tax obligation to a felony. In other words, O’Day contends the phrase “willfully attempt

to evade or defeat” creates a second actus reus element, which the complaint does not allege. Determining the elements of an offense is a matter of statutory interpretation that we review de novo. *State v. Beganovic*, 991 N.W.2d 638, 647 (Minn. 2023).

When interpreting a statute, our goal is to discern and effectuate the legislature’s intent. *State v. Abdus-Salam*, 1 N.W.3d 871, 876 (Minn. 2024); *see also* Minn. Stat. § 645.16 (2024). In doing so, we first determine whether the statutory language is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). Statutory language is ambiguous if it is “subject to more than one reasonable interpretation.” *Id.* (quotation omitted). If statutory language is unambiguous, we apply its plain meaning. *Abdus-Salam*, 1 N.W.3d at 877. To determine plain meaning, we look to both the text and the statutory context. *State v. Bee*, 17 N.W.3d 150, 153 (Minn. 2025).

To ascertain whether the phrase “willfully attempts to evade or defeat a tax” requires the state to establish a second actus reus, we begin by interpreting the statutory language. “Willful” is not defined in either Minn. Stat. § 289A.02 (2018) (tax-law definitions) or Minn. Stat. § 609.02 (2018) (criminal-law definitions). Accordingly, we may look to dictionary definitions of the term to determine if the statute’s meaning is plain. *Thonesavanh*, 904 N.W.2d at 436. Dictionaries define “willful” as “[s]aid or done on purpose; deliberate,” *The American Heritage Dictionary of the English Language* 1982 (5th ed. 2018); “[d]one wittingly or on purpose, as opposed to accidentally or casually; voluntary and intentional, but not necessarily malicious,” *Blacks Law Dictionary* 1922 (12th ed. 2024); and “done deliberately; intentional,” *Merriam-Webster’s Collegiate*

Dictionary 1433 (11th ed. 2014). The ordinary meaning of “willful” clearly contemplates deliberate, intentional conduct.

Minn. Stat. § 609.02, subd. 9(3), defines “intentionally” to mean that a person has “a purpose to do the thing or cause the result specified.” *See State v. Cyrette*, 636 N.W.2d 343, 348 (Minn. App. 2001) (holding use of term “willfully” in child-neglect statute means “intentionally”), *rev. denied* (Minn. Feb. 19, 2002). In contrast, “knowingly” is statutorily defined to “require[] only that the actor believes the specified fact exists.” Minn. Stat. § 609.02, subd. 9(2) (defining “know”). Importantly, both intent and knowledge relate to mens rea. *See Dorn*, 887 N.W.2d at 830-31. In the context of the tax-evasion statute, we thus conclude “knowingly” means that the person believes that they failed to file a tax return or pay a required tax. And we conclude that “willfully” means that the person knowingly failed to file a tax return or pay a required tax with the purpose to attempt to evade or defeat their tax obligation.³

The plain statutory terms and context convince us that the phrase “willfully attempts to evade or defeat a tax” does not create an additional actus reus offense element. Rather, it distinguishes the mens rea required to establish a felony violation of the statute

³ In *State v. Beattie*, we applied “willfully” to require proof of “specific intent to purposefully evade the [tax] obligation now and in the future.” No. A13-1099, 2014 WL 1660688, at *5 (Minn. Apr. 28, 2014), *rev. denied* (Minn. July 15, 2014). While *Beattie* did not formally interpret the statute—instead relying on the district court’s description of the law as set out in the unobjected to jury instructions—and it is not a precedential opinion, we consider it persuasive authority as to the meaning of “willfully” in the tax-evasion statute. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (“[N]onprecedential opinions may be cited as persuasive authority.”).

(willfullness) from that required to establish a gross misdemeanor violation (knowledge). In both instances, the actus reus remains the same: failure to comply with a tax obligation.

To persuade us otherwise, O'Day points to *Spies v. United States*, 317 U.S. 492, 497 (1943), which interprets the federal tax-evasion statutes, to argue that the phrase “willfully attempts to evade or defeat a tax” requires the state to prove a separate evasive act “taken with the intent to trick, deceive, or mislead.” We are not persuaded.

Unlike Minnesota's statute, the federal statutes use the term “willful” to describe the mens rea element of both misdemeanor and felony-level offenses. The federal statutes separately punish a “willful[] attempt[] in any manner to evade or defeat any tax” as a felony and a “willful[] fail[ure] to pay such estimated tax or tax, make such return, keep such records, or supply such information” as a misdemeanor. 26 U.S.C. §§ 7201, 7203 (2018). The distinction between the federal and state statutory schemes is significant. As the Supreme Court noted in *Spies*, “[t]he difference between willful failure to pay a tax when due, which is made a misdemeanor, and willful attempt to defeat and evade one, which is made a felony, is not easy to detect or define.” 317 U.S. at 497. To do so, the Supreme Court focused on “the affirmative action implied from the term ‘attempt,’ as used in the felony subsection,” holding: “We think that in employing the terminology of attempt to embrace the gravest of offenses against the revenues Congress intended some willful commission in addition to the willful omissions that make up the list of misdemeanors.”

Id. at 498-99.⁴ And the Supreme Court explained that such an additional willful act could be inferred from conduct such as “keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income.” *Id.* at 499.

Minnesota’s tax-evasion statute does not require us to similarly parse the statutory language to discern the legislature’s intent; the statute plainly distinguishes the mens rea required for the misdemeanor offense (knowing) from that required for the felony offense (willful attempt to evade). Accordingly, we are not convinced that *Spies* conflicts with our conclusion that Minnesota’s statute elevates tax evasion to a felony-level offense upon proof that the defendant failed to satisfy a tax obligation with the purpose to evade or defeat such obligation; no separate evasive act is required. But the examples of evidence evincing affirmative willful conduct outlined in *Spies* are instructive as to the type of evidence the state may marshal to prove that a defendant acted with the purpose to evade or defeat a tax obligation. *See State v. Rhodes*, 657 N.W.2d 823, 840 (Minn. 2003) (“Intent may be inferred from events occurring before and after the crime and may be proved by circumstantial evidence.”).

In sum, to prove felony tax evasion under Minn. Stat. § 289A.63, subd. 1, the state must prove the defendant knew they were obligated to file a tax return or pay taxes due, did not satisfy their tax obligation, and failed to do so with the purpose to evade or defeat

⁴ The Supreme Court noted that it was not necessary to turn to “the complexities of the common law” when discerning the meaning of “attempt” in the federal statute. *Spies*, 317 U.S. at 498.

their tax obligation. The state does not need to prove an additional evasive act. We therefore turn to whether probable cause supports the charges against O'Day.

II. Probable cause supports the charged offenses.

When a defendant challenges probable cause, the district court must determine if, “[g]iven the facts disclosed by the record, is it fair and reasonable . . . to require the defendant to stand trial.” *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976); *see* Minn. R. Crim. P. 11.04, subd. 1(c) (stating the district court may base a probable-cause decision “on the complaint or the entire record, including reliable hearsay”). “Probable cause exists where the facts would lead a person of ordinary care and prudence to hold an honest and strong suspicion that the person under consideration is guilty of a crime.” *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001). The district court should deny a motion to dismiss for lack of probable cause “if the facts before the district court present a fact question for the jury’s determination on each element of the crime charged.” *State v. Lopez*, 778 N.W.2d 700, 704 (Minn. 2010) (quotation omitted).

The district court dismissed the complaint because it determined that the state did not allege facts necessary to support the felony-level tax-evasion charges. The district court explained that “the record reflects that [O'Day] had a knowledge of his duty to file tax returns and pay said taxes, and even supports a probable cause finding that [O'Day] knowingly failed to do so.” But the court concluded that “this record does not support a finding of the additional willful attempt that is necessary for a felony-level charge.” Because the district court’s determination was based, in part, on its interpretation of the law, we review the decision *de novo*. *State v. Dixon*, 981 N.W.2d 387, 392 (Minn. 2022).

Having concluded that the state does not need to prove that O'Day committed an evasive act in addition to failing to file or pay required taxes, we turn to whether the record creates fact questions for the jury as to whether O'Day committed felony-level violations of the tax-evasion statute. The state argues that his "willful attempt to evade" his tax obligations may be inferred from the evidence, including O'Day's "repeated and consistent failure to file state income tax returns or pay income tax for nearly a decade while receiving hundreds of thousands of dollars of business income a year." Specifically, the state points to the following inferences: (1) O'Day knew that he had to file state income tax returns and pay state income taxes, having done so from 2006 to 2014; (2) O'Day "was a sophisticated and seemingly successful business [owner], who stopped filing tax returns or paying income tax after starting his own business"; (3) O'Day "used the income from his business as his own"; and (4) O'Day "consistently failed to file tax returns or pay tax[es] . . . over the course of nearly a decade despite having received substantial income." And the state provided evidence that O'Day Transportation was registered with the Secretary of State in 2015, that O'Day did not renew the registration after it expired in 2016 but the business kept operating, and that he comingled business and personal expenses. Drawing all inferences in favor of the state, a jury could infer that O'Day's conduct involved more than a mere knowing failure to file tax returns and pay taxes, and that O'Day also acted to conceal his business because he intended to evade his tax obligations.

We recognize, as the district court did, that this unique record contains fewer facts suggesting a willful attempt to evade or defeat a tax obligation than were present in *Beattie*,

one of the few appellate decisions involving the felony tax-evasion statute. In *Beattie*, a tax professional requested information and documents necessary to file tax returns and Beattie refused; the department of revenue notified Beattie of his failure to file returns and pay taxes; and when an employee inquired about paying taxes, Beattie responded, “What are they going to do, fine me?” 2014 WL 1660688, at *5. But *Beattie* involved a challenge to the sufficiency of the evidence presented at trial, not probable cause. This distinction makes a difference. “The standard for the sufficiency of the evidence to support a conviction is much higher than probable cause.” *State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995), *rev. denied* (Minn. Mar. 21, 1995); *see State ex rel. Hastings v. Bailey*, 116 N.W.2d 548, 551 (Minn. 1962) (stating at a preliminary hearing “[i]t is not necessary for the state to prove the defendant’s guilt beyond a reasonable doubt”). Bearing in mind that this case involves a probable-cause challenge, and viewing the record and all reasonable inferences in favor of the state, we conclude that the facts “present a fact question for the jury’s determination.” *Lopez*, 778 N.W.2d at 704 (quotation omitted). The district court erred by dismissing the charges against O’Day for lack of probable cause.

DECISION

To prove felony tax evasion under Minn. Stat. § 289A.63, subd. 1, the state must prove the defendant was obligated to file a tax return or pay taxes due, did not satisfy their tax obligation, and failed to do so with the purpose to evade or defeat their tax obligation. The state does not need to prove an additional evasive act. From the facts alleged in this record, a jury could infer that O’Day failed to satisfy his tax obligations with the purpose

to evade or defeat them. Accordingly, the district court erred by granting O'Day's pretrial motion to dismiss the charges for lack of probable cause.

Reversed and remanded.