

*This opinion is nonprecedential except as provided by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
A25-0184**

State of Minnesota,
Respondent,

vs.

Edward Louis Johnson, Jr.,
Appellant.

**Filed February 2, 2026
Affirmed
Jesson, Judge***

Todd County District Court
File No. 77-CR-23-460

Keith Ellison, Attorney General, Timothy C. Rank, Assistant Attorney General, St. Paul, Minnesota; and

John E. Lindemann, Todd County Attorney, Long Prairie, Minnesota (for respondent)

Paul D. Sellers, Minnesota Legal Defense, Eagan, Minnesota (for appellant)

Considered and decided by Bond, Presiding Judge; Worke, Judge; and Jesson, Judge.

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Edward Louis Johnson, Jr. was convicted of first-degree driving while impaired (DWI). On appeal, he argues that the district court erred in denying his motion to suppress evidence because law enforcement violated Minnesota Statutes section 626A.42 (2024), by obtaining his cell site location information (CSLI) without a search warrant. Because CSLI may be obtained without a warrant under Minnesota Statutes section 626A.42, subd. 2(a), if there is an emergency situation involving the risk of death or serious physical harm to the person possessing the cellular phone, and law enforcement in this case had such an objectively reasonable belief, we affirm.

FACTS

The facts of this case, which were elicited at the pretrial suppression hearing, are not disputed. Shortly before noon on May 30, 2023, a friend of Johnson contacted 911 with concerns related to Johnson. The friend told the 911 dispatcher that he had been on the phone with a highly intoxicated Johnson when Johnson pulled his pickup to the side of the road and passed out while still talking to the friend. According to the friend, Johnson was driving from Battle Lake to the Park Rapids area, and Johnson had passed out with his phone line still open. The friend could hear traffic driving by.

The 911 dispatcher relayed the message from Johnson's friend over the police scanner and Minnesota State Trooper R. heard the transmission. Trooper R. then called Trooper G. to discuss the situation. Based on the transmission, the troopers "weren't sure if [Johnson] had crashed, or if he was having a medical reason," and they "were more

worried about intoxication in the vehicle, plus a medical, plus possibly a crash, anything like that happening.” Trooper G. subsequently contacted Johnson’s friend, who told the trooper that Johnson was his “close friend,” and that he thought Johnson was intoxicated. According to the friend, he has “been around” Johnson “when he was intoxicated and could hear the intoxication in [Johnson’s] voice like a thick tongue, slurred speech.” The friend told the trooper that “he was very worried about [Johnson] because he believed [Johnson] wasn’t in a good mental state, that he had been driving his truck when he was talking to him, and that now all he could do was hear him breathing and he could hear cars passing.” And the friend relayed to the trooper that, in light of the situation and Johnson’s “bad” mental state, something “suicidal” could be “going on.”

At about 12:30 p.m., Trooper G. called Trooper R. and relayed the details of her conversation with Johnson’s friend to Trooper R. Because the troopers did not know Johnson’s location, or if he was having a “medical or what,” the troopers discussed “ping[ing]” Johnson’s phone in order to locate him “in case he needed some assistance.” “Pinging” Johnson’s cell phone refers to seeking emergency, real-time CSLI from Johnson’s cellular phone provider. Under Minnesota law, “a tracking warrant” is generally required before a government entity can obtain location information from an individual’s cellular phone. Minn. Stat. § 626A.42, subd. 2(a). But a government entity may obtain CSLI “without a tracking warrant . . . in an emergency situation that involves the risk of death or serious physical harm to the person who possesses” the cellular phone. *Id.*, subd. 2(b)(5).

The troopers decided that, under the circumstances, it was appropriate to ping Johnson's cell phone because it was necessary to perform a "welfare check." Trooper G. also believed that there was not enough time to obtain a warrant because of the "exigent circumstances" and "how fast things were escalating." According to Trooper G., it may take up to three hours to obtain a warrant, and if she waited and obtained a warrant, she "believe[d] something bad would have happened."

Trooper G. requested a ping by contacting a state patrol communications officer who followed carrier protocols to obtain an emergency ping of Johnson's phone, which included periodic location updates in 15-minute intervals. Trooper G. then received the first ping of Johnson's phone at about 12:38 p.m. After receiving the latitude and longitude coordinates for Johnson's phone, Trooper G. spoke with Johnson's friend who said that he had "reconnected" with Johnson, but that the two had an argument and Johnson hung up. Because Johnson was "driving again," and "highly intoxicated," Trooper G. believed that there was "now more of a risk for the public" and Johnson.

At 12:54 p.m., the troopers were alerted to another ping from Johnson's phone, indicating that Johnson had moved from the previous ping. Trooper R. was receiving updates of the ping locations and he eventually located Johnson's parked vehicle. After further investigation, Johnson was arrested and charged with two counts of first-degree DWI and open bottle possession.

Johnson moved to suppress all location data obtained by law enforcement, arguing that the troopers' failure to obtain a warrant for this information violated Minnesota Statutes section 626A.42, as well as Johnson's constitutional rights under the Fourth

Amendment. Following a contested omnibus hearing, the district court determined that the troopers “had an objectively reasonable basis for believing there was an ongoing emergency situation that involved the risk of death or serious physical harm to [Johnson] and members of the public.” The district court, therefore, concluded that “pinging [Johnson’s] phone without a tracking warrant was legal” under section 626A.42. The district court further determined that, “[i]f obtaining real-time CSLI is a constitutional search, the warrantless search was legal under the exigent circumstances exception.” Thus, the district court denied Johnson’s motion to suppress.

Following the denial of his motion to suppress, Johnson proceeded with a trial on stipulated evidence under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. The district court found Johnson guilty of first-degree DWI (refusal to submit to a chemical test), and the remaining charges were dismissed. The district court then sentenced Johnson to 54 months in prison. This appeal follows.

DECISION

Johnson challenges the district court’s denial of his motion to suppress, arguing that his CSLI was obtained in violation of Minnesota Statutes section 626A.42.¹ When reviewing a district court’s pretrial order on a motion to suppress evidence, “we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008)

¹ Johnson does not raise his Fourth Amendment challenge in this appeal.

(quotation omitted). A de novo standard of review also applies to questions involving statutory interpretation. *State v. Manypenny*, 682 N.W.2d 143, 149 (Minn. 2004).

As relevant here, a government entity may not obtain CSLI under Minnesota law without a tracking warrant. Minn. Stat. § 626A.42, subd. 2(a). A warrant granting access to such information pursuant to section 626A.42, subdivision 2(a), must be issued only if a government entity shows that there is “probable cause the person who possesses an electronic device or is using a unique identifier is committing, has committed, or is about to commit a crime.” *Id.* But this CSLI may be obtained by the government without a tracking warrant: (1) if the electronic device is reported lost or stolen by the owner; (2) “in order to respond to the user’s call or request for emergency services”; (3) if the owner or user of the electronic device or unique identifier provides informed, affirmative, or documented consent; (4) “with the informed, affirmative consent of the legal guardian or next of kin of the owner or user if the owner or user is believed to be deceased or reported missing and unable to be contacted”; or (5) “in an emergency situation that involves the risk of death or serious physical harm to a person who possesses [the] electronic communications device.” *Id.*, subd. 2(b). Evidence obtained in violation of section 626A.42 is not admissible “in any criminal, civil, administrative, or other proceedings.” *Id.*, subd. 6(a).²

² We note that Minnesota Statutes section 626A.42 is distinct from Minnesota Statutes section 626.085 (2024), which requires that a government entity “obtain a search warrant to require disclosure of electronic communication information.” Minn. Stat. § 626.085, subd. 2(a). Under this statute, “electronic communication information” is defined as “any information about an electronic communication or the use of an electronic communication service, limited to the contents of electronic communications and precise or approximate

At issue here is the emergency exception contained in Minnesota Statutes section 626A.42, subdivision 2(b)(5). An objective standard is applied in determining the reasonableness of an officer's belief that there was an emergency. *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992).

Here, the following facts are uncontested: (1) Johnson's friend contacted 911 expressing concern that Johnson was "highly intoxicated" and driving in the Battle Lake/Park Rapids area; (2) the friend described himself as a "close friend" of Johnson, and knew Johnson was intoxicated because he has "been around" Johnson "when he was intoxicated and could hear the intoxication in [Johnson's] voice like a thick tongue, slurred speech"; (3) the friend informed Trooper G. that Johnson "had been driving his truck when he was talking to him, and that now all [the friend] could do was hear [Johnson] breathing and [the friend] could hear cars passing"; (4) the friend told Trooper G. that "he was very worried" about Johnson because appellant was in a "bad" mental state and thought something "suicidal" could be "going on"; (5) based on the information provided, troopers were not sure if Johnson had crashed, or was perhaps having a medical incident; (6) the area between Battle Lake and Park Rapids consists of several routes and the time it would take to obtain a warrant could be up to three hours; and (7) the troopers testified that they believed that if they waited to obtain a warrant "something bad" would happen.

location of the sender or recipients at any point during the communication." Minn. Stat. § 626.085, subd. 1(2). This information may be obtained without a search warrant if the government "has valid consent from one authorized to give it, or exigent circumstances exist where there is a danger to the life or physical safety of an individual. *Id.*, subd. 2(b). There is no argument here that section 626.085 is applicable in this case.

The uncontested facts in this case support a reasonable, objective belief by the troopers that there was an “emergency situation” involving “the risk of death or serious physical harm” to Johnson. *See* Minn. Stat. § 626A.42, subd. 2(b)(5). The troopers had credible evidence from a “close friend” of Johnson that Johnson was driving while “highly intoxicated.” Troopers also knew that Johnson was in a “bad” mental state or perhaps suicidal, and that Johnson’s close friend was very worried about him. And troopers knew that Johnson had passed out or lost consciousness while driving and that Johnson might be in a precarious predicament because cars were heard passing Johnson’s location while Johnson was on the phone breathing but not responding to his friend. Finally, the troopers testified that they were concerned that Johnson could be suffering from a medical issue, and that a warrant could take up to three hours to obtain, which in the meantime, the troopers “believe[d] something bad” would happen. Because these circumstances support a reasonable, objective belief by the troopers that there was an “emergency situation” involving “the risk of death or serious physical harm” to Johnson, the individual possessing the electronic device, the initial warrantless ping of Johnson’s phone was legal under Minnesota Statutes section 626A.42, subdivision 2(b)(5).

We also conclude that the emergency situation continued *after* Trooper G. spoke with Johnson’s friend a second time. Although information from this second conversation revealed that Johnson was conscious and driving, the troopers knew that he was very intoxicated, which would put Johnson at risk of death or serious bodily harm. Moreover, under the circumstances presented here, the troopers did not know if Johnson had suffered some type of medical situation and whether, despite now being conscious, was still

suffering from that condition. These circumstances indicate that, even after speaking with Johnson’s friend a second time, the troopers had an objectively reasonable belief that there was still an ongoing “emergency situation” involving “the risk of death or serious physical harm” to Johnson. *See id.*

To persuade us otherwise, Johnson argues that the uncontested facts demonstrate that law enforcement violated section 626A.42 because the troopers’ “justification” for seeking the CSLI “rested solely on speculative concerns about Johnson’s welfare based on a third-party phone call” that is “insufficient to satisfy the emergency exception” contained in the statute. To support his position, Johnson relies on our nonprecedential decision in *State v. Lelyukh*, No. A21-0699, 2021 WL 5872306 (Minn. App. Dec. 13, 2021), *rev. denied* (Minn. Feb. 23, 2022).³ In that case, police obtained automated license plate reader (ALPR) information without a warrant that led to the defendant’s arrest for DWI after a “private citizen” reported to police that he observed that a “car had sped recklessly into the parking lot [of a regional park] and stopped; that two men were in the car; and that ‘several beer cans fell out of the car.’” *Lelyukh*, 2021 WL 5872306, at *1, 5. In affirming the decision granting the defendant’s motion to suppress evidence obtained as a result of the warrantless use of ALPR information, this court recognized that “[a]utomated license plate readers must not be used to monitor or track an individual who is the subject of an active criminal investigation unless authorized by a warrant, issued upon probable cause,

³ Nonprecedential decisions are not binding authority and have “persuasive value at best.” *See Skyline Vill. Park Ass’n v. Skyline Vill. L.P.*, 786 N.W.2d 304, 309-10 (Minn. App. 2010) (recognizing that nonprecedential opinions from this court “are of persuasive value at best and not precedential” (quotation omitted)).

or exigent circumstances justify the use without obtaining a warrant.” *Id.* at *1 (quoting Minn. Stat. § 13.824, subd. 2(d)). But the court declined to “reach the issue of whether stopping a drunk driver in real time is a single-factor exigency because the facts do not present that issue.” *Id.* at *5. The court then rejected the state’s argument that there were exigent circumstances under the totality-of-the-circumstances approach, reasoning that, “beyond the officer’s suspicion that the driver may have been impaired, the state points to no . . . factors that created a ‘now or never’ situation,” such as whether the driver had been drinking or if the beer cans that fell from the car were open or were anywhere near the driver. *Id.* at *6.

Johnson’s reliance on *Lelyukh* is misplaced. Unlike in *Lelyukh*, in which law enforcement merely had “suspicion that the driver may have been impaired,” 2021 WL 5872306, at *6, the troopers here had credible evidence from Johnson’s friend that Johnson was driving while “highly intoxicated.” Johnson’s intoxicated state, in addition to the other circumstances referenced previously, provided the troopers with a reasonable, objective belief that there was an “emergency situation” involving “the risk of death or serious physical harm” to Johnson. *See* Minn. Stat. § 626A.42, subd. 2(b)(5).

Moreover, there is a significant difference between the statute at issue in *Lelyukh*, and the statute applicable here. *Compare* Minn. Stat. § 13.824, subd. 2(d), *with* Minn. Stat. § 626A.42, subd. 2(b)(5). In this case, the warrant exception contained in section 626A.42, subdivision 2(b)(5), limits the warrantless use of CSLI to “emergency situations” involving “the risk of death or serious physical harm *to a person who possesses*” the electronic device. Minn. Stat. § 626A.42, subd. 2(b)(5) (emphasis added). In contrast,

the warrant exception contained in section 13.824, subdivision 2(d), which was at issue in *Lelyukh*, involves exigent circumstances.⁴ See Minn. Stat. § 13.824, subd. 2(d) (stating that ALPR information must not be used by law enforcement without a warrant unless “*exigent circumstances* justify the use without obtaining a warrant” (emphasis added)). Because the warrant exception in the statute at issue in *Lelyukh* is materially different than the warrant exception at issue in this case, *Lelyukh* is of limited persuasive value.

Johnson also relies on another nonprecedential decision to argue that the “objective facts available to law enforcement at the time of the warrantless ping did not establish an immediate risk of death or serious physical harm.” See *State v. Carlson*, No. A11-388, 2011 WL 5829295 (Minn. App. Nov. 21, 2011). In that case, law enforcement received a call regarding a man slumped over the steering wheel of a parked vehicle at a park. *Id.* at *1. When police arrived at the scene, the vehicle was no longer parked there, but the officer observed the vehicle travel past his squad car and onto the frozen lake. *Id.* The officer stopped the vehicle, and, after further investigation, the defendant was arrested and charged

⁴ We note that the district court in this case appeared to overlook the distinction between section 13.824, subdivision 2(d), and section 626A.42, subdivision 2(b)(5), when it determined that the troopers “had an objectively reasonable basis for believing there was an ongoing emergency situation that involved the risk of death or serious physical harm to [Johnson] *and members of the public*.” (Emphasis added.) Although Johnson might have presented a risk of death or serious physical harm to members of the public, that fact is not relevant under the exception set forth in section 626A.42, subdivision 2(b)(5), because the warrant exception is limited to the risk of death or serious physical harm to the person who possesses the electronic device. See Minn. Stat. § 626.42, subd. (b)(5). But, because the district court specifically based its decision on its determination that there was an emergency situation involving the risk of death or serious physical harm to appellant, any error in its reference to “members of the public” is harmless.

with DWI. *Id.* The defendant subsequently moved to suppress the evidence obtained as a result of the traffic stop, arguing that his seizure was unlawful. *Id.* The district court disagreed, concluding that the officer “had a sufficient basis to stop the vehicle to determine if the driver was in need of ‘medical or other assistance.’” *Id.* On appeal, this court reversed because the “state failed to demonstrate . . . an objectively reasonable belief that an emergency existed at the time of [the defendant’s] seizure.” *Id.* at *3. In reaching this decision, this court noted that the record did not establish a reasonable basis for the officer to believe that an emergency existed at the time of the defendant’s seizure because there was an absence of evidence regarding how long the defendant was slumped over the wheel of his vehicle, whether attempts were made to communicate with the defendant during this time, and whether he was responsive. *Id.* at *3 n.1.

Johnson argues that the troopers did not have a reasonable, objective belief that there was an emergency because, like in *Carlson*, the troopers never attempted to contact him. But the undisputed record reflects that any initial attempt to contact Johnson would have been fruitless because the troopers knew that Johnson was unresponsive. And any attempt to contact Johnson after he regained consciousness would also have been fruitless since Johnson’s friend reported to the troopers that Johnson was upset and “knew that the cops were after him.” Moreover, although troopers never observed Johnson passed out, or a crash involving Johnson, it was Johnson’s “close friend” who contacted law enforcement and provided them with the relevant information. As addressed above, this information—which included Johnson’s intoxicated state, his losing consciousness on or near traffic, and Johnson’s “bad” mental state—consists of more than mere speculation that there was an

“emergency situation” involving “the risk of death or serious physical harm” to Johnson. *See* Minn. Stat. § 626A.42, subd. 2(b)(5). We therefore conclude that the district court did not err in denying Johnson’s motion to suppress.

Affirmed.