STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1062

State of Minnesota,
Appellant,

vs.

Michael John Selle,
Respondent.

Filed November 21, 2011
Reversed and remanded
Wright, Judge

Hennepin County District Court
File No. 27-CR-10-46744

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Alina Schwartz, Assistant Plymouth City Attorney, Campbell Knutson, P.A., Eagan, Minnesota (for appellant)

James M. Ventura, Wayzata, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

WRIGHT, Judge

Appellant State of Minnesota challenges the district court's pretrial order suppressing statements made by respondent and all physical evidence seized from him. Appellant argues that the district court erred by concluding that respondent was arrested

without probable cause and subjected to custodial interrogation in violation of his *Miranda* rights.[1] We reverse and remand.

FACTS[2]

On October 6, 2010, at approximately 8:41 p.m., Minnesota State Highway Patrol Trooper Wade Erickson responded to the report of a single-vehicle accident on Interstate Highway 494 in Plymouth. When he arrived at the scene of the accident, Trooper Erickson observed an overturned vehicle in the highway median and an ambulance. Trooper Erickson entered the ambulance to speak with the vehicle's driver, respondent Michael John Selle, and "immediately detected the strong odor of marijuana" inside the ambulance. Trooper Erickson asked Selle about the odor; and Selle replied that he had smoked marijuana earlier. When Trooper Erickson asked Selle when he last smoked marijuana, Selle gave different responses, including "I haven't smoked today," "it wasn't recently," "this morning," and "a couple hours ago." Trooper Erickson observed that Selle's speech was "slow and slurred." When Trooper Erickson asked Selle how the accident happened, Selle replied that he had fallen asleep or another vehicle may have cut him off. Selle submitted to a preliminary breath test that measured no alcohol.

After speaking with Selle in the ambulance for approximately five to ten minutes, Trooper Erickson asked Selle to come to his squad car when the paramedics finished. Selle subsequently walked to Trooper Erickson's squad car and sat in the back seat,

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[1] *See Miranda v. Arizona*, 384 U.S. 436, 475, 86 S. Ct. 1602, 1628 (1966).

[2] The omnibus hearing comprised only the testimony of two law-enforcement witnesses. The facts in this section are based on the uncontroverted testimony of these two witnesses.

where Trooper Erickson spoke with Selle about the accident and his use of marijuana. Selle's car was towed from the scene, and Trooper Erickson drove Selle in his squad car to a nearby hotel parking lot to administer field sobriety tests. Selle performed poorly on the tests.

Trooper Erickson arrested Selle for driving while impaired (DWI) and transported him to Hennepin County Medical Center where he read Selle the Implied Consent Advisory and asked Selle to submit to a blood test. Selle consented. After Selle's blood was drawn, Trooper Erickson read Selle his *Miranda* rights. Selle declined to answer additional questions. Selle was transported to Hennepin County Jail where Trooper Jared Sturgill administered a drug recognition evaluation (DRE). As part of the DRE, Trooper Sturgill asked Selle medical questions, such as whether he is seeing a doctor or taking medication. But Selle refused to answer any questions regarding drug use. The DRE also included additional sobriety tests and measurements of Selle's pulse, blood pressure, and temperature, all of which demonstrated impairment. Based on the DRE results, Trooper Sturgill concluded that Selle was under the influence of a depressant and marijuana. Jail personnel subsequently searched Selle and recovered from his sock approximately 12 grams of marijuana.

Selle was charged with third-degree DWI by a controlled substance, a violation of Minn. Stat. §§ 169A.20, subd. 1(2), 169A.26, subd. 2 (2010); possession of more than 1.4 grams of marijuana in a motor vehicle, a violation of Minn. Stat. § 152.027, subd. 3 (2010); and careless driving, a violation of Minn. Stat. § 169.13, subd. 2 (2010). Troopers Erickson and Sturgill testified at the omnibus hearing. The district court issued

findings of fact, conclusions of law, and an order suppressing (1) all physical evidence seized from Selle because Trooper Erickson did not have probable cause to arrest Selle, and (2) "[a]ll statements made by . . . Selle from the moment he was placed into custody when he was locked into the back of Trooper Erickson's Highway Patrol car" because Selle was "subjected to extensive custodial interrogation without the benefit of the *Miranda* warnings." This appeal followed.

D E C I S I O N

The state challenges the district court's decision to suppress all physical evidence seized from Selle and all statements made by Selle after he entered Trooper Erickson's squad car. When the state appeals a pretrial suppression order, the state must clearly and unequivocally establish both that the district court's suppression of the evidence will have a critical impact on the state's ability to prosecute the defendant successfully and that the suppression is erroneous. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998). We review the district court's suppression order to determine whether the factual findings are clearly erroneous and whether, in light of the facts, suppression is warranted as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

I.

We first consider whether the district court's suppression order will have a critical impact on the state's case.[3] *See Scott*, 584 N.W.2d at 416 (observing that critical impact

[3] Our critical-impact analysis addresses the suppression of all physical evidence seized from Selle. But it does not address the suppression of any statements made by Selle because, as addressed in Part III, *infra*, the record does not reflect the existence of any statements affected by the district court's order.

must be determined before deciding whether suppression order was erroneous). To meet its burden of establishing that the suppression order will have a critical impact on the state's ability to prosecute the defendant successfully, the state is not required to establish that a conviction is impossible without the suppressed evidence. *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987). Rather, the state must demonstrate that the likelihood of a successful prosecution is significantly reduced by the unavailability of the suppressed evidence. *Id.* When analyzing the critical impact of a suppression order, we examine the admissible evidence available to the state as well as the inherent qualities of the suppressed evidence, including its relevance, its probative force, its ability to fill gaps in the evidence when viewed as a whole, its ability to provide a perspective of events different from what is otherwise available, its clarity and amount of detail, and its origin. *In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999).

The critical-impact standard may be met if the evidence suppressed is essential to prove some, but not all, of the charged offenses. *See State v. Grohoski*, 390 N.W.2d 348, 352 (Minn. App. 1986) (holding that suppression order had critical impact on state's case because suppressed evidence was essential to prove four of the seven charged offenses), *review denied* (Minn. Aug. 27, 1986). Here, the marijuana recovered from Selle's sock is essential to prove that Selle possessed more than 1.4 grams of marijuana in a motor vehicle. Minn. Stat. § 152.027, subd. 3.

In addition, although physical evidence of a controlled substance is not essential to prove the DWI or careless-driving charges, the suppression of some evidence of guilt may have a critical impact in a DWI case even when the state has other evidence of

intoxication, including an officer's observations and the defendant's admission. *State v. Ault*, 478 N.W.2d 797, 799 (Minn. App. 1991); s*ee also State v. Ronnebaum*, 449 N.W.2d 722, 724 (Minn. 1990) (holding that suppression of defendant's confession had critical impact even though state had other evidence of guilt). Under the state's theory of the case, Selle's accident occurred because he drove carelessly while under the influence of a controlled substance. No witness observed how the accident occurred. Selle's admissions as to when he last consumed marijuana were equivocal, a preliminary breath test did not detect any alcohol, and both law-enforcement officers testified that they smelled the odor of marijuana on Selle's person but not emanating from his breath. The suppressed physical evidence corroborates and qualitatively enhances the probative value of the testimony of the law-enforcement witnesses in support of the state's theory of the case. Thus, the unavailability of all physical evidence significantly weakens the state's DWI and careless-driving charges.

In addition to precluding prosecution of the marijuana-possession charge, the suppression of all physical evidence significantly affects the state's ability to prosecute Selle for DWI and careless driving. Accordingly, the critical-impact standard is satisfied.

II.

The state argues that the suppression of all physical evidence seized from Selle was based on the district court's erroneous conclusion that Trooper Erickson lacked probable cause to arrest Selle. The state contends that Selle was not under arrest when he entered Trooper Erickson's squad car. And even if those circumstances constitute an

arrest, the state maintains, Trooper Erickson had probable cause to arrest Selle at that time.

The United States Constitution and the Minnesota Constitution bar unreasonable searches and seizure. U.S. Const. amend. IV; Minn. Const. art I, § 10. A seizure occurs "[w]hen, under the totality of circumstances, a reasonable person would believe that, because of the conduct of the police, he or she [is] not free to leave." *State v. Bergerson*, 659 N.W.2d 791, 795 (Minn. App. 2003). A warrantless arrest is reasonable if it is supported by probable cause. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). Probable cause to arrest exists when the objective facts and circumstances would lead a person of ordinary care and prudence to "entertain an honest and strong suspicion that a crime has been committed." *State v. Wynne*, 552 N.W.2d 218, 221 (Minn. 1996) (quotation omitted). We give due weight to inferences drawn from the facts by the district court and review de novo the legal conclusion of whether probable cause to arrest existed. *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004).

"An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence" of alcohol or drugs. *Id.* (quotation omitted). Indicia of intoxication may include the odor of an intoxicant or slurred speech. *Id.* A driver's admission that the driver has consumed an intoxicant, when combined with other indicia of intoxication, is sufficient to establish probable cause to arrest. *See State v. Laducer*, 676 N.W.2d 693, 698 (Minn. App. 2004) (holding that probable cause to arrest may be based on an admission of drinking coupled with at least one other indicium of intoxication). Probable cause to arrest also may exist despite the

existence of valid alternative explanations for a person's physical symptoms. *Stiles v. Comm'r of Pub. Safety*, 369 N.W.2d 347, 350-51 (Minn. App. 1985).

Our analysis of the facts at issue here is informed by *State v. Lee*, in which a law-enforcement officer found an incoherent and nonresponsive motorcyclist injured on the side of the road after a single-vehicle accident at approximately 3:00 a.m. 585 N.W.2d 378, 383 (Minn. 1998). The motorcyclist's passenger advised the officer that she and the driver had been at a party at which the passenger had been drinking, but she "could not say" whether the driver had been drinking. *Id.* The passenger also reported to the officer that, shortly before the accident, the driver had stopped the motorcycle and accidentally tipped it over. *Id.* The Minnesota Supreme Court held that, when viewed together, this evidence established probable cause to arrest the driver for driving under the influence of alcohol. *Id.*

Our analysis in *Laducer* also guides our review of the district court's decision here. In *Laducer*, a law-enforcement officer arrested the defendant for DWI based on an odor of alcohol on the defendant, an admission from the defendant that he had been drinking that day, and a preliminary breath test that measured an alcohol concentration of .168. 676 N.W.2d at 698. We reversed the district court's suppression of evidence of the defendant's intoxication. *Id.* In doing so, we observed that, even without the results of the preliminary breath test, the officer had probable cause to arrest the defendant based on his admission that he had been drinking that day coupled with the officer's detection of the odor of alcohol on the defendant. *Id.*

Here, the district court found, and the record demonstrates, that Selle was involved in a single-vehicle accident, Trooper Erickson detected the odor of marijuana on Selle, Selle admitted he smoked marijuana earlier that day, and Selle gave inconsistent explanations for the accident. Trooper Erickson also testified that Selle's speech was slow and slurred, and the district court did not discredit this testimony. The uncontroverted record establishes that the officer received all of this evidence in the ambulance—before Selle entered Trooper Erickson's squad car.[4] The totality of evidence, including Selle's admission as to marijuana use, the nature of the accident, the scent of marijuana detected on Selle at the scene of the accident, and the indicia of Selle's intoxication, leads us to conclude that Trooper Erickson had ample probable cause to arrest Selle before Selle entered the squad car.[5]

[4] Although the district court found that most of this evidence was obtained in the squad car, these findings are contrary to the uncontroverted evidence and are, therefore, clearly erroneous. *See Johnson v. Comm'r of Pub. Safety*, 366 N.W.2d 347, 350 (Minn. App. 1985) (holding that district court clearly erred by making findings contrary to uncontroverted evidence).

[5] Notwithstanding our conclusion that probable cause to arrest Selle existed before Selle entered the squad car, we observe that Trooper Erickson needed only a reasonable, articulable suspicion of criminal activity to justify his brief detention of Selle to administer field sobriety tests. *See Harris*, 590 N.W.2d at 99 ("The brief seizure of a person for investigatory purposes is not unreasonable if an officer has a particular and objective basis for suspecting the particular person seized of criminal activity." (quotation omitted)); *State v. Moffatt*, 450 N.W.2d 116, 120 (Minn. 1990) (holding that police placing suspects in squad cars from which they were not free to leave was not de facto arrest because suspects may be detained temporarily and lack the freedom to leave, without being under arrest). Selle's poor performance on the field sobriety tests subsequent to his transportation in the squad car to a safe location to administer them provided additional indicia of intoxication to support Trooper Erickson's formal arrest of Selle thereafter.

Accordingly, the district court erred by concluding that probable cause did not exist and suppressing all physical evidence seized from Selle.

III.

The state also argues that the district court erred by suppressing all statements made by Selle after he entered Trooper Erickson's squad car. We observe that the state's brief and much of its oral argument focused on statements made in the ambulance *before* Selle entered the squad car. Our careful review of the record and the district court's suppression order establishes that these statements are not suppressed by the district court's order, which suppressed "[a]ll statements made by . . . Selle from the moment he was placed into custody when he was locked into the back of Trooper Erickson's Highway Patrol car."

The district court's factual findings that Selle told Trooper Erickson how the accident occurred and admitted to having smoked marijuana while in the squad car are clearly erroneous. *See Johnson*, 366 N.W.2d at 350 (holding that district court clearly erred by making findings contrary to uncontroverted evidence). As to this evidence, the record is uncontroverted. These statements were made in the ambulance, not in the squad car. Indeed, the record does not reflect the contents of any statements Selle made in Trooper Erickson's squad car or thereafter. And the results of the field sobriety tests and the DRE are not statements; rather, they reflect the observations of law-enforcement officers. *See State v. Breeden*, 374 N.W.2d 560, 562-63 (Minn. App. 1985) (holding that district court erred by suppressing portions of videotape that show defendant performing

field sobriety tests after invoking his right to counsel because such evidence is nontestimonial).

On this record, which we have carefully scrutinized, the district court's order suppressing statements made after Selle entered Trooper Erickson's squad car has no practical or legal effect. Accordingly, this aspect of the district court's order is a nullity.

Reversed and remanded.