

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1770**

State of Minnesota,
Respondent,

vs.

Louis Larell Osborne,
Appellant.

**Filed July 20, 2020
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-18-16627

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

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Frisch,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of unlawful possession of a firearm, arguing that the district court erred by denying his motion to suppress evidence recovered during a search incident to his arrest. Because probable cause justified the arrest, we affirm.

FACTS

Around 1:00 a.m. on June 30, 2018, Officer Joshua Krienert of the Minneapolis St. Paul Airport Police observed a white Chevrolet Traverse in the parking lot of a medical clinic near the airport. The clinic was closed, and a sign prohibits parking outside of business hours. Officer Krienert checked the license plate and learned that the owner was a car rental agency; he saw no indication that the vehicle was stolen. He approached the vehicle, noting that it was unoccupied and unlocked.

Officer Krienert reported the vehicle to his partner, Officer Bradley Wingate, who was conducting an overtime patrol in an unmarked car due to reports of increased thefts from car rental facilities at the airport. Officer Wingate indicated that he had seen the same vehicle earlier, with two occupants.

Officer Wingate maintained surveillance of the vehicle from a distance while Officer Krienert went to the rental agency for more information. He spoke with a manager, who informed him that the vehicle was a short-term rental that was three weeks overdue. The manager indicated he was reporting the vehicle as stolen.

Officer Wingate resumed surveillance of the stolen vehicle, joined by Officer Noel Nelson. Both officers were in uniform. At approximately 3:15 a.m., Officer Nelson saw

a man get dropped off by the clinic parking lot and start walking toward the vehicle. He reported the development and approached in his unmarked car; Officer Wingate approached in a marked squad car from nearby. As the man neared the vehicle, both officers saw the vehicle's interior and exterior lights flash and then remain on, as though somebody had used a key fob to unlock it. Since nobody else was in the vicinity, they suspected the man had unlocked the vehicle. Officer Nelson exited his car, identified himself as a police officer, and shouted to the man to stop. The man immediately changed course by approximately 60 degrees to walk away from the vehicle and increased his speed to a "brisk walk." Officer Nelson pursued the man, repeating the command to stop, but the man did not comply. Officer Wingate drove toward the man in his marked squad car, also shouting for him to stop, then exited his car, pointed his firearm at the man, and ordered him to the ground. At that point, he complied.

Officer Wingate handcuffed the man and helped him to his feet. While searching him, the officer recovered the keys to the stolen vehicle and saw a gun drop from the man's groin area to the ground. The man was identified as appellant Louis Osborne.

Respondent State of Minnesota charged Osborne with unlawful possession of a firearm and receiving stolen property. Osborne moved the district court to suppress the gun evidence, arguing that the search that yielded the gun was not a lawful search incident to arrest because police lacked probable cause to suspect him of a crime. After an evidentiary hearing at which all three officers testified, the district court denied the motion. The court concluded that the officers had a reasonable basis for suspecting Osborne of receiving stolen property when they saw him approach the vehicle, and his act of fleeing

in response to police commands elevated that suspicion to probable cause, justifying the arrest and incident search. Osborne thereafter waived a jury trial and submitted the firearm charge to the district court on stipulated evidence under Minn. R. Crim. P. 26.01, subd. 3.¹ The district court found him guilty. Osborne appeals.

D E C I S I O N

When reviewing a pretrial order denying a motion to suppress evidence, we review the district court’s factual findings for clear error and its legal conclusions de novo. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). Whether particular circumstances establish probable cause is a question of law that we review de novo. *State v. Dickey*, 827 N.W.2d 792, 796 (Minn. App. 2013).

The United States and Minnesota Constitutions protect against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. A person who has been lawfully arrested may be subjected to a warrantless search incident to the arrest. *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018). “A warrantless arrest is reasonable if supported by probable cause.” *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). Probable cause to arrest exists when the facts would lead a “person of ordinary care and prudence” to “entertain an honest and strong suspicion that a *specific* individual has committed a crime.” *Id.* (quotation omitted). In determining probable cause, courts conduct an objective analysis of all the facts of the case. *Id.*

¹ The state agreed to dismiss the stolen-property charge.

The district court concluded that all of the circumstances taken together established probable cause to suspect the three facts necessary to arrest Osborne for receiving stolen property: (1) the vehicle was stolen, (2) Osborne possessed the vehicle, and (3) Osborne knew that the vehicle was stolen. *See* Minn. Stat. § 609.53, subd. 1 (2016). Osborne challenges the probable-cause determination only as to the third element.

He first argues that the record does not support the district court’s pivotal finding that he changed his direction and pace after Officer Nelson exited his car and identified himself as a police officer. We disagree. Officer Nelson testified: “As I pulled into the airport clinic lot I got out of my car and I yelled at the person walking toward the car that I was police, to stop,” at which point Osborne changed his path and began to walk faster. Officer Nelson also testified that Osborne ignored multiple commands to stop. This testimony amply supports the district court’s finding.

Osborne next asserts that his evasive conduct does not support an inference that he knew the vehicle was stolen. This argument is similarly unavailing. While not determinative, an individual’s “nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.” *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000). Flight from police, as the “consummate act of evasion,” is “certainly suggestive” of wrongdoing, *id.*, and may indicate consciousness of guilt, *State v. McDaniel*, 777 N.W.2d 739, 746 (Minn. 2010).

We consider Osborne’s evasive conduct in light of the surrounding circumstances. He was dropped off at 3:15 a.m. by a vehicle that left immediately. He walked directly toward a stolen vehicle parked in the otherwise vacant parking lot of a closed medical

clinic. He used a key fob to unlock the stolen vehicle. When a uniformed police officer identified himself and commanded Osborne to stop, he did not do so. But he did not ignore the officer. Instead, he substantially changed course and increased his pace in an attempt to evade the officer. Osborne's conduct as a whole established probable cause to believe that he knew the vehicle was stolen. Accordingly, Osborne has not demonstrated that the district court erred by denying his motion to suppress.

Affirmed.