This opinion is nonprecedential except as provided by Minn.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
A21-0699

State of Minnesota,
Appellant,

vs.

Aleksandr Viktorovich Lelyukh,
Respondent.

Filed December 13, 2021
Affirmed
Gaïtas, Judge
Dissenting, Ross, Judge

Scott County District Court
File No. 70-CR-20-10121

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant State of Minnesota appeals the district court's pretrial order suppressing the evidence resulting from a police officer's contact with respondent Aleksandr Viktorovich Lelyukh. We affirm.

FACTS

In July 2020, a private citizen contacted the Prior Lake police to report a concern about a particular car observed in a regional park. The citizen alleged that the car had sped recklessly into the parking lot and stopped; that two men were in the car; and that "several beer cans fell out of the car." When a police officer arrived at the park, the citizen provided the officer with a photo of the car. The car's license plate was visible in the photo. A records search showed that the car was registered to Lelyukh, who resided in Prior Lake.

The officer drove by Lelyukh's home fifteen minutes later, but the car was not there. Still hoping to locate the car, the officer contacted Mystic Lake Casino Surveillance, which had an automated license plate reader (ALPR). The officer provided the license plate number and asked whether the ALPR had spotted the car on casino property. Casino surveillance confirmed that the ALPR had located the car on casino property twenty minutes earlier, but it had since left.

Shortly thereafter, casino surveillance contacted the officer and provided updated information about the car's location and direction of travel. Based on that information, the officer found the car parked at a convenience store and made contact with Lelyukh.

Following additional investigation, the officer arrested Lelyukh for driving while impaired. Lelyukh was subsequently charged with second-degree driving while impaired (DWI), Minn. Stat. § 169A.20, subd. 2(1) (2018) (refusal to submit to chemical testing), third-degree DWI, Minn. Stat. § 169A.20, subd. 1(1) (2018) (operating a motor vehicle under the influence of alcohol), and violating the open bottle law, Minn. Stat. § 169A.35, subd. 3 (2018).

Lelyukh moved to suppress the evidence, arguing that the officer's warrantless use of the ALPR to track his location violated Minnesota Statutes section 13.824, subdivision 2(d) (2020), making his stop unlawful. Section 13.824, subdivision 2(d), provides:

> Automated 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, or exigent circumstances justify the use without obtaining a warrant.

The parties assumed that section 13.824, subdivision 2(d), applied to the circumstances presented. And they stipulated that the district court would consider the suppression motion based solely on the police reports regarding the officer's investigation and Lelyukh's arrest.

The district court granted Lelyukh's motion, concluding that the state "failed to meet its burden [of] showing sufficient exigency to justify the warrantless use of the license plate reader." Because "the use of the license plate reader was prohibited," the district court suppressed "all evidence gathered as a result of its use."

The state appeals.

DECISION

Relying on section 13.824, subdivision 2(d), the district court suppressed all evidence resulting from an officer's warrantless use of an ALPR to track Lelyukh's car while investigating suspected drunk driving. On appeal, the state argues that the district court's factual findings were clearly erroneous, that the district court erred as a matter of law in determining there were no exigent circumstances, and that the district court should not have suppressed the evidence based solely on a violation of the statute. We conclude

that the challenged factual findings were erroneous but, because they had no relevance to the district court's legal determinations, we do not reverse on that ground. And because we conclude that there were not exigent circumstances and the state forfeited its argument regarding the appropriate remedy for a violation of section 13.824, subdivision 2(d), we affirm.

I. The district court's order suppressing the evidence critically impacts the state's ability to prosecute Lelyukh.

When the state challenges a pretrial order on appeal, the state must first show "how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial." Minn. R. Crim. P. 28.04, subd. 2(2)(b). The reviewing court considers critical impact as a threshold issue before turning to the merits of the state's allegation of error. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). If the "lack of suppressed evidence significantly reduces the likelihood of a successful prosecution," the district court's order critically impacts the state's case. *State v. Joon Kyu Kim*, 398 N.W.2d 544, 551 (Minn. 1987).

The state contends that the district court's decision to suppress all evidence resulting from the ALPR—which was the officer's method for locating Lelyukh—will cause the state's case to "simply collapse." Lelyukh concedes that the state "satisfies the critical impact requirement." We agree that the state cannot prosecute Lelyukh for the charged offenses if the evidence resulting from the investigation is suppressed. We therefore move on to consider the merits of the state's appeal. *See State v. Lugo*, 887 N.W.2d 476, 481-87

(Minn. 2016) (noting that an appellate court can consider the merits of the state's pretrial appeal if the state establishes critical impact).

II. The state failed to provide sufficient evidence of exigent circumstances.

Because the parties apparently agree that section 13.824, subdivision 2(d), applies to the officer's conduct, and the district court likewise relied on the statute, we assume without deciding that the statute applies here. Section 13.824 (2020) is included in the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2020). Enacted in 2015, section 13.824 is included among other MGDPA statutes governing law enforcement, judicial, corrections, and criminal justice data. The statute defines an ALPR as

> an electronic device mounted on a law enforcement vehicle or positioned in a stationary location that is capable of recording data on, or taking a photograph of, a vehicle or its license plate and comparing the collected data and photographs to existing law enforcement databases for investigative purposes. Automated license plate reader includes a device that is owned or operated by a person who is not a government entity to the extent that data collected by the reader are shared with a law enforcement agency.

Minn. Stat. § 13.824, subd. 1.

Law enforcement agencies and private corporations are increasingly "using license plate reader technology, in which cameras take photographs of license plates, recognition software creates a record of the plate number, and a computer automatically compares the license plate number against a database of license plates." 32 A.L.R.7th Art. 8 (2017). Section 13.824 provides comprehensive instructions to government entities—and non-

government actors who share information with law enforcement agencies—for collecting, logging, storing, sharing, auditing, and destroying data collected by ALPRs.

Section 13.824 also includes restrictions on the use of such data. Subdivision 2(d)—the relevant statutory provision here—prohibits the use of this technology "to monitor or track an individual who is the subject of an active criminal investigation unless authorized by a warrant, issued upon probable cause, or exigent circumstances justify the use without obtaining a warrant." Minn. Stat. § 13.824, subd. 2(d). Here, the district court determined that the police officer violated this section by using an ALPR to track Lelyukh's whereabouts during an active criminal investigation without first obtaining a warrant, and in the absence of exigent circumstances.[1]

The parties have consistently grafted the definitions and standards from constitutional criminal law onto the technical terms used in the statute—"warrant, issued upon probable cause" and "exigent circumstances." Without explicitly addressing the meaning of the statute, the district court likewise applied constitutional criminal law concepts in deciding Lelyukh's motion. Because "warrant, issued upon probable cause" and "exigent circumstances" are technical terms that have long-accepted meanings in constitutional criminal law, we also apply those meanings in our analysis. *See* Minn. Stat. § 645.08(1) (2020) (stating that courts should construe "technical words and phrases and such others as have acquired a special meaning . . . according to such special meaning or their definition"); *Cox v. Mid-Minn. Mut. Ins. Co.*, 909 N.W.2d 540, 543 (Minn. 2018) ("A

[1] The record indicates that the ALPR was operated by Mystic Lake Casino, but that data from the ALPR was shared with the officer upon her request.

word has a special meaning if courts have ascribed a well-established and long-accepted meaning to it." (quotation omitted)).

The officer did not obtain a warrant before requesting and relying on the ALPR information used to locate Lelyukh. Thus, the sole question before us is whether there were exigent circumstances.

Exigent circumstances provide an exception to the constitutional warrant requirement; the presence of exigent circumstances may justify a law enforcement officer's warrantless entry of a home, warrantless search, or warrantless seizure. *See State v. Othoudt*, 482 N.W.2d 222 (Minn. 1992) (providing that exigent circumstances can justify a warrantless entry and search of a person's home); *see also State v. Horst*, 880 N.W.2d 24, 34 (Minn. 2016) (concluding that exigent circumstances justified the warrantless seizure of the defendant's cell phone). Simply put, exigent circumstances exist when "there is a compelling need for official action and no time to secure a warrant." *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015) (quoting *Michigan v. Tyler*, 436 U.S. 499, 509 (1978)). The state has the burden of proving the existence of exigent circumstances. *State v. Gray*, 456 N.W.2d 251, 256 (Minn. 1990).

The United States Supreme Court has identified several "categorical" exigencies, where the presence of a single factor alone provides justification for an officer to act without a warrant. *See Lange v. California*, 141 S. Ct. 2011, 2017 (2021). Those situations—which primarily involve an officer's authority to enter a building without a warrant—include hot pursuit of a fleeing felon, preventing the imminent destruction of

evidence, preventing a suspect from escaping, providing emergency aid to an injured person, or protecting an occupant from imminent injury. *See id.*

Most cases do not involve a categorical exigency, however, and must be evaluated based on the totality of the circumstances. *See id.* at 2018. "Whether a 'now or never situation' actually exists—whether an officer has 'no time to secure a warrant'—depends upon the facts on the ground." *Id.* (quoting *Riley v. California*, 573 U.S. 373, 391 (2014)). For example, the Supreme Court has held that the dissipation of alcohol in the body is not a categorical exigency allowing police to obtain a warrantless blood sample from every suspected drunk driver. *Missouri v. McNeely*, 569 U.S. 141, 164 (2013). Rather, to determine whether there are exigencies justifying a warrantless blood draw, a court must consider the totality of the circumstances in each individual case, including whether the officer reasonably could have obtained a warrant. *Id.* at 152-53. Other considerations bearing on the exigency analysis include whether the offense at issue is "grave or violent," whether the suspect is reasonably believed to be armed, whether there is strong probable cause connecting the suspect to an offense, whether there is strong reason to believe the suspect is present in the place to be searched, and whether the suspect is likely to escape. *Gray*, 456 N.W.2d at 256.

The state makes two challenges to the district court's determination that it "failed to meet its burden [by] showing sufficient exigency to justify the warrantless use of the [ALPR]." First, the state argues that the district court's factual findings were wrong. And second, the state contends that the district court's conclusion was legally incorrect.

In reviewing an order on a motion to suppress evidence, the appellate court reviews the district court's factual findings for clear error. *Stavish*, 868 N.W.2d at 677. But the district court's legal conclusions, including the "ultimate determination of exigency," are reviewed de novo. *Id.*

At the outset, we consider the state's argument that the district court's factual findings were incorrect. The state identifies three findings that are not supported by the stipulated record: casino surveillance reported that the car "had been on the property at approximately 7:24 p.m."; casino surveillance reported that the car was "currently at a convenience store on casino property"; and Lelyukh was the "sole occupant" of the car when it was found at the convenience store. Based on our review of the stipulated record, we agree that these three findings, which are not based on facts in that record, are clearly erroneous. *See In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (explaining that factual findings are clearly erroneous when they are not supported by the evidence). In fact, as the state notes, the stipulated record shows that casino surveillance reported that the car had been on the property at 7:08 p.m., not 7:24 p.m. Moreover, it shows that casino surveillance did not direct the officer to the convenience store. Rather, the officer located the car at the convenience store at 7:38 p.m. after casino surveillance reported its last-known whereabouts and direction of travel at 7:35 p.m. And the stipulated record shows that Lelyukh was outside of the car when the officer first encountered him and that another individual was seated on the passenger side.

The state argues these findings require reversal of the district court's order because they affected the analysis regarding the presence of exigent circumstances. We disagree.

Each of the clearly erroneous factual findings concern the timing and details of events that occurred *after* the officer first used the ALPR to find Lelyukh's car. Consequently, they are not part of the circumstances that the district court was required to assess in deciding whether there was an exigency *before* the officer requested the ALPR data without a warrant. We therefore reject the state's request to reverse based on erroneous factual findings that are unrelated to the legal question decided.

The state does not challenge any of the district court's factual findings regarding the events that occurred before the officer's request for the ALPR data. Those facts are as follows. A private citizen reported that he saw a car occupied by two men drive into a regional park at a high rate of speed. According to the citizen, he saw several beer cans fall out of the car. The citizen took a photo of the car's license plate. Records indicated that the car was registered to Lelyukh. When officers responded to Lelyukh's home, the car was not there. Based on these facts, we turn to the next issue before us—whether, with these facts, the state satisfied its burden of proving exigent circumstances.

The state first urges us to conclude that these facts established a single-factor exigency. Specifically, the state argues that "[s]topping a drunk driver satisfies the protection-of-human-life exigency." The state alleges that the officer "was trying to stop a drunk driver in real-time, before the driver killed or maimed somebody and added to the slaughter on our highways."

The protection of human life may be an exigency that justifies police action during an emergency. *See State v. Lemieux*, 726 N.W.2d 783, 787-88 (Minn. 2007); *see also Ries v. State*, 920 N.W.2d 620, 633-34 (Minn. 2018). Police may act without a warrant in an

emergency if they have an objective, reasonable basis for believing there is a "need to assist persons who are seriously injured or threatened with such injury." *Brigham City v. Stuart*, 547 U.S. 398, 403-06 (2006). In *Stuart*, for example, officers had a reasonable basis for believing an emergency was ongoing when they entered a home without a warrant upon observing through the window a violent fight between several adults and a juvenile. *Id.* at 405-06. Similarly, where police learned of an active burglary near the site of a recent murder, and had evidence the murderer was the burglar, they had an objective basis for believing an emergency was ongoing and legally entered the home without a warrant. *Lemieux*, 726 N.W.2d at 789-90.

We have also held that an imminent act endangering human life may provide a single-factor exigency. In *State v. Miranda*, we concluded that a single-factor exigency justified a police officer's warrantless entry of a home where the suspect had threatened to burn down the home, the officer observed gasoline on the floor of the home, and the suspect was brandishing a lighter. 622 N.W.2d 353, 357 (Minn. App. 2001).

Here, however, we do not 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. The limited information that the officer had did not establish an objectively reasonable belief of an ongoing or imminent emergency. Although the statements of the witness may have created some suspicion of drunk driving, that was all they established—a possibility. In this respect, the circumstances here are similar to those in *In re Welfare of B.R.K.*, where the Minnesota Supreme Court concluded that a "possibility of danger to human life" did not create a single-factor exigency. 658 N.W.2d 565, 579 (Minn. 2003). There, an officer

entered a home where he knew there were guns and had a reasonable suspicion that teenagers were drinking alcohol inside. *Id.* Here, as in *B.R.K.*, where the officer knew of some facts suggesting a possibility of danger, there was insufficient information to establish a single-factor exigency based on the protection of human life.

Alternatively, the state asks us to conclude that there were exigent circumstances under the totality-of-the-circumstances approach. It argues that DWI is a grave offense due to its inherent danger. Additionally, the state contends that there was strong probable cause connecting Lelyukh to the crime and the privacy right at issue "was small" compared to a law enforcement officer's entry of a home.

We agree with the state that impaired driving can be a grave offense. *See State v. Johnson*, 689 N.W.2d 247, 252 (Minn. App. 2004) (determining that criminal vehicular homicide is a grave or violent offense), *rev. denied* (Minn. Jan. 20, 2005). Unfortunately, it is common knowledge that drunk driving endangers human life. But "[t]he seriousness of the offense does not itself create exigency, and does not reduce the quantum of evidence that the State must present to prove exigent circumstances." *Stavish*, 868 N.W.2d at 680 (citation omitted).

Given the totality of the circumstances here, we cannot conclude that the state's evidence satisfied its burden. Notwithstanding the state's assertion, the limited facts before the officer did not create "strong probable cause" that Lelyukh was driving while impaired. *See State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) (noting that probable cause exists when the totality of the circumstances allows an officer to entertain an honest and strong suspicion that a person has committed the crime). As noted, the officer acted on nothing

more than a suspicion. She did not know whether the driver had been drinking at all, whether the beer cans that fell from the car were open, or whether the beer cans were anywhere near the driver's side of the car or the driver. And beyond the officer's suspicion that the driver may have been impaired, the state points to no other factors that created a "now or never" situation.

Additionally, the state's evidence wholly failed to address whether it would have been reasonable for the officer to obtain a warrant. Although the state's brief contends that it would have been unreasonable, this assertion is based on speculation and not on anything in the record.

Finally, we reject the state's request to apply a more relaxed standard in considering whether exigent circumstances justify a warrantless ALPR search because such a search is less intrusive than a residential search. The state did not present this argument to the district court, and the stipulated record is not sufficiently developed for us to consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1996) (stating that a reviewing court should only consider issues that were presented and considered by the district court).

This is a close case. We want to give police officers the authority to respond to offenses and situations that endanger the public. But given the facts here, we agree with the district court that the state's evidence did not prove exigent circumstances.

III. The state forfeited its argument that evidence suppression is an improper remedy for violations of section 13.824, subdivision 2(d).

As a remedy for the statutory violation, the district court suppressed all evidence gathered from the use of the ALPR. For the first time on appeal, the state argues that the

remedy of suppression, which is used to address violations of the constitutional search-warrant requirement, should not apply to violations of section 13.824. Generally, issues that were not raised before the district court are forfeited and will not be decided. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Limited exceptions occur when the novel issue invokes the federal or state constitution and the issue has been briefed by both parties. *See Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn. 1982); *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). Although the state raised this issue in its appellate brief, it provided minimal analysis. Moreover, the issue does not invoke the constitution. We therefore conclude that the state has forfeited this argument and we do not decide the issue.

Affirmed.

ROSS, Judge (dissenting)

I respectfully dissent. I agree with the majority that, by its plain terms, the automated-plate-reader statute authorizes police to use data collected by license-plate readers to monitor or track a criminal suspect in either of two situations: (1) when a probable-cause-based warrant directs police to do so, or (2) when police face the same sort of exigent circumstance that courts applying constitutional standards have held to be an exception to the warrant requirement. *See* Minn. Stat. § 13.824, subd. 2(d) (2020). But caselaw teaches that an urgent and serious public-safety threat is, standing alone, an exigent circumstance that justifies warrantless police action. And I believe that the Prior Lake police faced that kind of exigent circumstance when they learned that a drunk, speeding, reckless driver was operating his car on the roadways in and near a public park. I would therefore reverse, holding that the district court erred by suppressing the plate-reader data that police used to locate and stop Aleksandr Lelyukh's car.

Courts assessing police conduct under constitutional standards have recognized that an exigent circumstance is one that is pressing, demanding, and urgent, and that preventing physical harm tops the exigent-circumstances list of reasons justifying immediate, warrantless police action. Our state supreme court emphasized this by establishing that an officer's "protection of human life" satisfies a bright-line, single-factor test constituting an exigency and obviating any need for further analysis under a multifactor, totality-of-the-circumstances test. *In re Welfare of D.A.G.*, 484 N.W.2d 787, 791 (Minn. 1992) (quotation omitted). Other courts have likewise "define[d] exigent circumstances as those circumstances that would cause a reasonable person to believe that [the challenged

police activity] was necessary to prevent physical harm to the officers or other persons." *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984) (en banc), *overruled on other grounds by Estate of Merchant v. C.I.R.*, 947 F.2d 1390, 1392–93 (9th Cir. 1991); *cf. United States v. Toussaint*, 838 F.3d 503, 507 (5th Cir. 2016) (outlining public-safety exigency exception by observing that "the police serve a community caretaking function to ensure the safety of citizens" (quotation omitted)). The United States Supreme Court has similarly explained, "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (quotation omitted). The majority acknowledges the existence of this single-factor test for public safety but refuses to apply it for two reasons, both of which I think are flawed.

The first faulty rationale is the majority's theory that "here, . . . [because] at most, the officer had some information suggesting a possibility of danger," the information available to the officers was not sufficient to establish a single-factor exigency. The majority says that "at most" only a "possibility of danger" existed here because it believes this case mirrors *In re Welfare of B.R.K.*, where the supreme court distinguished between an actual, urgent danger (an exigency) and a mere "possibility of danger to human life" (a nonexigency). 658 N.W.2d 565, 579 (Minn. 2003). But two critical factors demonstrate that this case bears absolutely no relevant similarity to *B.R.K.* First, the *B.R.K.* court faced a challenge to the most invasive form of constitutionally limited police activity—nonconsensual entry into a person's home. *Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."). By sharp

contrast, this case involves arguably one of the least invasive police activities, one that implicates no express constitutional issue—use of data to locate a vehicle in public. Second, the *B.R.K.* case involved only a parent's unspecific concerns about her child and other teenagers drinking alcohol inside a house and a deputy's vague and attenuated speculation that drinking might lead to intoxication and intoxication might lead to a risky encounter with unidentified household hazards. *Id.* at 569. By very sharp contrast, this case involves a specific report of presently occurring reckless, speeding, drunk driving.

Given those two material dissimilarities between the circumstances here and the circumstances in *B.R.K.* as it regards danger, describing the officers as having learned merely of "some facts *suggesting a possibility* of danger" misaligns this case with *B.R.K.*, misunderstands the concept of danger, and erroneously minimizes the exigency. Every reasonable police officer would believe that the man speeding the Lexus into and out of the public park, with beer cans falling out of his car, was operating both drunk and recklessly. And a car being operated by a speeding, reckless, drunk driver does not merely *suggest a possibility* of danger, it constitutes a real and immediate danger. The instant the reported conduct occurred, Lelyukh's car, like a bullet fired by a careless shooter toward a crowd, was a danger despite the uncertainty that it would eventually strike someone. In my opinion, although we might fairly say that an eventual *injury* was "at most . . . a possibility," we cannot say this about the *danger*, which already existed. The threat of injury is itself the danger that officers are authorized to address as an exigent circumstance without obtaining a warrant.

I add that courts know well that the danger that each drunk driver poses every moment he remains on the street is a present reality, not a mere future "possibility." Half a century ago, the Supreme Court described drunk driving as "one of the great causes of the mortal hazards of the road," and it decried, "The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield." *Breithaupt v. Abram*, 352 U.S. 432, 439 (1957). Little has changed and the numbers grow. The Minnesota Department of Public Safety reported that drunk drivers caused at least 4,027 crashes in 2018, resulting in 2,156 injured, and 123 dead. Minn. Dep't of Pub. Safety, *Minnesota Traffic Crashes in 2018*, at i (2018), https://dps.mn.gov/divisions/ots/reports-statistics/Documents/2018-crash-facts.pdf. Over recent decades, drunk drivers have accounted for between one-quarter and one-half of Minnesotans killed in traffic collisions. *Id.* at 41. Whet her or not they know this detailed data, police officers understand that an active drunk driver is deathly dangerous to himself, to his passengers, and to every pedestrian and occupied vehicle in his path. This is not speculative, like wondering whether teenagers drinking inside a home might become intoxicated and then do something risky. Each minute the officers here might have spent contemplating, drafting, submitting, and awaiting the results of a warrant application would have been time needlessly prolonging the danger and increasing the possibility that another unsuspecting Minnesotan would become a drunk-driver fatality statistic.

The second faulty rationale the majority depends upon is its apparent view that probable cause was necessary for the officers to act on the exigency. This is just not so

either under the statute or under the exigency principles in caselaw that we must apply to effectuate the statute. The statute itself refers to probable cause only in the context of describing a warrant issued under the subdivision, not to refer to the alternative authorization to use the data—an exigent circumstance. *See* Minn. Stat. § 13.824, subd. 2(d) (outlining the alternative bases in the disjunctive, "unless authorized by a warrant, issued upon probable cause, or exigent circumstances justify the use without obtaining a warrant"). Whether the officers had probable cause is therefore irrelevant to their use of the data here: probable cause is not sufficient for use under the first alternative (since that alternative also requires a warrant and in any event the officers did not base their use on that option) and because probable cause is unnecessary under the second alternative (as the statute does not require probable cause for an officer to use the data to react to an exigent circumstance regardless of whether police suspect that any law has been violated). And regarding caselaw, as the Supreme Court has outlined, the standard by which police may act without a warrant based on a safety exigency is certainly not probable cause to believe that a crime was committed (or even to believe that an exigency exists) but instead merely an objectively reasonable basis to believe there is a "need to assist people who are seriously injured or threatened with such an injury." *Stuart*, 547 U.S. at 403. The reported conduct provided an objectively reasonable basis to believe that the officers needed to intervene to protect those threatened with serious injury.

I observe finally that the statute demonstrates the legislature's express intent to restrict government officials in their effort "to monitor or track an individual," Minn. Stat. § 13.824, subd. 2(d), and that the police here wanted the data merely to locate the car—a

police activity far less intrusive than the electronic monitoring and tracking presumably available with the technological surveillance tool. I agree that using the data to locate the car was indeed a kind of tracking, but the reasonableness of contested police conduct is measured by degree against the significance of the reason for it. Given the gravity of the urgent need to end the danger and prevent serious injury here as balanced against the minimal intrusiveness of using the data merely to locate Lelyukh's car in public, I am convinced that the prompt and prudent police response did not offend the statute. I would reverse.