

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0275**

State of Minnesota, Respondent,

vs.

Joel Clarence Velisek,
Appellant.

**Filed February 7, 2022
Reversed
Jesson, Judge**

Beltrami County District Court
File No. 04-CR-19-3521

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

David L. Hanson, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Jesson, Judge; and
Cleary, Judge.*

SYLLABUS

Minnesota Statutes section 171.24, subdivision 5 (2018), which prohibits persons from operating a motor vehicle after license cancellation, does not apply to persons operating motor vehicles on private property.

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

OPINION

JESSON, Judge

A sheriff's deputy observed appellant (who had a cancelled driver's license) drive his vehicle in his mother's driveway and arrested him for driving after cancellation as inimical to public safety. The questions in this case are whether that arrest was authorized and, if not, whether evidence obtained after the arrest should have been suppressed. Because we conclude that the arrest was not authorized and the evidence—which was necessary to prove the offenses—should have been suppressed, we reverse appellant's convictions of driving after cancellation as inimical to public safety and first-degree driving while impaired (DWI).

FACTS

A sheriff's deputy visited appellant Joel Clarence Velisek at his mother's home to fill out an annual predatory-offender registration form. When the deputy arrived, Velisek was standing in his driveway next to a running car. After helping Velisek complete the form, the deputy drove several miles away before realizing that he should have informed Velisek that he had to update certain information with law enforcement within five days. He tried to call Velisek, and when his calls went unanswered, he returned to Velisek's mother's home.¹ As the deputy approached, he saw Velisek driving the car in the driveway toward the road, but Velisek stopped before he reached the road. Because the deputy knew

¹ The deputy arrived at 8:26 a.m. to complete the form and returned at 8:46 a.m.

Velisek's license was cancelled as inimical to public safety, he arrested Velisek for driving after cancellation.

During the arrest, the deputy observed that Velisek spoke rapidly and slurred his words. After taking Velisek to jail, the deputy obtained a search warrant for a blood or urine sample, which tested positive for methamphetamine.

Respondent State of Minnesota charged Velisek with one count of first-degree DWI² and one count of driving after cancellation as inimical to public safety.³ Velisek then moved to suppress the evidence obtained as a result of his arrest, arguing that because he drove only on a private driveway, the deputy lacked probable cause to arrest him. The district court denied Velisek's motion.

The state then amended its complaint to add a second count of first-degree DWI.⁴ Velisek stipulated to the prosecution's case to obtain review of the district court's denial of his motion to suppress evidence.⁵ The district court found Velisek guilty of one count of first-degree DWI and of driving after cancellation. It sentenced him to 57 months' imprisonment for DWI and one year in jail for driving after cancellation. Velisek appeals.

² Minn. Stat. §§ 169A.24, subd. 1(1), .20, subd. 1(2) (2018) (stating that it is a crime to drive while "under the influence of a controlled substance").

³ Minn. Stat. § 171.24, subd. 5.

⁴ The additional DWI charge was with reference to Minnesota Statutes section 169A.20, subdivision 1(7) (2018), which specifies that it is a crime for a person to drive if "the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols."

⁵ Minn. R. Crim. P. 26.01, subd. 4.

ISSUES

- I. Was there probable cause to arrest Velisek for driving after cancellation as inimical to public safety when Velisek drove only on a private driveway?
- II. Was there probable cause to arrest Velisek for attempted driving after cancellation as inimical to public safety?
- III. Even if there was no probable cause to arrest Velisek, does the good-faith exception to the exclusionary rule apply?

ANALYSIS

Both the United States and Minnesota constitutions guarantee people the right to be free from “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. Accordingly, a warrantless arrest is unreasonable unless it is supported by both probable cause and an exception to the warrant requirement. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001); *In re Welfare of G.M.*, 560 N.W.2d 687, 694-95 (Minn. 1997); *see* Minn. Stat. § 629.34, subd. 1(c)(1) (2018) (warrantless-arrest statute) (authorizing warrantless arrest for offense committed in officer’s presence). Here, the state asserts that probable cause and the warrantless-arrest statute supported Velisek’s arrest. Probable cause exists “when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a specific individual has committed a crime.” *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (emphasis omitted) (quotation omitted). And if adequate suspicion does not exist, evidence obtained in violation of this Fourth Amendment protection must usually be suppressed

under what courts refer to as the exclusionary rule. *State v. Jackson*, 742 N.W.2d 163, 178 (Minn. 2007).

Here, Velisek argues that the deputy lacked probable cause to arrest him for driving after cancellation and that the evidence the deputy obtained after arresting him must be suppressed. If we agree with Velisek, the state contends that there was probable cause to arrest Velisek for attempted driving after cancellation. And the state alternatively argues that the good-faith exception to the exclusionary rule should apply because the deputy relied on court precedent authorizing Velisek's arrest under these circumstances. We address each issue in turn.

I. The deputy did not have probable cause to arrest Velisek.

Velisek contends that Minnesota Statutes section 171.24, subdivision 5 (the cancellation statute), prohibits a person whose license is cancelled from driving only on streets or highways. He therefore argues that the deputy did not have probable cause to arrest him because he drove the vehicle only on a private driveway.

This argument raises a question of statutory interpretation, which we review *de novo*. *Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020). Our goal in interpreting statutes is to ascertain and effectuate the legislature's intent. *Id.* When interpreting a statute, we first determine whether it is ambiguous, meaning that it is subject to "more than one reasonable interpretation." *State v. Gibson*, 945 N.W.2d 855, 857 (Minn. 2020) (quotation omitted). If the statute does not define a phrase, we look to the plain meaning and context of that phrase to determine whether it is ambiguous, *id.* at 858, including looking to other sections in the same chapter to avoid conflicting interpretations,

State v. Clark, 755 N.W.2d 241, 250 (Minn. 2008); *see also Cent. Hous. Assocs. LP v. Olson*, 929 N.W.2d 398, 404-05 (Minn. 2019) (applying this principle to determine whether a statute’s meaning is plain). If the language is unambiguous, we apply the statute’s plain meaning without resorting to further statutory construction. *Gibson*, 945 N.W.2d at 858.

Turning to the language here, the cancellation statute provides that a person is guilty of gross misdemeanor driving after cancellation as inimical to public safety if, among other things, “the person disobeys [an order cancelling the person’s license] by *operating in this state any motor vehicle, the operation of which requires a driver’s license*, while the person’s license or privilege is canceled or denied.” Minn. Stat. § 171.24, subd. 5(3) (emphasis added).

When applying the rules of statutory interpretation, we conclude that the cancellation statute is unambiguous. By its plain language, a driver violates the law when the vehicle operated is one *for which a license is required*. We therefore turn to Minnesota Statutes section 171.02, subdivision 1(a) (2018) (the license-requirement statute), which sets forth the circumstances in which a license is required to operate a motor vehicle. The license-requirement statute provides that “a person shall not drive a motor vehicle *upon a street or highway in this state* unless the person has a valid license.” Minn. Stat. § 171.02, subd. 1(a) (emphasis added). In turn, a “street or highway” includes “every way or place” between property lines that is “open to the use of the public, as a matter of right, for purpose of vehicular traffic.” Minn. Stat. § 171.01, subd. 48 (2018). In other words, a license is required only when a vehicle is operated on a street or highway—not when operated on

private property. *See* Minn. Stat. § 171.02, subd. 1(a). Had the legislature intended the license-requirement statute to apply more broadly, it could have included broader geographical controls. *Cf. Montella v. City of Ottertail*, 633 N.W.2d 86, 90 (Minn. App. 2001) (noting that legislature could have used “food” instead of “meals” to include other food service establishments in statute’s coverage); *Arlandson v. Humphrey*, 27 N.W.2d 819, 823 (Minn. 1947) (stating that, if the legislature intended to include persons on eligibility lists in addition to “officer[s] or employee[s],” it could have done so). It did not do so. Accordingly, incorporating the license-requirement statute’s explanation of when a license is required, the plain language of the cancellation statute covers only situations in which a person operates a motor vehicle on a street or highway.

Further, although not mentioned by the parties, Minnesota Statutes section 171.04, subdivision 1(10) (2018) (the license-ineligibility statute), states that the commissioner of public safety shall not issue a driver’s license “to any person when the commissioner has good cause to believe that the operation of a motor vehicle *on the highways* by the person would be inimical to public safety.” (Emphasis added.) This statute—which also confines prohibited operation to that occurring on highways—bolsters our conclusion that the cancellation statute does not apply when people operate vehicles on private property.

We are not persuaded otherwise by the inclusion of the phrase “in this state” in the cancellation statute. Minn. Stat. § 171.24, subd. 5(3). Although this language shows that the cancellation statute *could* apply anywhere in the state, the subsequent phrase “the operation of which requires a driver’s license” limits its reach. *Id.* That reach extends only to circumstances when a vehicle which requires a driver’s license is operated. Under the

license-requirement statute, those circumstances do not include operation on private property. *See* Minn. Stat. § 171.02, subd. 1(a). We also note that the phrase “in this state” appears in both the license-requirement statute and the cancellation statute. *See* Minn. Stat. §§ 171.02, subd. 1(a), .24, subd. 5(3). But despite the broad language of “in this state,” the license-requirement statute nevertheless requires a license *only* for vehicles operated on streets and highways. That statute’s subsequent phrase “street or highway” limits its reach. It follows that we should interpret the cancellation statute in a similar manner: the subsequent limiting phrase narrows its otherwise broad reach.⁶ *See Auto-Owners Ins. Co. v. Second Chance Invs., LLC*, 827 N.W.2d 766, 772 (Minn. 2013) (stating we generally give the same language used throughout a statute the same meaning).

Although we base our decision on the plain language of the cancellation statute, we observe that our decision aligns with the unique status of private property in our society. A person’s rights on their own property are different from—and often stronger than—that person’s rights on public property. *See, e.g., State v. Oquist*, 327 N.W.2d 587, 591 (Minn. 1982) (recognizing that expectation of privacy in items placed in garbage can is lost once garbage is outside curtilage of private residence); *cf.* Minn. Stat. § 609.06,

⁶ We note that the phrase “in this state” appears elsewhere throughout the drivers’-license statutes, often to describe the jurisdiction in which a person must obtain a license. *See* Minn. Stat. §§ 171.01-.60 (2020). In one context, it appears that the phrase “in this state” has broader meaning than we give it here. *See* Minn. Stat. § 171.20, subd. 2(a) and (b) (stating that a resident whose license “to operate a motor vehicle in this state has been suspended, revoked, or cancelled, shall not operate a motor vehicle in this state under license, permit, or registration certificate issued by any other jurisdiction”). But unlike the cancellation and license-requirement statutes, there is no other phrase in section 171.20 that limits the geographical reach of “in this state” in that statute. *Id.*

subd. 1(4) (2020) (authorizing use of force to resist trespass on lawfully possessed real property). As the United States Supreme Court has noted, people have the right to retreat to their homes and “there be free from unreasonable governmental intrusion.” *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quotation omitted). And this principle extends to the private property surrounding a person’s home, which is the situation here. *Id.* at 6-7 (defining curtilage, or area immediately surrounding the home, and noting that it is also protected under the Fourth Amendment).

Still, the state argues that we should apply the reasoning in *State v. Bauman*, 552 N.W.2d 576, 577 (Minn. App. 1996), *rev. denied* (Minn. Nov. 20, 1996), to driving on private property. In *Bauman*, we addressed the driving-after-revocation statute.⁷ 552 N.W.2d at 577. We reasoned that the phrase “the operation of which requires a driver’s license,” which appears in the driving-after-revocation statute, modifies the motor vehicle being driven rather than the nature of the driver’s operation of it. *Id.* (citing Minn. Stat. § 171.24, subd. 2 (1994)). We noted that the only geographic restriction in the statute is that the operation be “in this state.” *Id.* And we therefore held that driving in a public parking lot with a revoked license violates the revocation statute, implicitly indicating that a public parking lot is sufficiently akin to a “street or highway” that driving there with a revoked license violates the revocation statute. *Id.* at 577-58. In *Bauman*, a sheriff’s

⁷ The 1994 revocation statute’s language is almost identical to that in the 2018 revocation statute: a person commits misdemeanor driving after revocation if the person disobeys an order revoking his license “by operating in this state any motor vehicle, the operation of which requires a driver’s license, while the person’s license or privilege is revoked.” Minn. Stat. § 171.24, subd. 2 (1994); *see also* Minn. Stat. § 171.24, subd. 2 (2018) (containing identical language).

deputy had stopped the defendant, whose license was revoked, while he backed his vehicle out of a parking space in the county courthouse parking lot after he had just pleaded guilty to a prior driving-after-revocation charge. *Id.* at 576.

In determining whether to follow *Bauman*'s reasoning, we note that the parties acknowledge that doing so here would require us to extend that decision.⁸ We agree. *Bauman* fails to resolve the precise question we face here: whether a vehicle operated *on private property* is one for which a driver's license is required.⁹ Private property is unlike a street or highway, and it is unlike a public parking lot—it is not open to public use. *See* Minn. Stat. § 171.01, subd. 48. And neither *Bauman* nor the state gives us reason—particularly in light of the plain language of the cancellation statute—to extend *Bauman*'s conclusion to the context of an individual's conduct solely on private property.¹⁰

In sum, because a driver's license is not required to operate a motor vehicle on private property, the deputy lacked probable cause to believe that Velisek committed a crime by “operat[ing] a motor vehicle, the operation of which requires a driver's license” in violation of the cancellation statute. Minn. Stat. § 171.24, subd. 5. Velisek's arrest for driving after cancellation was therefore unauthorized, and the evidence obtained as a result of his arrest should have been suppressed.

⁸ The state made this acknowledgement at oral argument.

⁹ We also observe that *Bauman* addresses the revocation context rather than the cancellation context.

¹⁰ We emphasize that we do not overrule *Bauman*. That decision remains good law: thus, a person violates the revocation statute by driving in a public parking lot while the person's license is revoked. Our decision today simply declines to extend that holding to apply to driving on private property with a cancelled license.

II. Because the state did not provide legal authority for its attempt argument, we decline to determine whether the deputy had probable cause to arrest Velisek for attempted driving after cancellation.

Having determined that the deputy lacked probable cause to arrest Velisek for driving after cancellation as inimical to public safety, we turn next to the state's alternative argument that the deputy had probable cause to arrest Velisek for attempted driving after cancellation. Velisek asserts that this issue is not properly before us.

We begin by acknowledging that a respondent may defend a judgment on any ground so long as *there is factual and legal support* for the alternative ground and deciding the issue would *not expand the relief* granted to the respondent. *State v. Grunig*, 660 N.W.2d 134, 136 (Minn. 2003) (citing Minn. R. Crim. P. 29.04, subd. 6) (concluding that court of appeals erred by failing to consider state's alternative argument). This principle applies to cases in which a defendant stipulates to the prosecution's case under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. *See State v. Poehler*, 921 N.W.2d 577, 582 (Minn. App. 2018) (applying *Grunig* to affirm conviction on alternative basis after trial under rule 26.01, subdivision 4), *aff'd*, 935 N.W.2d 729 (Minn. 2019).

Here, the record contains sufficient facts to address the attempt argument and addressing the attempt argument will not expand the relief granted to the state. However, the state cited no cases addressing attempted driving after cancellation or a similar offense. Nor are we aware of other cases addressing attempted traffic offenses. And the state argues only that the deputy could have arrested Velisek for such an offense because the deputy has a duty to prevent crime and statutory authority to arrest a person for attempting an

offense within the deputy's presence. *See* Minn. Stat. § 629.34, subd. 1(c)(1). But that statute does not provide legal guidance for a determination of whether Velisek attempted to drive after cancellation.

We conclude that the state failed to provide adequate legal support for its alternative argument and therefore decline to consider it. *See Grunig*, 660 N.W.2d at 136 (requiring adequate legal support for appellate consideration of newly raised issue); *see also Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017) (stating that a party forfeits an argument that is based on mere assertion and unsupported by legal authority).

III. The good-faith exception does not apply.

As another alternative to support Velisek's convictions, the state argues that the deputy acted in reasonable reliance on existing precedent, namely *Bauman*, authorizing his actions. Velisek responds that this issue, too, is not properly before us. And on the merits, Velisek argues that *Bauman* does not qualify as binding appellate precedent for purposes of the good-faith exception to the exclusionary rule.

We begin by noting that this issue does not suffer the same defect that caused our disinclination to address the attempt issue. The state adequately briefed this issue. Given that the Minnesota Supreme Court adopted a narrow good-faith exception, we have no doubt as to its viability in Minnesota law should we determine that it applies on these facts. *See State v. Lindquist*, 869 N.W.2d 863, 871 (Minn. 2015) (adopting good-faith exception for circumstances when law enforcement acts in objectively reasonable reliance on binding

appellate precedent). We therefore conclude that the good-faith-exception issue is properly before us and address its merits.

Illegally obtained evidence usually must be suppressed. *Jackson*, 742 N.W.2d at 178. But Minnesota recognizes a good-faith exception to this exclusionary rule when an officer relies on binding appellate precedent that authorizes the officer's actions at the time, even if that precedent is later overturned after the incident at issue. *Lindquist*, 869 N.W.2d at 871. The binding precedent must specifically authorize the officer's actions, and the officer may not extend the law to other or unsettled areas of law. *Id.* at 876-77.

Bauman does not qualify as that binding precedent here. It does not authorize arrests for driving after cancellation on private property. And the supreme court in *Lindquist* held that the good-faith exception applies narrowly: only when binding appellate precedent *specifically authorizes* law enforcement's actions.¹¹ *Id.* Because we determined that we

¹¹ We note the similarity of this rule to the parameters established by the United States Supreme Court for determining when qualified immunity applies. In that context, the Supreme Court stated that a government official is not entitled to qualified immunity if the official violates a statutory or constitutional right and the unlawfulness of the official's action was "clearly established" at the time. *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). Existing precedent must more than merely suggest that the official's actions were unlawful. *Id.* Rather, precedent must so clearly define the rule establishing that the officer's actions were unlawful that any reasonable officer would know his conduct in the situation was unlawful. *Id.* This requires much specificity in the rule, *id.*, which is particularly important in the Fourth Amendment context when it is difficult to determine how various legal doctrines apply to unique factual situations. *Kisela v. Hughes*, 138 S. Ct. 1148, 1152-53 (2018). Analogously, in the Fourth Amendment context of exceptions to the exclusionary rule at issue in this case, the rule established by precedent must be clear and precise about what law enforcement activity is specifically authorized. *Bauman* does not meet that standard here.

would have to extend *Bauman* in order to apply its holding to this case, the good-faith exception does not apply here.

DECISION

Because a person cannot be arrested for driving after cancellation as inimical to public safety after driving solely on private property, the deputy did not have probable cause to arrest Velisek for that offense. And we decline to address the state's argument that the deputy could have arrested Velisek for attempted driving after cancellation because it is not properly before us. Finally, the good-faith exception does not apply because there is no binding appellate precedent specifically authorizing the deputy's actions in this case. Because Velisek's arrest was unauthorized, the evidence the deputy obtained as a result of that arrest should have been suppressed. We therefore reverse Velisek's convictions.

Reversed.