STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1020

State of Minnesota,
Respondent,

vs.

Edward Valentine Forsythe,
Appellant.

Filed November 28, 2022
Affirmed
Slieter, Judge

Stearns County District Court
File No. 73-CR-19-8469

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant argues that evidence seized as the result of a vehicle search should have been suppressed and that he was improperly denied a *Schwartz*[1] hearing on alleged juror misconduct. Because the warrant for the vehicle search was supported by probable cause and because appellant failed to state a *prima facia* case for juror misconduct to justify the *Schwartz* hearing, we affirm.

FACTS

In March 2021, a jury found appellant Edward Valentine Forsythe guilty of first-degree possession of cocaine. The following facts derive from two search-warrant applications—the first involving Forsythe's residence and the second a vehicle in which police found contraband.

In March 2019, a Sartell police officer assigned to the Central Minnesota Violent Offender Task Force (the lead officer) received information from the Minnesota Bureau of Criminal Apprehension that a phone number used by Forsythe appeared to be used in a conspiracy to sell controlled substances, primarily methamphetamine. During the next six months, the lead officer conducted an investigation which revealed evidence that Forsythe was selling controlled substances from his house in St. Cloud. The lead officer obtained a search warrant which authorized a search of the house and seizure of "[d]ocumentation

[1] *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960).

and/or keys that may indicate a separate storage facility, including but not limited to safe deposit boxes, cabins, and/or storage units."

The search produced evidence of drug use and distribution, as well as titles to 16 vehicles, most of which were registered to Forsythe. The lead officer had prior knowledge of 11 vehicles registered in Minnesota to Forsythe and that "several" of these vehicles were typically parked at the house. While other officers collected and catalogued evidence inside the house, the lead officer "check[ed] the vehicles parked in close proximity to Forsythe's residence" and "observed a black in color Mercedes-Benz with no license plates . . . parked in-between two other vehicles that were both owned by Forsythe." The lead officer observed two small personal safes on the back seat behind the driver's seat of the car.

A search of the car's vehicle identification number revealed that it was registered in Florida to an individual other than Forsythe. The lead officer knew, based on his experience, that drug traffickers often store drugs and money in small personal safes. The lead officer obtained a dog sniff of the car, and the canine handler informed him that the dog "indicated for the presence of narcotics on the back driver side door."

Based on these facts, and a matching vehicle title seized during the residence search, the district court issued a search warrant for the car. Inside the safes in the car, officers found methamphetamine, Oxycodone, cocaine, deposit receipts, and cash. Marijuana and documents addressed to Forsythe were found elsewhere in the car.

The district court denied Forsythe's motion to suppress evidence seized from the car, and a jury found him guilty of possession of cocaine, in violation of Minn. Stat.

§ 152.021, subd. 2(a)(1) (2018). The district court convicted Forsythe and sentenced him to 150 months' imprisonment. Forsythe filed a direct appeal, which this court stayed so that he could pursue postconviction relief. *See* Minn. R. Crim. P. 28.02, subd. 4(4). In his petition for postconviction relief, Forsythe requested a *Schwartz* hearing to develop alleged evidence that a juror had not acknowledged during jury selection that he knew an assistant county attorney. The postconviction court denied Forsythe's request, and this court reinstated Forsythe's appeal.

DECISION

I. Suppression

Forsythe argues that the lead officer did not have sufficient basis to order a dog sniff of the car and, without the dog's alert, the search warrant for the vehicle lacked probable cause.

"When reviewing the denial of a pretrial motion to suppress evidence, [appellate courts] review the district court's factual findings for clear error and its legal conclusions de novo." *State v. Molnau*, 904 N.W.2d 449, 451 (Minn. 2017). If the facts are undisputed, we review *de novo* whether the facts warrant suppression as a matter of law. *State v. Wiggins*, 788 N.W.2d 509, 512 (Minn. App. 2010), *rev. denied* (Minn. Nov. 23, 2010). "[H]owever, we afford great deference to the court's finding of probable cause and limit our review to ensuring that the court had a substantial basis for concluding that probable cause existed." *See State v. McBride*, 666 N.W.2d 351, 360 (Minn. 2003). "A warrant is supported by probable cause if, on the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place."

State v. Holland, 865 N.W.2d 666, 673 (Minn. 2015) (quotations omitted). When making this determination, we look "only to information presented in the [search warrant] affidavit." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005).

"[A] dog sniff around the exterior of a motor vehicle located in a public place is not a search requiring probable cause for purposes of the Fourth Amendment," and requires, at most, reasonable, articulable suspicion. *State v. Wiegand*, 645 N.W.2d 125, 132, 135 (Minn. 2002) (holding that reasonable, articulable suspicion is required to expand a stop for an equipment violation before conducting an exterior dog sniff of a vehicle); *United States v. Friend*, 50 F.3d 548, 551 (8th Cir. 1995) (holding that "a dog sniff of a car parked on a public street or alley . . . is so limited an intrusion on protected privacy interests as to not amount to a search for Fourth Amendment purposes"), *vacated on other grounds*, 517 U.S. 1152 (1996). Reasonable, articulable suspicion requires only that the investigation "was not the product of mere whim, caprice, or idle curiosity." *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (quotation omitted).

Before the lead officer obtained a dog sniff, he observed the car, with no license plates, parked between two other vehicles registered to Forsythe, and with two small personal safes located on the back seat. A search of the vehicle identification number showed that the car was registered to an individual in a different state. In the lead officer's experience, people selling controlled substances often store them in small personal safes and "transfer titles for those vehicles they use" to transport controlled substances across state lines.

These facts, combined with the proximity to Forsythe's house, which was already subject to a warranted search, demonstrate that the dog sniff "was not the product of mere whim, caprice, or idle curiosity" but was supported by reasonable, articulable suspicion. *Id.* And the dog's "alert," indicating the presence of controlled substances within the car, was enough to support probable cause for the search warrant. *See State v. Baumann*, 759 N.W.2d 237, 241 (Minn. App. 2009) ("Finally, because the dog-sniff search was legal, its result provided probable cause for the search warrant."), *rev. denied* (Minn. Mar. 31, 2009). Because the dog sniff was legal, the search warrant for the car was supported by probable cause and the evidence obtained from the search did not require suppression.[2]

II. *Schwartz* Hearing

"A *Schwartz* hearing provides a party an opportunity to impeach a verdict due to juror misconduct or bias. A verdict may be impeached by testimony establishing that a juror gave false answers during voir dire that concealed prejudice or bias toward one of the parties." *Pulczinski v. State*, 972 N.W.2d 347, 361 (Minn. 2022).[3] A district court may decline to hold a *Schwartz* hearing if the party seeking it does not establish a *prima facia* case of juror misconduct or bias by "submit[ting] sufficient evidence, which, standing alone and unchallenged, would warrant the conclusion of jury misconduct." *Id.* (quotation

[2] Because we conclude that the dog sniff, which supplied probable cause for the vehicle search warrant, was supported by reasonable, articulable suspicion, we do not address Forsythe's argument that probable cause for the vehicle search warrant required the title to the car which, he argues, was not within the scope of the search warrant for the house. For the same reason, we do not address the state's argument that Forsythe lacked standing to challenge the warrant.

[3] This judicially created hearing is now codified in Minn. R. Crim. P. 26.03, subd. 20(6). *Pulczinski*, 972 N.W.2d at 360 n.11.

omitted). Alleged juror prejudice or bias based on mere speculation is insufficient to present the *prima facia* case necessary to warrant a *Schwartz* hearing. *State v. Martin*, 614 N.W.2d 214, 226 (Minn. 2000). Appellate courts review denial of a *Schwartz* hearing for an abuse of discretion. *Pulczinski*, 972 N.W.2d at 361.

Forsythe requested a *Schwartz* hearing "because a juror failed to disclose his relationship with a member of the Stearns County Attorney's Office during voir dire." The postconviction court denied a *Schwartz* hearing because the evidence Forsythe presented did not "suggest an implied bias on the part of the juror" and did not "suggest that [the juror] even knew [the attorney] . . . worked for the Stearns County Attorney's Office." The record supports this conclusion.

During jury selection, the district court asked if any prospective jurors had "any ongoing relationship with the Stearns County Attorney's Office" or were "related to, close to, or acquainted with anyone who work[ed] in the field of criminal justice or law enforcement." The juror in question did not respond to either inquiry. After Forsythe made his direct appeal to this court, an assistant county attorney, who was not the prosecuting attorney, realized after review of the trial transcripts that the juror was his neighbor. He reported to Forsythe's appellate counsel that he "*believed* [the juror] knew where he worked." (Emphasis added.) The assistant county attorney also stated that he and the juror "got along as neighbors, but he did not consider [the juror] a close friend."[4]

[4] We commend the assistant county attorney's candor and proactive steps to ensure a fair and just proceeding. *See* Minn. R. Prof. Conduct 3.3(a)(2) (requiring candor toward the court), 3.8(d) (requiring prosecutors to disclose mitigating evidence to the accused).

Based upon this record, it is not clear whether the juror *in fact* knew of this possible connection to the county attorney's office. Even if the juror knew the reporting attorney worked for the county attorney's office, the juror could reasonably have understood *voir dire* questions as referring to closer relationships than a neighbor who was not a "close friend." Thus, any juror prejudice or bias is mere speculation, which is insufficient to present the *prima facia* case necessary to warrant a *Schwartz* hearing. *Id.*

Affirmed.