STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1430

State of Minnesota,
Respondent,

vs.

Justin Neal Shelton,
Appellant.

Filed July 24, 2023
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CR-20-22406

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the existence of probable cause for his warrantless arrest. Because the police had probable cause to believe he committed criminal damage to

property by obscuring pavement markings with tire marks caused by doing "donuts" and "burnouts" with his vehicle, we affirm.

FACTS

Following a stipulated-facts trial, appellant Justin Neal Shelton was convicted of possessing a firearm as an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2020). Shelton agreed to a stipulated-facts trial to appeal the district court's denial of his pretrial motion to suppress the firearm Minneapolis police seized in a search incident to his warrantless arrest. *See* Minn. R. Crim. P. 26.01, subd. 4. The following facts come from testimony and exhibits received at the suppression hearing.

At approximately 2:00 a.m. on August 9, 2020, a large group assembled in downtown Minneapolis to watch people do "burnouts" and "donuts" with their cars at the intersection of North Fourth Street and North First Avenue. *See State v. Abdus-Salam*, 988 N.W.2d 493, 495 (Minn. App. 2023) (describing "intersection takeovers" occurring in "urban Minnesota"), *petition for rev. filed* (Minn. May 3, 2023). After the incident, a Minneapolis police officer reviewed surveillance video of the intersection and identified one of the drivers as Shelton. The officer identified Shelton's car as the one that "conducted the majority of the damage to the street," and the officer described the damage as "defacing of crosswalks and bike lanes, surfacing of painted lines." The officer also received estimates that it would cost $8,000-$9,000 to repair the intersection.

Based on this information, the officer issued a "PC pick-up" on the suspicion that Shelton had committed felony criminal damage to property, in violation of Minn. Stat. § 609.595, subd. 1(4) (2020). The officer explained at the suppression hearing that a "PC

pick-up" is an internal police department notice that there is probable cause to arrest an individual in relation to a crime.

On October 17, 2020, a Minneapolis police officer recognized Shelton at a gas station and arrested him based on the "PC pick-up." Shelton was wearing a fanny pack and asked that the officer "give [it] to [his] girlfriend." The officer searched the fanny pack and found a loaded 9-millimeter handgun.

Three days later, the state charged Shelton with one count of possessing a firearm as an ineligible person. Shelton moved to suppress the firearm based upon an illegal arrest. The district court held an evidentiary hearing at which the officer who issued the "PC pick-up" and the arresting officer testified, and the state presented surveillance video of the intersection. After the hearing and with the consent of the district court, the parties submitted invoices showing that the intersection was repainted in early October 2020 and photos of the intersection from February 2021.

The district court denied Shelton's suppression motion because Shelton was arrested based upon probable cause to believe he committed felony criminal damage to property. After a stipulated-facts trial, the district court found Shelton guilty of possessing a firearm as an ineligible person and sentenced him to 60 months' incarceration, stayed for three years of probation, a downward dispositional departure. Shelton appeals.

DECISION

The United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). "A warrantless arrest is reasonable if supported by

probable cause." *Williams*, 794 N.W.2d at 871. Probable cause to support a warrantless arrest exists "when a person of ordinary care and prudence, viewing the totality of the circumstances objectively, would entertain an honest and strong suspicion that a specific individual has committed a crime." *Id.* (emphasis omitted) (quotation omitted). This standard "requires more than mere suspicion but less than the evidence necessary for conviction." *Id.* (quotation omitted). "When determining the legality of a warrantless arrest, we look to the information that police took into consideration when making the arrest, not what they uncovered thereafter." *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000), *rev. denied* (Minn. July 25, 2000). If a warrantless arrest is not supported by probable cause, the remedy is generally to exclude evidence seized as a result, pursuant to the exclusionary rule. *State v. Jackson*, 742 N.W.2d 163, 178 (Minn. 2007). When the facts underlying a pretrial order on a motion to suppress are not in dispute, we review *de novo* "whether the police articulated an adequate basis for the search or seizure at issue." *State v. Flowers*, 734 N.W.2d 239, 247-48 (Minn. 2007); *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018).

Felony criminal damage to property in the first degree occurs when a person "intentionally causes damage to physical property of another without the latter's consent . . . if . . . the damage reduces the value of the property by more than $1,000 measured by the cost of repair and replacement." Minn. Stat. § 609.595, subd. 1(4). The cost of repair and replacement may be established by estimates, which gives effect to the statute's "plain language and structure" focusing on "the degree of culpability on the

defendant's actions, not on the action or inaction of the victim." *State v. Powers*, 962 N.W.2d 853, 860 (Minn. 2021).

At the suppression hearing, the officer who issued the "PC pick-up" testified that the intersection was damaged because the tire marks "defac[ed]" crosswalks and bike lanes and "surfac[ed]" painted lines. The officer also received estimates that it would cost over $8,000 to repair the intersection. Thus, the officer knew the intersection had been altered by Shelton's actions and, based on the repair estimates, it would cost more than $1,000 to repair it.[1] This is sufficient for a person of ordinary care and prudence to entertain an "honest and strong suspicion" that Shelton committed felony criminal damage to property. *Williams*, 794 N.W.2d at 871.

Shelton argues that the tire marks were not "damage" as required by the statute because there were no "cracks or holes" in the pavement, vehicles and pedestrians could still traverse the intersection, and the tire skid-marks eventually disappeared and thus did not require repair. We interpret Shelton's argument to be that damage must be more than cosmetic and have some degree of permanence. The law compels our disagreement.

First, the statute defines the damage amount to be "measured by the cost of repair and replacement." Minn. Stat. § 609.595, subd. 1(4). The officer possessed such evidence

[1] The parties do not dispute that the cost of repair was over $1,000, but we note that the relevant source of the cost of repair is the estimates, not the actual cost of repainting reflected in invoices the state submitted after the suppression hearing. The actual cost to repaint the intersection is irrelevant to our analysis because it did not exist when the officer issued the "PC pick-up" and there is no evidence the arresting officer was aware of the actual cost of repair at the time of the arrest. Therefore, it is not part of "the information that police took into consideration when making the arrest." *Cook*, 610 N.W.2d at 667.

in the form of a repair estimate. Nothing in the statute suggests that damage must be more than cosmetic and must have some (undefined) degree of permanence before it rises to the level of criminal damage to property. Moreover, to read such requirements into the statute would inappropriately shift the focus away from the defendant's actions. *Powers*, 962 N.W.2d at 860.

Second, even if the statute defined damage to be more than cosmetic, the tire marks left by Shelton's driving conduct would constitute damage. The value of roads is not simply the public's ability to travel on them, but to travel on them *safely*, and pavement markings play a key role in guiding traffic to ensure the safety of all users. *See* Minn. Stat. § 169.21 (2022) (requiring drivers to yield to pedestrians in a marked crosswalk); Minn. Stat. § 169.222 (2022) (providing rules for bicycle use in bike lanes and crosswalks); Minn. Stat. § 169.18 (2022) (prohibiting drivers from driving in a bicycle lane except in limited circumstances). The tire marks caused by Shelton as he conducted "burnouts" and "donuts" with his vehicle obscured bike lanes and crosswalks, which prevented them from guiding traffic. Thus, it was reasonable for the officer to believe the intersection was damaged and, therefore, probable cause existed to arrest Shelton.

Affirmed.