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STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2180

State of Minnesota,
Respondent,

vs.

Paul Anthony Brown,
Appellant.

Filed March 4, 2008
Affirmed
Halbrooks, Judge

Clay County District Court
File No. K1-05-89

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Brian J. Melton, Clay County Attorney, Clay County Courthouse, 807 North 11th Street, P.O. Box 280, Moorhead, MN 56561 (for respondent)

Jeffrey S. Storms, Special Assistant State Public Defender, Oppenheimer Wolff & Donnelly LLP, Plaza VII, Suite 3300, 45 South 7th Street, Minneapolis, MN 55402 (for appellant)

Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and Wright, Judge.

U N P U B L I S H E D   O P I N I O N

HALBROOKS, Judge

Appellant challenges his convictions of possession of a controlled substance and driving after cancellation, arguing that the stop of his vehicle and subsequent search of his apartment violated his Fourth Amendment rights. Because we conclude that there was reasonable articulable suspicion to stop appellant's vehicle and that probable cause supported the search warrant issued for his apartment, we affirm.

FACTS

On January 10, 2005, Officer Lien of the Moorhead Police Department received a phone call from a man identifying himself as Byron Brink. Brink told Officer Lien that he was an employee of the Moorhead public-housing authority and that he suspected appellant, a resident of an apartment complex that the housing authority operated, was driving a vehicle without a valid driver's license. Brink described the vehicle as a 1993 green Mercury Topaz with North Dakota plate EDG-292 and stated that appellant usually parked the vehicle in a specific area of the parking lot of the apartment complex where he lived. Brink further informed Officer Lien that he had observed an unusually high number of individuals coming and going from appellant's apartment lately and that he believed that appellant might be involved in narcotics activity.

Officer Lien ran a computer check on appellant, confirming Brink's tip that his Minnesota driver's license was canceled. Officer Lien next went to appellant's apartment complex and found the green Mercury in the area of the parking lot where Brink said it was usually parked. Officer Lien then radioed fellow Moorhead Police Officer Ryan

Nelson and requested his assistance. When Officer Nelson arrived, Officer Lien informed him that appellant was suspected of possible narcotics activity, due to the large number of people coming and going from his apartment.

The two officers went to appellant's apartment and talked to him. Appellant denied any involvement in narcotics activity, explaining the frequency with which people came and went from his residence by stating that he had many friends. During this contact with appellant, Officer Nelson noticed scars on appellant's hands that he knew from his training and experience were often indicative of drug use. Appellant refused the officers' request to search his apartment and ended the encounter. The two officers then briefly talked to several employees of the apartment complex, who confirmed Brink's report that appellant drove the green Mercury. Before leaving, Officer Lien pointed out the green Mercury to Officer Nelson and informed him that appellant's Minnesota driver's license had been canceled.

While on patrol the following day, Officer Nelson drove through the parking lot of appellant's apartment complex and noticed that the green Mercury was not there. Officer Nelson contacted fellow Officer Steve Larsen and relayed to him a description of appellant and the green Mercury and told him that appellant was known to drive the vehicle in spite of his license being canceled. Officer Larsen later spotted the green Mercury and observed that the male driver had the same hair color as the physical description of appellant that Officer Nelson had given him. Officer Larsen stopped the vehicle and identified appellant as its driver.

Appellant was arrested for driving with a canceled license, and a search of his person and an inventory search of the vehicle were performed. As a result of the search of appellant's person, Officer Larsen found a pipe containing residue and a small amount of marijuana. In the vehicle, officers found numerous sandwich-sized plastic baggies, a digital scale, and a glass pipe containing white residue. A later search of appellant during the booking process at the county jail revealed one-inch by one-inch plastic baggies with white residue in them.

The police then applied for, and received, a search warrant for appellant's residence. This search revealed additional drug paraphernalia, a small amount of marijuana, and .4 grams of cocaine.

Appellant was charged with the sale of a controlled substance in the second degree in violation of Minn. Stat. § 152.022, subd. 1(6) (2004); possession of a controlled substance in the third degree in violation of Minn. Stat. § 152.023, subd. 2(4) (2004); driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5(1) (2004); and possession of drug paraphernalia in violation of Minn. Stat. § 152.092 (2004). Before trial, appellant challenged the validity of both the traffic stop and the search warrant. The district court denied appellant's motion to suppress. The state subsequently agreed to dismiss the sale-of-a-controlled-substance count and the drug-paraphernalia count in return for appellant's agreement to be tried before the district court on stipulated facts pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), on the remaining two counts. The district court found appellant guilty on both remaining counts. This appeal follows.

D E C I S I O N

I.

Appellant first argues that the district court erred when it found that Officer Larsen possessed a reasonable articulable suspicion that appellant was the person who was driving the green Mercury when the officer stopped the vehicle. We review a district court's determination regarding the legality of a warrantless search or seizure, including a stop based on reasonable articulable suspicion, de novo to determine whether it erred in suppressing or not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004); *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

"The factual basis required to support an investigatory stop is minimal." *Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000). All the police must show is "that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (quotations omitted). The totality of the circumstances is considered when determining whether reasonable suspicion existed, and even seemingly innocent facts may be relevant to this evaluation. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). By virtue of their training and experience, police officers, in articulating a reasonable suspicion, "may make inferences and deductions that might well elude an untrained person." *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007).

Here, Officer Larsen stopped appellant's vehicle based on information that appellant, who had a canceled Minnesota driver's license, was known to drive the green

Mercury.[1] Brink told the police that he "knew" that appellant drove the green Mercury. An informant's tip may be adequate to support an investigative stop if the tip has sufficient indicia of reliability. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). There is a presumption that tips from citizen informants are reliable. *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004). In evaluating the reliability of an informant's tip underlying a *Terry*-stop, Minnesota courts frequently focus on any identifying information given by the informant and the existence of information indicating the informant's basis of knowledge. *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 12, 2002). An informant's reliability is enhanced "by sufficient police corroboration of the information supplied, and corroboration of even minor details can lend credence to the informant's information where the police know the identity of the informant." *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (quotation omitted). Ultimately, the basis for an officer's investigatory stop must be justified in light of the totality of the circumstances. *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000) (citing *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990)).

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[1] That Officer Larsen did not have firsthand knowledge of the underlying facts justifying appellant's seizure does not undermine the validity of the stop because Officer Nelson's and Officer Lien's personal knowledge was imputed to him for the purposes of the stop under the collective-knowledge doctrine. *See State v. Lemieux*, 726 N.W.2d 783, 789 (Minn. 2007) (stating that when evaluating propriety of an officer's search or seizure, "the officer who conducts the search [or seizure] is imputed with knowledge of all facts known by other officers involved in the investigation, as long as the officers have some degree of communication between them."); *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 559 (Minn. App. 2005) ("The collective knowledge of the police may provide the basis for an investigatory stop.").

Brink, a concerned-citizen informant, is presumed to be reliable. Appellant has proffered no facts that undermined this presumption of reliability. Brink identified himself to Officer Lien, which further enhances the reliability of his tip, and Brink informed Officer Lien that he worked for the Moorhead public-housing authority. Therefore Officer Lien had a general sense of Brink's source of knowledge regarding appellant's activities. Officer Nelson and Officer Lien also corroborated Brink's report that appellant drove the green Mercury with additional employees of appellant's apartment complex and personally corroborated Brink's information regarding the location where appellant usually parked the Mercury. We also note that Officer Larsen observed that the gender and hair color of the Mercury's driver matched the physical description of appellant that Officer Nelson had provided. While these two identifying attributes are clearly too common to raise a reasonable suspicion on their own, they do demonstrate that Officer Larsen personally observed no facts that would make his dependence on Brink's otherwise reliable tip unreasonable when he initiated the stop. Considering the totality of these circumstances, we conclude that Brink's tip contained sufficient indicia of reliability to create a reasonable suspicion that appellant was driving the vehicle when Officer Larsen initiated the traffic stop.

Appellant relies on *State v. Pike*, 551 N.W.2d 919 (Minn. 1996), in support of his argument that the stop was not justified. In *Pike*, the supreme court held that an officer's knowledge that the registered owner of a vehicle had a revoked license created reasonable suspicion justifying a traffic stop of the vehicle when there were no facts that made unreasonable the officers' assumption that the owner was driving the vehicle. 551

N.W.2d at 922. Here, it is undisputed that Officer Larsen knew that appellant was not the registered owner of the green Mercury when he stopped the vehicle. Thus, appellant argues there was not reasonable articulable suspicion to justify the stop. But this argument misconstrues *Pike*'s holding. *Pike* described a particular set of circumstances that created a reasonable suspicion justifying a traffic stop; it in no way held that different circumstances could not justify the same stop. In this case, the officer's stop was based on his knowledge that appellant had a canceled license and Brink's tip, not the identity and license status of the registered owner of the vehicle. The facts involved here were sufficient to provide the officer with a reasonable suspicion of criminal activity to justify the investigative stop.

II.

Appellant contends that the affidavit supporting the search-warrant application for his apartment did not establish probable cause to believe that evidence of criminal activity would be found in his residence. In evaluating whether an affidavit establishes probable cause justifying the issuance of a search warrant, appellate courts do not review a district court's determination de novo. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). Instead, they afford "great deference" to the issuing judge's determination that the affidavit established probable cause. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). This court's review is limited to "ensur[ing] that the issuing judge had a 'substantial basis' for concluding that probable cause existed." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1984)). In making this determination, a totality-of-the-circumstances approach is

employed. *State v. Carter*, 697 N.W.2d 199, 204-05 (Minn. 2005). A substantial basis for issuing the warrant exists if "given all the circumstances set forth in the affidavit . . . , including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Souto*, 578 N.W.2d at 747 (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332).

When reviewing the sufficiency of the affidavit, courts should not evaluate each component in isolation, but should, instead, evaluate the affidavit as a whole. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). Under such a paradigm, "a collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause." *Jones*, 678 N.W.2d at 11. "Police officers may rely on training and experience to draw inferences in affidavits, but mere suspicion does not equal probable cause." *State v. Kahn*, 555 N.W.2d 15, 18 (Minn. App. 1996). "[I]n examining the issuing judge's basis for finding probable cause, we look only to information presented in the affidavit and not to information that the police possessed but did not present in the affidavit." *Carter*, 697 N.W.2d at 205 (quotation omitted).

Appellant contends the affidavit did not establish a sufficient nexus between his alleged criminal activity and his apartment. Minnesota courts have "historically required a direct connection, or nexus, between the alleged crime and the particular place to be searched, particularly in cases involving the search of a residence for evidence of drug activity." *Souto*, 578 N.W.2d at 747-48. This court has previously refused to adopt cases from other jurisdictions that "have not required facts specifically linking drug activity to

a dealer's residence because the 'nexus,' or connection, can be made merely on the basis of the affiant-officers' experience that drug dealers ordinarily keep their supply, records, and monetary profits at home." *Kahn*, 555 N.W.2d at 18.

Relevant excerpts of the affidavit underlying the search warrant here include:

> Your Affiant has received training involving the use, production, and distribution of methamphetamine and other drugs while employed as a police officer. Your affiant has experience and training in the identification of controlled substances and the methods used for the trafficking and distribution of drugs.
>
> Your affiant has received information and complaints about a high amount of traffic coming and going from 800 2nd Ave. North #607 [i.e., appellant's apartment]. Your affiant is aware this kind of activity is consistent with the sale and use of controlled substances.
>
> . . . .
>
> . . . Your affiant also became aware [appellant] drives a green 1993 Mercury Topaz with North Dakota license plates: EDG-292. . . . [Y]our affiant noticed this vehicle was parked in the parking lot of 800 2nd Avenue North.
>
> . . . .
>
> Your affiant . . . conducted a search of [appellant's] vehicle at the scene of the traffic stop. Your affiant located numerous plastic baggies . . . a glass pipe and a digital scale inside the vehicle. . . . [D]uring the booking process . . . more plastic baggies were found . . . . Some of the baggies contained a white-powder residue. . . .
>
> Your Affiant, based on training and experience, is aware the items located during the vehicle search are consistent with drug/narcotic trafficking. Your affiant is aware, also based on training and experience, drug/narcotic trafficking is not typically done solely out of vehicle, but also at residence.

> Based upon the information received from citizen complaints about narcotic activity with [appellant] . . . your Affiant believes there are drugs . . . at 800 2nd Avenue North #607.

If the affidavit contained only the facts regarding the contraband found during the traffic stop and the affiant-officer's inferential claim based on those facts, we would agree that the requisite nexus to appellant's apartment was lacking. *See Kahn*, 555 N.W.2d at 18 (holding that the "mere possession of an ounce of cocaine" and an officer's inferential claim that this quantity of cocaine is indicative of narcotics dealing is not sufficient "to demonstrate probable cause that an individual is a dealer and that his home contains evidence or contraband"). But the affidavit also contains information that *the prior day* the police received a report of heavy foot traffic to and from appellant's apartment. A later paragraph of the affidavit identifies to the issuing magistrate that this information came from a citizen complainant, who is presumed to be reliable. Furthermore, the affiant-officer permissibly drew on his training and experience to explain in the affidavit that this amount of foot traffic is consistent with narcotics trafficking.

Appellant correctly points out that the information in the affidavit regarding the traffic stop did not identify the amount of time that had passed between when he left his apartment driving the vehicle and when he was stopped, nor where he had been or what he had done in the meantime. He also notes that there are many innocent explanations for a high volume of foot traffic to and from a residence. His contention that these circumstances attenuate the nexus to his apartment is not without merit, but this argument

improperly isolates and then individually attacks individual facts contained in the affidavit. *See Wiley*, 366 N.W.2d at 268 (courts should review an affidavit as a whole). But reviewing the affidavit as a whole and with the deference owed to the issuing magistrate, we conclude that the combination of the contraband found in appellant's vehicle and on his person, the very recent citizen-informant tip regarding heavy foot traffic to and from his residence, and the affiant-officer's permissibly drawn inferences establishes a sufficient nexus to appellant's apartment. *See State v. Gail*, 713 N.W.2d 851, 858 (Minn. 2004) (stating that, to prevent the warrant requirement from becoming so burdensome that police are discouraged from seeking judicial review, the resolution of close or marginal cases should be resolved by the preference for warrants).

Affirmed.