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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1162**

State of Minnesota,
Respondent,

vs.

Juan Antonio Garcia Zambrano,
Appellant.

**Filed September 8, 2009
Affirmed
Willis, Judge***

Scott County District Court
File No. 70-CR-07-13660

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

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Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and Willis, Judge.

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

UNPUBLISHED OPINION

WILLIS, Judge

Appellant challenges his conviction of second-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress evidence seized from his apartment because the validity of the warrant for the search depended on the result of a dog sniff that police conducted without reasonable suspicion. We affirm.

FACTS

Deputy Douglas Schmidtke of the Carver County Sheriff's Office was working with the Southwest Metro Drug Task Force (SMDTF) in early June 2007 when he received a tip from a confidential informant regarding drug dealing in Prior Lake. The informant told Deputy Schmidtke that a person named Juan Garcia had recently been released from prison on a drug conviction and was selling large amounts of cocaine in the area from an apartment and from a vehicle. The informant told Deputy Schmidtke that Garcia obtained the cocaine from an individual who Deputy Schmidtke independently knew to be a cocaine dealer. The informant gave Deputy Schmidtke Garcia's address and the names of two of Garcia's roommates, A.S.M. and A.G. The informant also described the color, make, and model of the car that Garcia drove and said that the car belonged to A.S.M.

Having received reliable information from the informant on multiple prior occasions, Deputy Schmidtke credited the tip and sought to confirm some of the information provided. Deputy Schmidtke checked law-enforcement and driving records for "Juan Garcia" and located appellant Juan Antonio Garcia Zambrano, whose address matched that given by the informant. The records indicated that Zambrano commonly went by the name Juan Garcia.

Deputy Schmidtke also discovered a car in the name of A.S.M. that matched the description given by the informant.

On June 12, 2007, Deputy Schmidtke met with the informant again. The informant told Deputy Schmidtke that the informant had learned, through a second source, that Garcia had recently obtained several ounces of cocaine and was attempting to sell it quickly. The informant identified Zambrano as Garcia based on a color photograph of Zambrano from driving records. The same day, Agent Nick Adler, also of the SMDTF, spoke to a manager at the apartment building that the informant had identified. The manager told Agent Adler that A.S.M. and A.G. rented an apartment with a man named Juan, and the manager identified Zambrano as the person in question when shown the driving-records photograph.

The next day, Agent Adler took his canine partner to Zambrano's apartment building to conduct a drug-sniff test. The dog is trained and certified as a narcotics-detector dog and alerted to the odor of narcotics outside Zambrano's apartment. Based on the positive dog sniff and the information provided by the informant, Deputy Schmidtke obtained a search warrant for Zambrano's apartment and person, and A.S.M.'s car. A search of Zambrano's apartment led to the seizure of cocaine and Zambrano's arrest.

Zambrano was charged with first-degree possession and sale of a controlled substance, in violation of Minn. Stat. § 152.021, subds. 1(1), 2(1) (2006). Zambrano moved to suppress evidence obtained as a result of the search, including the drugs and his statements. The district court denied the motion. The state agreed to amend the complaint to charge only second-degree possession of a controlled substance, in violation of Minn. Stat. § 152.022, subd. 2(1) (2006), and Zambrano agreed to waive his right to a jury trial and

submit the charge to the district court on stipulated facts, as authorized by *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found Zambrano guilty, and this appeal follows.

DECISION

Zambrano argues that the police did not have reasonable suspicion of illegal drug activity that justified the dog sniff outside his apartment, and, therefore, the warrant based on the dog sniff was invalid. We review de novo whether reasonable suspicion justifies a dog sniff. *State v. Baumann*, 759 N.W.2d 237, 240 (Minn. App. 2009), *review denied* (Minn. Mar. 31, 2009).

Under the Minnesota Constitution, police must have a reasonable, articulable suspicion that a person is engaged in illegal drug activity before they may conduct a dog sniff in the common hallway outside the person's apartment door. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). The reasonable-suspicion standard is "less demanding than probable cause" but requires more than an unarticulated hunch. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008); *Davis*, 732 N.W.2d at 182. "The requisite showing is not high." *Davis*, 732 N.W.2d at 182 (quotation omitted). In determining whether the dog sniff was justified, we consider "the totality of the circumstances pertaining to the issue." *Baumann*, 759 N.W.2d at 240 (citing *Davis*, 732 N.W.2d at 182).

Police conducted the dog sniff outside Zambrano's apartment based on the information provided by the informant. Zambrano contends that this information was insufficient to establish reasonable suspicion because it was "either easily obtainable or unverified and unreliable." Zambrano thus challenges the reliability of the informant but

does not dispute that the information provided, if believed, was sufficient to establish reasonable suspicion.

In the probable-cause context, this court has identified six factors relevant to the reliability of a confidential, but not anonymous, informant:

(1) a first-time citizen informant is presumably reliable; (2) an informant who has given reliable information in the past is likely also currently reliable; (3) an informant's reliability can be established if the police can corroborate the information; (4) the informant is presumably more reliable if the informant voluntarily comes forward; (5) in narcotics cases, "controlled purchase" is a term of art that indicates reliability; and (6) an informant is minimally more reliable if the informant makes a statement against the informant's interests.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004). These same factors bear on the reliability of a confidential informant when police rely on information from the informant to establish reasonable suspicion for a dog sniff. *See Alabama v. White*, 496 U.S. 325, 328-29, 110 S. Ct. 2412, 2415 (1990) (stating that factors regarding an informant's reliability that are relevant in the probable-cause context "are also relevant in the reasonable-suspicion context, although allowance must be made in applying them for the lesser showing required to meet that standard"). Several of the *Ross* factors apply here.

First, there is substantial evidence that the informant provided reliable information on multiple occasions in the past. Our supreme court has indicated that "[h]aving a proven track record is one of the primary indicia of an informant's veracity." *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). Even a conclusory statement that an informant has been used successfully in the past is sufficient to support an informant's credibility. *See State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985) (affirming probable-cause determination based in

part on assertion that informant “has been used over several years successfully”). Here, the informant had “provided drug-related information to [police]” in the two months preceding Zambrano’s arrest, “which was found to be true and accurate information.” Before that, the informant provided police with “information that led to the arrest of one person for felony drug charges and the recovery of over 5.0 grams of illegal controlled substance.” The informant thus had a record of providing accurate drug-related information to police.

Second, the police corroborated much of the information provided. An informant’s reliability may be 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) (quoting *Wiley*, 366 N.W.2d at 269). Here, the police corroborated Zambrano’s identity and alias, his residence, the full names of his roommates, and the information about the make, model, and ownership of the car that Zambrano used. Police also independently knew that the individual who the informant identified as the source of Zambrano’s cocaine was involved in the sale of cocaine. This corroboration lends credence to the informant’s information. *See State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990) (noting that corroboration of the defendant’s residence supported probable-cause determination).

Zambrano argues that “these were facts that could have been known to anyone and were easily obtainable” and therefore “cannot be enough to support an intrusion on one’s legitimate expectation of privacy.” In support of his argument, Zambrano cites *State v. Albrecht*, in which this court concluded that corroboration of “easily obtained facts and

conditions” was insufficient to establish probable cause for a search warrant. 465 N.W.2d 107, 109 (Minn. App. 1991). But *Albrecht* did not address whether the corroboration in that case could satisfy the “less demanding” reasonable-suspicion standard applicable to a dog sniff. See *Timberlake*, 744 N.W.2d at 393 (comparing probable cause and reasonable suspicion). Moreover, the informant in *Albrecht* was anonymous, and the *Albrecht* court indicated that the corroboration of easily obtained facts would have been more significant if the informant had been known to police. *Id.* (distinguishing *McCloskey*, which involved corroboration of peripheral information from an informant who met with police and “expressed a valid reason for anonymity”); see also *Davis*, 732 N.W.2d at 183 (stating that a known informant is presumed more reliable than an anonymous informant). Because the informant here was known to police but wished to remain confidential for safety reasons, *Albrecht* is inapposite.

Third, the informant here voluntarily approached and met with police. “Where an informant voluntarily comes forward (without having first been arrested) to identify a suspect, and in the absence of a motive to falsify information, the informant’s credibility is enhanced” *Ward*, 580 N.W.2d at 71. An informant’s willingness to meet face-to-face with police may also make the information provided more credible. See *McCloskey*, 453 N.W.2d at 704 (noting that informant’s willingness to meet with sheriff face-to-face supported probable-cause determination). The voluntary nature of the informant’s contact with Deputy Schmidtke also weighs in favor of the informant’s reliability.

Zambrano contends that the lack of evidence regarding the basis of the informant’s knowledge, particularly regarding the information provided on June 12 during the second

meeting with Deputy Schmidtke, renders the informant unreliable. The basis of an informant's knowledge is relevant to establishing probable cause for a search warrant. *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998). Our supreme court has not applied that standard in assessing whether reasonable suspicion has been established, but an informant's "basis of knowledge" should be assessed in the reasonable-suspicion context according to the "lesser showing required to meet that standard." *White*, 496 U.S. at 328-29, 110 S. Ct. at 2415. And firsthand knowledge is not required, even to establish probable cause. *See State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (stating that an informant's basis of knowledge may be supplied directly, by firsthand information, or indirectly, "through self-verifying details that allow an inference that the information was gained in a reliable way"), *review denied* (Minn. July 25, 2000); *cf. State v. Holiday*, 749 N.W.2d 833, 840 (Minn. App. 2008) (stating that an informant's firsthand observation of an event entitles the informant's tip to "greater weight" (quotation omitted)).

In *Davis*, the supreme court determined that a dog sniff outside the defendant's apartment was justified based on a tip from an employee of the defendant's apartment complex who suspected drug possession because of information he received secondhand from maintenance employees at the complex. 732 N.W.2d at 175. The supreme court discussed the reliability of the informant but expressed no reservations about the reliability of the report because of the indirect nature of the information. *Id.* at 182-83. While there was more information about the origin of the information in *Davis* than is present here, the informant who spoke with Deputy Schmidtke also provided more detail about Zambrano and specifically said that drug activity was being conducted. *Cf. id.* at 175 (describing

maintenance employees' belief that they had observed marijuana-growing lights inside defendant's apartment and defendant's refusal to admit employees to his apartment to investigate or repair a possible water leak); *Cook*, 610 N.W.2d at 668 (considering "the quantity and quality of detail" in the informant's report).

Three factors weigh in favor of the reliability of the informant here and one of these—the informant's track record—is also "one of the primary indicia of an informant's veracity." *See Munson*, 594 N.W.2d at 136. These factors supported the informant's report that Zambrano regularly sold cocaine, had recently come into possession of a large quantity of cocaine, and would likely be selling the cocaine soon. The police, therefore, had enough reliable evidence to form a reasonable suspicion that Zambrano was engaged in illegal drug activity, thus meeting the threshold necessary to support a dog sniff. Because Zambrano does not dispute the existence of probable cause to support issuance of the warrant when the result of the dog sniff is considered, he has not shown that the district court erred by denying his motion to suppress.

Affirmed.