

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1314**

State of Minnesota,
Respondent,

vs.

Yvonne Nicole Lowe,
Appellant.

**Filed September 8, 2009
Affirmed in part and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-06-055369

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman Hennepin County Attorney, Alan J. Harris. Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Bradford Colbert, Legal Assistance to Minnesota Prisoners, 875 Summit Avenue, Suite 254, St. Paul, MN 55105 (for appellant)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

ROSS, Judge

This case involves a challenge to a pretrial order denying the defendant's motion to suppress evidence seized during a warrantless search of her car. The evidence led to Yvonne Lowe's conviction of a controlled substance crime and possession of a firearm by an ineligible person. Lowe argues that the district court erred by denying her motion to suppress evidence of a firearm and drugs and contends that her convictions must therefore be reversed. She also contends that the district court erred by failing to conduct an *in camera* hearing regarding whether the state must disclose the identity of its confidential informant. Because we conclude that the officers had independent probable cause to search Lowe's car, we affirm the district court's denial of the motion to suppress the evidence. But because Lowe established a basis for the district court to inquire into the confidential informant's identity, we remand so that the district court can conduct an *in camera* review.

FACTS

In August 2006, Officer Kristin Sturgis applied for a search warrant for Lowe's residence, including "unattached garages [and] motor vehicles" after a confidential reliable informant contacted Sturgis and told her that the informant had witnessed narcotics dealing at Lowe's residence. Supporting the warrant application, Officer Sturgis's affidavit specifically relayed the information that "[w]ithin the past 24 hours[,] . . . the [informant] was inside [Lowe's residence] . . . [and] observed a large quantity of suspected marijuana." The informant also notified Officer Sturgis that Lowe kept a

“handgun on her person for her own personal protection.” The application noted that “Lowe has an extensive criminal history with the Minneapolis Police Department as well as with several of the surrounding suburban police departments.”

The district court granted a search warrant that authorized a search of Lowe’s residence. The warrant did not specifically authorize a search of Lowe’s vehicle or the unattached garage. The officers executed the warrant. The search of Lowe’s residence yielded minor contraband, but police found the most inculpatory evidence in Lowe’s vehicle.

At the pretrial hearing on Lowe’s motion to suppress, Officer Sturgis testified about the search. She described how she had applied for and obtained a warrant to search Lowe’s residence. She explained that a plain-clothes officer had been in the area monitoring Lowe’s residence immediately before the warrant was executed. The officer notified Officer Sturgis as Lowe pulled into the driveway. Officer Sturgis pulled her marked squad car in behind Lowe’s car, blocking it in the driveway. A team of officers entered the residence to search while Officer Sturgis handcuffed Lowe and brought her into the house. Officer Sturgis had Lowe sit on a bar stool while Sturgis completed paperwork and other officers searched.

The residential search yielded a small amount of marijuana, a marijuana pipe, ammunition, a gun holster, Ziplock bags, live rounds of .22-caliber ammunition, and a scale. Officer Sturgis explained that Lowe appeared intoxicated during the search and that she overheard Lowe talking to or yelling at an officer who was stationed in the kitchen. Sturgis testified that she overheard Lowe say that the evidence the officers

found in the house was just “the piddley sh-t” and that she had marijuana and a handgun in her car. Officer Sturgis then directed Officers Grant Snyder and Kyle Ruud to search Lowe’s car. They found a bag that contained a large quantity of marijuana and a .38-caliber handgun.

Lowe moved to suppress the evidence seized from her house based on a lack of probable cause and from her car based on her claim that the search exceeded the scope of the warrant. The district court first found that probable cause supported the issuance of the warrant and therefore concluded that the evidence seized from Lowe’s house was admissible. Lowe does not challenge that decision. But she does challenge the district court’s conclusion that the evidence seized from Lowe’s car was admissible. The district court denied Lowe’s motion to suppress the evidence because, “despite the fact that the vehicle was not listed in the search warrant, there was independent probable cause to search the vehicle.” Lowe also challenges the district court’s conclusion that she “did not establish a need to disclose the identity of the [confidential informant]” and therefore denied her request for an *in camera* hearing.

After the district court denied her motion to suppress the evidence, the case proceeded to a jury trial and the jury found Lowe guilty of fifth-degree possession of a controlled substance and possession of a firearm by an ineligible person. The district court sentenced Lowe to 36 months in prison for the controlled-substance offense and to the mandatory-minimum sentence of 60 months in prison for possession of a firearm by an ineligible person. This appeal follows.

DECISION

On appeal, Lowe argues that the search of her car was not supported by probable cause. She also urges that the district court erroneously refused to undertake a proper analysis to determine whether she was entitled to know the confidential informant's identity.

I

Lowe argues that the district court erred by denying her motion to suppress because, she contends, the police did not have probable cause to conduct a warrantless search of her car. The district court denied Lowe's motion to suppress the evidence seized from her car because it concluded that "there was independent probable cause to search the vehicle." This court reviews pretrial suppression rulings de novo, reviews the evidence independently, and decides whether suppression is warranted as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The federal and state constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The United States Supreme Court has stated that generally, warrantless searches and seizures are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). But police may search a vehicle without a warrant, pursuant to the automobile exception, if they have probable cause to believe the vehicle contains contraband or other evidence of criminal conduct. *Maryland v. Dyson*, 527 U.S. 465, 467, 119 S. Ct. 2013, 2014 (1999). Probable cause determinations are based on the totality of the circumstances. *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995). Probable cause to search exists where there is a "fair

probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983).

The district court reviewed the totality of the circumstances and found that independent probable cause existed to search Lowe’s car because: (1) the warrant to search Lowe’s house was properly granted; (2) the officers observed Lowe arrive at the residence in the car; (3) the officers had already discovered marijuana, ammunition, and a digital scale inside Lowe’s house before they searched the car; and (4) after the officers found the items in the house, Lowe voluntarily stated that the officers had found only “piddley sh-t” and that there was a large quantity of drugs and a gun in the back seat of her car. We agree with the district court that based on these circumstances—especially the unequivocal declaration that the car contained contraband—there was a fair probability that the police would discover contraband in Lowe’s car.

Lowe makes two important concessions that also lead us to affirm the district court’s decision. First, Lowe concedes that “[i]f [she] had made such a statement, the police would have had probable cause to search the [car].” Lowe argues that this court must reverse the district court’s probable cause determination because “it is simply not credible that Lowe, or anyone else for that matter, would make such a statement to the police.” But prisons have no small supply of people whose incarceration followed some surprisingly revealing utterance or conduct. And credibility determinations rest with the finder of fact. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). The district court credited Officer Sturgis’s testimony of Lowe’s admission, finding that Lowe “voluntarily told the officers that . . . there was a large quantity of drugs and a gun in the back seat of

the vehicle.” Lowe cross-examined Officer Sturgis at the hearing but did not move Officer Sturgis from her story.

Lowe argues that this court should replace the district court’s credibility determination with our own regarding Officer Sturgis’s testimony because the testimony was “directly contradicted” by another officer at trial. But our review of the trial record shows that Officer Sturgis’s testimony was not directly contradicted. At the pretrial hearing, Officer Sturgis testified that she overheard Lowe make the incriminating statements to Officer Snyder. Lowe points out that Officer Snyder stated that Lowe did not make the incriminating statement to him. But Officer Snyder testified that he also overheard Lowe state that drugs and a gun were in her car. And when Officer Sturgis testified at trial, she clarified that from her vantage point in the living room of the house, she could not see who Lowe was talking to when she made the comment and that she was “hearing [Lowe] more than observing her” at the time. The minor discrepancy regarding to whom Lowe made the incriminating statement does not render Officer Sturgis’s testimony materially inconsistent.

Lowe’s second key concession occurred during oral argument. Lowe’s attorney conceded that the automobile exception to the warrant requirement can apply to parked cars. In these circumstances, we agree with that concession, especially considering that the police observed Lowe arrive in the car and took her into custody immediately after her car stopped in her driveway.

Because Lowe’s incriminating statement gave officers probable cause to believe that Lowe’s car contained additional contraband, the officers’ search of Lowe’s car was

not unreasonable under the constitutional provisions. The district court therefore did not err by denying Lowe's motion to suppress the evidence.

II

Lowe argues that we must reverse her convictions because the district court "abused its discretion by refusing to conduct an *in camera* inquiry where Lowe established that the informant's identity could have been helpful to her entrapment defense." The district court denied Lowe's motion for an *in camera* hearing to evaluate the need for the informant's confidentiality in the face of her defense because it found that Lowe "merely speculated as to why examination of the informant might be helpful to her case" and she did "not explain[] what testimony she thinks the informant would give and how such testimony would be relevant to her case." This court reviews a district court's decision granting or denying a request for an *in camera* hearing for clear error. *State v. Lenorud*, 412 N.W.2d 816, 817 (Minn. App. 1987).

The standard for requiring an *in camera* hearing to evaluate whether to order the disclosure of a confidential informant when a defendant asserts an entrapment defense was stated by the supreme court in *Syrovatka v. State*:

Rather than reject out of hand the suggestion that the informant might have information relevant to entrapment, the court should consider the matter *in camera*. However, courts should not require *in camera* disclosure solely on the basis of speculation by the defendant that the informant's testimony might be helpful. The defendant must explain precisely what testimony he thinks the informant will give and how this testimony will be relevant to a material issue of guilt or innocence.

278 N.W.2d 558, 562 (Minn. 1979). It is the defendant's burden to justify an *in camera* hearing, and the basis for inquiry must be "something more than mere speculation by the defendant that examination of the informant might be helpful." *State v. Moore*, 438 N.W.2d 101, 106 (Minn. 1989).

Lowe submitted a detailed affidavit attempting to establish a basis for the district court to inquire *in camera* into the identity of the informant. Her affidavit states that she "believe[s]" that the confidential informant is "[D.E.S.], a/k/a 'Mafia.'" Her belief is based on the fact that two days before the search, she mentioned to Mafia that she had been robbed. She asserted that Mafia insisted that she carry a gun to protect herself and that he also provided her with the gun, "not taking no for an answer." Mafia also asked her to get marijuana for him, knowing that she smoked marijuana, and he met with her again the day before the search to attempt to obtain marijuana from her. She therefore concludes that the informant must be Mafia and that establishing Mafia as the informant would support her entrapment defense.

The state argues that Lowe's affidavit is mere speculation and therefore Lowe has failed to establish a basis for an *in camera* hearing. It contends that in order to establish a basis for an *in camera* hearing, Lowe must establish that Mafia *actually was* the confidential informant. The state asks us to set the bar too high. How can any defendant ever meet the burden to inquire into the identity of a *confidential* informant if the defendant must first prove the actual identity of the confidential informant?

The state alternatively contends that Lowe's affidavit does not establish the need for an *in camera* hearing because Lowe was so predisposed to commit the crimes that her

entrapment defense would have failed. To disclose the confidential informant's identity, argues the state, would therefore be unnecessary. The state is only half-correct.

The record shows that Lowe is predisposed to possess drugs. She has a previous drug-crime conviction, and even her affidavit acknowledges that she smokes marijuana. Because she was predisposed to commit the drug crime, knowing the confidential informant's identity would not help her entrapment defense regarding possession of drugs. But the record does not show that she was predisposed to possess a firearm, and her affidavit lays out a basis to believe that disclosure of the confidential informant might be helpful to her entrapment defense regarding the firearm-possession charge. She asserts that Mafia provided her with the gun over her objections, as he did "not tak[e] no for an answer." If Mafia was a law-enforcement operative and if he truly did provide her with the gun against her refusal, Lowe's entrapment defense might have merit.

Because the record shows that Lowe established a basis for inquiry that was more than mere speculation, we conclude that the district court erred by finding that Lowe failed to meet her burden to establish a basis for an *in camera* hearing. Lowe supported her argument regarding both the informant's plausible identity and his role in the alleged entrapment. According to the affidavit, Mafia was at her residence, asking for marijuana, in the days before it was searched and Lowe was "bringing the marijuana [Mafia] requested" back to her residence at the time she was arrested and searched. We conclude that Lowe has established that an *in camera* inquiry into the informant's identity is necessary because it might help her entrapment defense on the firearm charge.

We decline to reverse her convictions but instead remand to allow the district court to conduct an *in camera* hearing to determine whether there is a reasonable probability that the informant's testimony was necessary for Lowe to receive a fair trial. Despite the state's practical concerns, we are confident that the district court can conduct the inquiry while heeding the state's practical concern that the inquiry could chill public willingness to cooperate with police as confidential informants. The district court can determine whether Mafia was the informant without the true informant's presence at the hearing and, if it is not Mafia, without the court disclosing the true informant's identity. *See Syrovatka*, 278 N.W.2d at 562.

Affirmed in part and remanded.