STATE OF MINNESOTA
IN COURT OF APPEALS
A09-123

State of Minnesota,
Respondent,

vs.

Michael Ross Winter,
Appellant.

Filed November 17, 2009
Affirmed
Stoneburner, Judge

Carlton County District Court
File No. 09CR07987

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

Nichole J. Carter, Carlton County Attorney's Office, 202 Carlton County Courthouse, P.O. Box 300, Carlton, MN 55718 (for respondent)

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

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

STONEBURNER, Judge

Appellant challenges his conviction of first-degree controlled-substance crime, arguing that the district court erred in denying his motion to suppress evidence of the controlled substance that he contends was obtained as a result of an illegal search. We affirm.

FACTS

In the early months of 2007, Lieutenant Rick Lake of the Carlton County Sheriff's Department began receiving information from a confidential reliable informant (CRI) that appellant Michael Ross Winter and Ashley Lynn Norell were traveling weekly to Chisago County and Washington County to obtain methamphetamine to sell in Carlton County. The CRI had previously provided accurate information to Lake that resulted in successful arrests and convictions.

On April 5, 2007, the CRI contacted Lake and told him that, in the evening, Norell would be driving a burgundy Dodge Stratus or a Dodge Dakota pickup, with Winter as a passenger, to the area of the Tanger Outlet Center in North Branch to pick up an ounce of methamphetamine. The CRI gave information about alternate stops that Norell might make and stated that the vehicle would return to Carlton County that night. The CRI said that the drugs would be on Winter's person.

Lake and investigator Ryan Rennquist verified that Norell owned a burgundy Dodge Stratus and that Winter had recently acquired a 1993 Dodge Dakota pickup truck that was still registered to another person. Lake and Rennquist began surveillance on

Winter's and Norell's residences in the afternoon of April 5. At about 5:00 p.m., the officers, who were in separate vehicles, saw the Dodge Dakota pickup being driven from Winter's residence to Norell's residence. After a short time, the officers followed the pickup, driven by Norell with Winter as a passenger, to a residence in Willow River where it stayed for about ten minutes. The officers then followed the pickup south on Interstate 35 to a Wal-Mart store in Pine City, then to the Tanger Outlet Center in North Branch. The officers then discontinued direct surveillance, but between 10:30 and 11:00 p.m., they observed the truck travelling northbound toward Carlton County on Interstate 35.

Lake contacted Sergeant Paul Coughlin, who was on patrol in Carlton County, and told him about the investigation, including the information from the CRI. Lake requested that Coughlin stop the vehicle when it entered Carlton County.

Coughlin saw the pickup enter Carlton County and stopped it. He identified Norell and Winter. Neither could produce proof of insurance on the vehicle. Coughlin asked Norell to come to the squad car so they could discuss the "insurance situation." He questioned her about where she and Winter had been, and she gave answers that were inconsistent with information Coughlin had from Lake.

Coughlin returned to the pickup and asked Winter where they had been. Winter gave information that was inconsistent with information Coughlin had obtained from both Lake and Norell. Coughlin told Winter and Norell that the truck would be towed because of failure to provide proof of insurance but that he would give them a ride off of the freeway. He then pat-searched Norell and Winter. Coughlin felt a round, soft object

in an outside pocket of Winter's jacket. After Coughlin manipulated the object he believed it to be a controlled substance. Coughlin handcuffed Winter and removed a golf-ball sized baggie of methamphetamine from Winter's pocket.

Winter was subsequently charged with one count of first-degree controlled-substance crime. He moved to suppress evidence of the controlled substance, arguing that there was no reasonable articulable suspicion for the stop and no probable cause for the search and his arrest.

The district court, concluding that Coughlin had reasonable articulable suspicion to stop the vehicle and probable cause to search Winter, denied Winter's motion to suppress. Winter submitted the case on stipulated facts under Minn. R. Crim. P. 26.01, subd. 4, to preserve the suppression issue for appeal. Winter was found guilty and sentenced to 74 months in prison. This appeal followed.

D E C I S I O N

Winter argues on appeal that evidence of the controlled substance was discovered as a result of an illegal traffic stop, search, and arrest and therefore must be suppressed. "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The district court's underlying factual findings are reviewed under the "clearly-erroneous" standard. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

I. Legality of the stop

In Minnesota, to lawfully stop a motorist, an officer must have a specific, articulable, and objective basis for suspecting the particular person stopped of criminal activity. *State v. Anderson*, 683 N.W.2d 818, 822–23 (Minn. 2004). The officer's determination must be based on the totality of circumstances, including the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant. *Kotewa v. Comm'r of Pub. Safety*, 409 N.W.2d 41, 43 (Minn. App. 1987). The stop cannot be based on "whim, caprice . . . or idle curiosity." *State v. Wadell*, 655 N.W.2d 803, 809 (Minn. 2003).

Winter argues that the stop of the vehicle in which he was a passenger was illegal because officers did not personally observe any suspected criminal activity by Winter or Norell. But an officer's personal knowledge is only one factor that may be considered in viewing the totality of the circumstances. The factual basis for an investigatory stop "need not arise from the personal observations of the police officer but may be derived from information acquired from another person." *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn. App. 2005). There is no merit in Winter's argument that the stop was illegal because the officers did not personally observe suspected criminal activity.

Winter next argues that the CRI's information was not reliable and could not provide a reasonable basis for the stop. We disagree.

An informant's tip to law enforcement may be adequate to support an investigatory stop if the tip has sufficient indicia of reliability. *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000). The six factors for determining the reliability of identified, confidential informants are: (1) a first-time citizen informant is presumed reliable; (2) an informant who has given reliable information in the past is likely reliable; (3) reliability can be established by police corroboration; (4) an informant who voluntarily comes forward is presumed more reliable; (5) a "controlled purchase" is a term of art that indicates reliability; and (6) an informant who makes a statement against his or her interests is minimally more reliable. *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004).

The CRI in this case was not a first-time citizen informant, did not make a controlled purchase, and did not give a statement against his interests. But Lake testified that the CRI had previously provided accurate information which resulted in convictions; Lake and Rennquist corroborated several details of the CRI's tip; and the CRI *volunteered* the information about Winter's involvement with drugs. In Minnesota, appellate courts have found confidential informants to be reliable under circumstances very similar to those in this case. *See State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (holding that corroboration of several specific details of a CRI's tip provided police with reasonable articulable suspicion of criminal activity needed to support an investigatory stop of a vehicle's occupants for further investigation); *State v. Ross*, 676 N.W.2d at 305 (holding that a CRI's prediction of future behavior, verified by law-enforcement prior to a search, provided *probable cause* for a warrantless search).

The CRI's tip in this case predicted future behavior with a level of detail similar to the details provided in *Munson* and *Ross*. And, as in *Munson* and *Ross*, the CRI in this case had provided reliable information to law enforcement in the past, and the police independently corroborated many of the details of the tip before stopping the vehicle in which Winter was a passenger.

Winter argues that because Coughlin had no way of gauging the veracity or reliability of the information Lake provided to him, Coughlin did not have reasonable articulable suspicion of criminal activity to stop the pickup truck. But "the grounds for making [a] stop can be based on the collective knowledge of all investigating officers." *In re Welfare of G.M.*, 542 N.W.2d 54, 57 (Minn. App. 1996) (affirming that, under collective-knowledge approach, reasonable articulable suspicion of criminal activity based on information from CRI supplied to police by an investigator, along with investigator's personal observations, supported a stop and frisk by the police), *aff'd* 560 N.W.2d 687 (Minn. 1997); *State v. Conway*, 319 N.W.2d 35, 40 (Minn. 1982) (stating that "[a]n arresting officer may rely on all collective information in the police department, and, acting in good faith on the basis of such information, may assume at the time of apprehension that probable cause has been established" (quotation omitted)). Under the totality of circumstances of this case, the stop was based on reasonable articulable suspicion of criminal activity.

Winter also challenges the stop by Coughlin as "pretextual," noting that Coughlin's report indicates that he stopped the vehicle for driving conduct and suspected illegal window tint. But at the omnibus hearing, Coughlin admitted that he stopped the

vehicle based on the information from Lake that Winter was transporting methamphetamine in the vehicle. "[I]f there is an objective legal basis for it, an arrest or search is lawful even if the officer making the arrest or conducting the search based his or her action on the wrong ground or had an improper motive." *State v. Olson*, 482 N.W.2d 212, 214 (Minn. 1992) "[T]he United States Supreme Court has determined that the actual or ulterior motives of an officer do not invalidate police action that is justifiable on the basis that a violation of law has occurred." *State v. Battleson*, 567 N.W.2d 69, 71 (Minn. App. 1997) (citing *Whren v. United States*, 517 U.S. 806, 812, 116 S. Ct. 1769, 1773–74 (1996)). Because the stop was supported by reasonable articulable suspicion that Winter possessed methamphetamine in the vehicle, any pretext Coughlin may have engaged in is irrelevant.

II. Probable cause to search and arrest Winter

Winter argues that, following the stop, Coughlin lacked probable cause to search and arrest him. The United States Constitution and the Minnesota Constitution prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. For an unwarranted search to be constitutional, it must fall within one of the well-delineated exceptions to the warrant requirement. *Munson*, 594 N.W.2d at 135.

Based on probable cause, police officers may arrest a felony suspect without a warrant in any public place. *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998). And if an arrest is valid, the police may conduct a warrantless search of the arrestee as an incident of the arrest. *Id*. A search "incident to arrest" includes a search that occurs *before* the formal arrest. *In re Welfare of G.M.*, 560 N.W.2d at 695 ("The issue . . .

turn[s] on whether the police had objective probable cause to arrest [the suspect] prior to the . . . search . . . .").

Police officers have probable cause to arrest a person if they reasonably believe that a person has committed a crime, based on their observations, inferences, and experience. *State v. Olson*, 436 N.W.2d 92, 94 (Minn.1989), *aff'd*, 495 U.S. 91, 110 S. Ct. 1684 (1990). In evaluating whether probable cause exists, a court looks at "objective facts" and considers the totality of the circumstances. *State v. Olson*, 634 N.W.2d 224, 228 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). For there to be probable cause, the facts must "indicate that a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed" and "must justify more than mere suspicion but less than a conviction." *Id.* (quotation omitted). "The fact that there might have been an innocent explanation . . . does not demonstrate that the officers could not reasonably believe" that a crime had been committed. *State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001).

In this case Coughlin continued to corroborate the tip by identifying the occupants, noting their heightened nervousness and the inconsistencies in the information they gave about where they had been. Based on the tip and this additional corroboration of the tip, Coughlin had probable cause to believe that Winter possessed a controlled substance sufficient to support Winter's arrest. Because Coughlin's pre-arrest search of Winter, at which time he discovered the methamphetamine, was supported by probable cause to arrest Winter, the district court did not err in denying Winter's motion to suppress.

Affirmed.