STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1903

State of Minnesota,
Respondent,

vs.

Marco Antonio Sosa-Ramirez,
Appellant.

Filed August 15, 2011
Affirmed
Hudson, Judge

Carver County District Court
File No. 10-CR-10-13

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, Peter A.C. Ivy, Assistant County Attorney, Chaska, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Collins, Judge.*

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

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

HUDSON, Judge

Appellant challenges the district court's denial of his motion to suppress evidence, arguing that information obtained from a confidential informant did not provide reasonable suspicion for his seizure, which led to the drug-related search of a vehicle in which he was riding. Because the totality of the circumstances sufficiently established a basis for the seizure, the district court did not err in denying the motion to suppress, and we affirm.

FACTS

On January 5, 2010, a Carver County Sheriff's deputy assigned to the Southwest Metro Drug Task Force received a phone call from a confidential informant (CI), who told the deputy that he had met "Juby," a nickname for appellant Marco Antonio Sosa-Ramirez. The CI provided the deputy with a phone number and stated that appellant would be willing to sell the CI some cocaine.

The deputy had worked with the CI for several years, and the CI had provided previous information with respect to 10-15 drug cases, all of which were prosecuted. Based on the CI's recent information, the deputy listened to calls and read text messages between the CI and appellant and determined that there was enough information to indicate that appellant wished to sell an ounce of cocaine to the CI for $950.

The deputy assembled the task force members at a designated stop, photocopied some cash, and waited for more phone calls to come in to the CI from appellant on the location for the drug deal. According to the calls, the location was a SuperAmerica gas

station at Jonathan Boulevard and Highway 41. The task force members arrived at that location and noticed that appellant was in a maroon Ford Expedition parked in the parking lot, with the motor running, in an area of the parking lot usually reserved for employees. At that time, the CI had a phone conversation with a person in the Expedition. But other calls had also come in indicating that the people in the Expedition wanted to change the plan and take the CI to another location to perform the drug transaction.

As the CI walked toward the Expedition, the deputy saw the back taillights of that vehicle flash a couple of times, and the CI entered the vehicle. Because the deputy was worried that he could not control the situation if the Expedition were to drive away, and for the safety of the CI, the task force members then rushed in at gunpoint and removed the CI from the vehicle along with two other people, including appellant.

The CI indicated that he had heard appellant yell at the driver in Spanish, "Get rid of it, get rid of it. It's the cops," and the driver had placed a paper towel or something white in the front-seat console. The deputy searched the Expedition and found in the console a rolled-up paper towel, with a plastic baggie that contained one ounce of a material that later tested positive for cocaine.

The state charged appellant with one count of first-degree possession of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 2(1) (2008), and one count of first-degree sale of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 1(1) (2008). Appellant moved to suppress the evidence and to dismiss the charges based on a lack of probable cause. The district court denied the motion, concluding that

the complaint was supported by probable cause and that the evidence was legally obtained in a warrantless search. A jury found appellant guilty of one count each of aiding and abetting first-degree sale and possession of a controlled substance, and the district court sentenced appellant to 74 months. This appeal follows.

D E C I S I O N

When a suppression order is challenged on appeal, this court independently reviews the facts and the law to determine whether the district court erred by suppressing or refusing to suppress the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The district court concluded that, based on the testimony at the evidentiary hearing, police "had probable cause to believe that contraband, specifically cocaine, was present in the vehicle." Appellant does not specifically challenge this conclusion, but he argues that the district court erred by implicitly determining that reasonable suspicion existed to support appellant's initial seizure, based on the information provided by the CI. Therefore, appellant argues, evidence obtained from the subsequent search was inadmissible as "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 487–88, 83 S. Ct. 407, 417 (1963) (stating that evidence is inadmissible if it has been acquired by exploitation of illegally acquired evidence).

Limited investigative stops are subject to the prohibitions against unreasonable searches and seizures in the Fourth Amendment to the United States Constitution and article I, section 10, of the Minnesota Constitution. *State v. Askerooth*, 681 N.W.2d 353, 359–60 (Minn. 2004). A limited investigative stop requires a showing of reasonable suspicion, rather than probable cause. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996).

To justify an investigative stop, an officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). The district court examines the totality of the circumstances to determine whether this standard is met. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983).

Police may base an investigative stop on an informant's tip if that tip contains sufficient indicia of reliability. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). To determine whether information provided by an informant is reliable, courts examine "the informant and the informant's source of the information and judge them against all of the circumstances." *Id*. (quotation omitted). 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). Here, the record shows that police had previously received information from the CI in approximately 10-15 prior cases and that all of those cases had led to prosecutions. Therefore, this factor tends to support reasonable suspicion.

Appellant argues that the CI's information was insufficiently reliable to justify his seizure because the record does not indicate how the CI knew appellant, or whether the CI had even seen appellant use or sell drugs. *See State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (stating general requirement that informant's tip must show a basis of knowledge that is supplied either by first-hand information or by "self-verifying details," which indicate that "the information was gained in a reliable way"), *review denied* (Minn. July 25, 2000). But in this case, police did not need to rely on the CI's basis of knowledge to establish reliability because they independently verified the calls and text

messages by listening to them and reading them. In addition, the CI provided detailed predictive information that was corroborated by police when they observed the Expedition parked by itself in the SuperAmerica lot with its motor running, and the Expedition flashed its lights as the CI approached. *See Munson*, 594 N.W.2d at 136 (concluding that informant's tip gave police reasonable, articulable suspicion for investigative stop when police corroborated details of tip, including arrival of three people in a rental car at a specific address).

Appellant argues that the deputy was unable to corroborate the CI's information with a controlled buy because the proposed location of the buy was changed at the last minute, and that this failure weighs against the reliability of the information. But this update may actually enhance the CI's reliability because it shows that the CI had current information and kept police apprised of the evolving situation. *See State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004) (concluding that CI's updating police on a change in car that suspect would be driving enhanced CI's reliability by showing CI's recent information and diligence in informing police). The totality of the circumstances provided reasonable suspicion to seize appellant.

Finally, although the parties have not addressed this issue, we also note that the record would also support a determination that the cocaine was discovered in a valid search incident to appellant's arrest. *See State v. Ture*, 632 N.W.2d 621, 628 (Minn. 2001) (stating that "[u]nder the exception for searches incident to arrest, once a vehicle's occupant is lawfully arrested the police may search the vehicle's passenger compartment").

The district court did not err in denying the motion to suppress.

Affirmed.