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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0761**

State of Minnesota,
Respondent,

vs.

Anthony Chevelle Robinson,
Appellant.

**Filed April 30, 2018
Affirmed
Kirk, Judge**

Koochiching County District Court
File No. 36-CR-15-507

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Grant Gibeau, Special Assistant Public Defender, Felhaber Larson, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges his controlled-substance convictions, arguing that a search warrant based, in part, on a confidential informant's (CI) tip was not supported by probable cause and that the tip was not reliable or sufficiently corroborated. Appellant contends that the district court (1) erred in denying his motion to dismiss and to suppress all evidence obtained as a result of the search warrant, and (2) abused its discretion in denying his request to disclose, or to conduct an in camera review of, the CI's identity. Appellant also raises several pro se arguments. We affirm.

FACTS

On July 19, 2015, Officer Josh Mastin requested a search warrant for a trailer residence in International Falls, where an individual named M.B. was known to be residing. The request and accompanying affidavit were based in part on law enforcement's surveillance of the trailer for the 72 hours prior, as well as information received by Officer Mastin from a CI. A district court judge reviewed the request and affidavit and issued a search warrant authorizing a nighttime search of the trailer and its occupants for the purpose of locating methamphetamine or other items used in the use or sale of methamphetamine.

That same day, appellant Anthony Chevelle Robinson drove to International Falls with his then-girlfriend D.L. and two others, A.R. and C.C. They arrived at M.B.'s trailer around 11 p.m. and decided to order a pizza and stay the night. Around 1 a.m., law enforcement arrived to execute the search warrant. M.B. was standing in the trailer's open doorway waiting for the pizza delivery when law enforcement approached and announced

“police search warrant” several times before entering through the open door. Once inside, law enforcement observed the trailer’s four other occupants sitting in the living room.

Appellant was sitting in the middle of the couch, with D.L. on his left side, and A.R. on his right side. C.C. was sitting in a chair. Law enforcement provided a copy of the search warrant, and the occupants were searched, secured, and placed in handcuffs. Underneath the middle portion of the couch where appellant was sitting, law enforcement located a plastic bag with several smaller baggies inside of it. Some of the baggies were empty and had black spades on them. Two small baggies contained a crystalline substance, which field tested positive for methamphetamine. The Bureau of Criminal Apprehension (BCA) later confirmed that one of the baggies contained 0.88 ± 0.005 grams of methamphetamine, and the other contained 18.212 ± 0.005 grams of a cutting agent or filler.

A law enforcement officer searched A.R. and recovered \$100 in cash and a small, empty baggie with black spades on it that matched the baggies found under the couch. In speaking with Officer Mastin at the scene, appellant claimed that they drove to International Falls to buy a car at M.B.’s trailer. M.B., who was upset and appeared to be high, told Officer Mastin that appellant had drugs on him and that he should be searched. Officer Mastin searched appellant and located a scale with residue on it and \$1,980 in cash. Law enforcement also discovered needles, spoons with residue, a glass pipe, empty bags, scales, cash, and electronic devices in the trailer, which they secured and recorded.

The five occupants in the trailer were arrested and transported to the law enforcement center. Appellant was charged with a controlled-substance crime. Appellant

moved to dismiss the charge, challenging probable cause for the search warrant, seeking to suppress all evidence obtained as a result of the search warrant, and requesting disclosure, or an in camera review by the district court, of the CI's identity. Following an omnibus hearing, the district court denied appellant's motion in full.

Appellant was charged by amended complaint with third-degree sale of a controlled substance (methamphetamine) under Minn. Stat. § 152.023, subd. 1(1) (2014), and for sale of a simulated drug believed to be a controlled substance (phenethylamine) under Minn. Stat. § 152.097, subd. 1(3) (2014). At the jury trial, M.B., D.L., C.C., Officer Mastin, and other law enforcement officers testified. The jury found appellant guilty of both charges. The district court convicted appellant and sentenced him to 51 months in prison on count one and a concurrent 19-month prison sentence on count two. This appeal follows.

D E C I S I O N

I. The record supports the district court's probable cause determination for issuing the search warrant.

We review a district court's probable cause determination for issuing a search warrant under a deferential, substantial-basis standard of review. *State v. Rochefort*, 631 N.W.2d 802, 804 n.1 (Minn. 2001). In this context, a substantial basis means a "practical, common-sense decision" based on the totality of the circumstances, that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

Information provided by a CI can provide probable cause for a search warrant. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). In such cases, “the informant’s veracity and the basis of his or her knowledge are considerations under the totality test.” *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). “Recent personal observation of incriminating conduct has traditionally been the preferred basis for an informant’s knowledge.” *Wiley*, 366 N.W.2d at 269. “Veracity can be established . . . [by] showing that the informant has a proven track record of reliability . . . or ‘by showing that details of the tip have been sufficiently corroborated so that it is clear the informant is telling the truth on this occasion.’” *State v. Holiday*, 749 N.W.2d 833, 840 (Minn. App. 2008) (quoting *State v. Siegfried*, 274 N.W.2d 113, 114-15 (Minn. 1978)).

Minnesota courts consider several factors in reviewing the CI’s reliability, including if “the informant has previously given police correct information” and whether there was “sufficient police corroboration of the information supplied.” *Ward*, 580 N.W.2d at 71. A police officer’s corroboration of easily obtained facts from an informant’s tip, without more, is not a sufficient basis for probable cause. *See, e.g., State v. Albrecht*, 465 N.W.2d 107, 107 (Minn. App. 1991). However, sufficient police corroboration of even minor details can “lend credence” to the informant’s reliability where the police know the identity of the informant. *See Ward*, 580 N.W.2d at 71.

Appellant argues that Officer Mastin’s affidavit failed to establish probable cause to issue a search warrant and that 72 hours of law enforcement surveillance was insufficient to corroborate the CI’s otherwise unreliable and unverified information. Appellant adds

that the CI merely repeated “easily obtained facts,” and that the accuracy rate for the CI’s prior tips was not established.

The record shows that Officer Mastin’s affidavit included information from a CI who informed law enforcement that methamphetamine was being brought to International Falls to be sold and that it would be at M.B.’s trailer. The CI also said that he had been in M.B.’s trailer and observed an unspecified amount of methamphetamine for sale in the last 48 hours. The district court found, and the record supports, that the CI’s information came from personal observation and firsthand knowledge, and thus was more persuasive for the purposes of probable cause. *See Wiley*, 366 N.W.2d at 269.

In addition, the district court recognized, and the record supports, the veracity of the CI’s information. The record shows that the CI gave accurate and reliable information to Officer Mastin in the past that was independently verified and led to arrests and convictions in controlled-substance cases. Law enforcement is not required to prove that a CI’s past information was never false, or alternatively, that it was always correct, as appellant contends. *See id.* (holding that, although more detail is preferable, a statement that an informant “has been used over several years successfully” was sufficient to permit an inference that the “informant had provided accurate information to the police in the past”).

The record also supports the district court’s findings indicating that the CI’s tip was sufficiently corroborated by law enforcement. Officer Mastin was aware that M.B. had been involved in a recent controlled-substance warrant that led to an arrest and conviction. Further, Officer Mastin attested that during law enforcement’s 72-hour surveillance of M.B.’s trailer, he observed “steady stop and go traffic,” which in his training and

experience, was “consistent with that of drug activity.” A police officer’s training and experience may be used to draw inferences and deductions to establish probable cause for a search warrant, as long as the affidavit sets forth competent sufficient evidence for a reasonable person to believe there was a basis for the search beyond mere suspicion. See *State v. Richardson*, 514 N.W.2d 573, 579 (Minn. App. 1994).

On this record, there was competent and sufficient evidence based on the CI’s firsthand knowledge and past reliability, as well as law enforcement’s corroboration of the CI’s tip, to support the district court’s finding of probable cause to issue the search warrant. The district court did not err by refusing to suppress the evidence obtained as a result of the search warrant.

II. The district court did not abuse its discretion in denying disclosure of the CI’s identity.

“We review a district court order regarding disclosure of a confidential informant’s identity for an abuse of discretion.” *State v. Rambahal*, 751 N.W.2d 84, 90 (Minn. 2008). The state has a “legitimate interest in protecting the identity of persons who provide information to law enforcement.” *Id.* (quoting *State v. Litzau*, 650 N.W.2d 177, 184 (Minn. 2002)). “The privilege is not unlimited, however, and it gives way when the disclosure of an informer’s identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause.” *Id.* (quotation omitted). “The defendant has the ultimate burden of establishing the need for the disclosure.” *State v. Ford*, 322 N.W.2d 611, 614 (Minn. 1982).

A CI's identity generally need not be disclosed "when an informant is a mere transmitter of information and not an active participant in the crime itself . . . [and his only participation] is to bring together the defendant and the government agent." *State v. Medal-Mendoza*, 718 N.W.2d 910, 919 (Minn. 2006) (citation omitted). The district court considers a request for disclosure on a case-by-case basis. *State v. Wiley*, 295 Minn. 411, 422-23, 205 N.W.2d 667, 676 (1973) (noting there is no "fixed rule" for disclosure). Relevant factors include whether the informant was a material witness and whether disclosure is required to fairly determine guilt. *Rambahal*, 751 N.W.2d at 90-91.

Here, Officer Mastin's affidavit requested that the CI's identity be protected out of concern that disclosure would result in great bodily harm to the CI, and the district court denied appellant's request to disclose the CI's identity. Appellant argues that the court abused its discretion because he was denied the opportunity to elicit testimony from the CI that would have helped his defense. Appellant contends that the CI was not a "mere transmitter of information," and that the CI was the only disinterested witness who could have testified that the methamphetamine was in the trailer before appellant arrived.¹

The district court found that the CI was a "mere transmitter of information" and did not participate in the crime, and that "he only told law enforcement that he saw [appellant] in possession of methamphetamine within the past 48 hours." Appellant is correct that the

¹ As a preliminary matter, the state argues that appellant forfeited his right to raise this issue on appeal because appellant provided a different legal theory at the district court, and now cites to different caselaw for a different purpose on appeal. The state's argument is unsupported by the record, and as noted, our review is for an abuse of discretion, not plain error as the state contends.

court misstated the CI's statement—the record shows that the CI told Officer Mastin that he saw methamphetamine for sale at the trailer in the last 48 hours, not that he saw appellant with the methamphetamine in the last 48 hours. Given this record, the court's finding is clearly erroneous.

Nonetheless, the CI's statement to Officer Mastin supports the district court's conclusion that the CI was a "mere transmitter of information" and not an active participant in the crime itself. There is no evidence in the record that the CI was involved in the drug-related activity for which appellant was convicted or that the CI was in the trailer at the same time as appellant. As such, the CI could not have been a material witness for appellant because the CI did not witness any events used to establish appellant's guilt. *See, e.g., Ford*, 322 N.W.2d at 614 (finding that a CI was not a material witness, even if previously involved in some way as a witness or a conspirator, because the record showed that the CI did not witness the events supporting the conviction).

In addition, appellant's argument that the CI's testimony would have shown that illegal drug activity was occurring at the trailer before the search warrant was executed is not persuasive. As the district court noted, even if the CI's identity was disclosed and the CI testified that there was methamphetamine in the trailer before appellant arrived, there was still sufficient evidence of appellant's possession of and connection to the drugs found in the trailer—the scale and large amount of cash found on appellant's person—to support the conviction.

Further, contrary to appellant's argument, the CI was not the only disinterested witness. Others who were present in the trailer at the same time as appellant—M.B., D.L.,

and C.C.—all testified at trial. C.C. accepted a plea agreement in exchange for her testimony, but M.B.’s and D.L.’s related criminal cases were resolved by the time of trial. M.B. testified that she received no benefit from testifying, and D.L. was no longer dating appellant and had no agreement to testify.

On this record, the district court did not abuse its discretion in finding that appellant failed to meet his burden of showing a significant need to disclose the CI’s identity so as to overcome the state’s privilege to protect it. *See State v. Marshall*, 411 N.W.2d 276, 280 (Minn. App. 1987) (holding that disclosure of the CI’s identity was not required where the defendant failed to make a significant showing of need for the disclosure), *review denied* (Minn. Oct. 26, 1987).

III. The district court did not abuse its discretion in denying in camera review of the CI’s identity.

“If the defendant fails to meet his burden [to disclose the CI’s identity] but is able to establish a basis for inquiry by the court, then the court should hold an *in camera* hearing to consider affidavits or to interview the informant in person.” *Ford*, 322 N.W.2d at 614. The defendant must make “a minimal showing of a basis for inquiry but something more than mere speculation . . . that examination of the informant might be helpful.” *State v. Moore*, 438 N.W.2d 101, 106 (Minn. 1989).

Appellant contends that he met his minimal burden of showing the relevancy of the CI’s testimony because the CI saw the methamphetamine in the trailer prior to appellant’s arrival. For all of the reasons discussed above, we disagree. There was sufficient evidence with or without the CI’s testimony, including discovery of a controlled substance, drug

paraphernalia, and money under appellant's control, as well as the testimony of law enforcement, C.C., and M.B., to support appellant's conviction. While the CI's testimony was highly relevant to the issuance of the search warrant, the record shows that appellant failed to establish a basis for the CI's testimony regarding the circumstances of appellant's conviction.

Appellant was able to present his defense through D.L.'s testimony that they went to International Falls to buy a car for appellant, as appellant told Officer Mastin at the scene. The jury heard testimony about the 72-hour surveillance of the trailer and law enforcement's suspicions that drug activity was taking place *before* appellant arrived. Testimony and exhibits regarding the black spade baggies, which appellant claims help to establish his defense, were also admitted. And appellant was allowed to impeach C.C.'s and M.B.'s credibility. But on appeal, we assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *Moore*, 438 N.W.2d at 108. Because there was sufficient evidence in the record, with or without the CI's testimony, for the jury to reach its guilty verdicts, we conclude that the district court did not abuse its discretion in denying appellant's request for an in camera review.

IV. Appellant's pro se arguments are without merit.

Finally, on appeal, appellant filed a pro se informal brief styled as an affidavit in which he raises new legal and fact-based arguments and relies on foreign and non-precedential state and federal caselaw. Some of the issues raised in appellant's pro se brief are also raised in appellant's principal brief on appeal, the merits of which we have already addressed herein. In addition, appellant raises the new claims of false imprisonment, denial

of due process, unlawful warrantless arrest, failure to provide a timely first appearance, improper use of handcuffs, and improper booking procedure, including fingerprinting. The state argues that these additional arguments are without merit. We agree with the state.

The record on appeal consists of the “documents filed in the [district] court, the exhibits, and the transcript of the proceedings.” Minn. R. Civ. App. P. 110.01; *see also* Minn. R. Crim. P. 28.02, subd. 8. We do not determine issues of fact on appeal. *See Kucera v. Kucera*, 275 Minn. 252, 254-55, 146 N.W.2d 181, 183 (1966) (“It is not within the province of [appellate courts] to determine issues of fact on appeal.”). Further, new arguments not made or considered by the district court are beyond the scope of this court’s review on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

The additional claims in appellant’s pro se appellate brief are either not properly before this court on appeal or are not supported by the facts in the record or by Minnesota law. *See State v. Meldrum*, 724 N.W.2d 15, 23 (Minn. App. 2006) (concluding that pro se allegations made outside of the record and without supporting legal authority are forfeited), *review denied* (Minn. Jan. 24, 2007); *see also State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) (declining to consider pro se claims on appeal that are lacking in supportive arguments or legal authority). As such, we agree that appellant’s claims of false imprisonment, denial of due process, unlawful warrantless arrest, failure to provide a timely first appearance, improper use of handcuffs, and improper booking procedure, including fingerprinting, are without merit, and we decline to address them further.

Affirmed.