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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1446**

State of Minnesota,  
Respondent,

vs.

Davon Keontae Garner,  
Appellant.

**Filed June 24, 2019  
Affirmed  
Larkin, Judge**

Hennepin County District Court  
File No. 27-CR-18-6087

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

## UNPUBLISHED OPINION

**LARKIN**, Judge

Appellant challenges his conviction of possession of a firearm by a prohibited person, arguing that the district court erred by denying his motion to suppress the firearm as the fruit of an unlawful seizure. We affirm.

### FACTS

Respondent State of Minnesota charged appellant Davon Keontae Garner with possession of a firearm by a prohibited person. Garner moved to suppress the firearm, arguing that it was obtained during an unlawful search and seizure. The district court held a hearing on Garner's motion. Minneapolis Police Officer Andrew Schroeder testified at the hearing, and the district court received a Snapchat video that Garner had uploaded as evidence. The district court found the relevant facts to be as follows.

In January 2018, Officer Schroeder learned that Garner was a potential suspect in a shots-fired incident. Officer Schroeder saw a photograph of Garner with known gang members in a daily intelligence brief discussing the incident, and he began to follow Garner on social media. Officer Schroeder determined that Garner was prohibited from possessing a firearm.<sup>1</sup> Officer Schroeder also spoke with several confidential reliable informants (CRIs) regarding Garner.

On March 5, 2018, Officer Schroeder saw a photo on Garner's public Snapchat account that depicted Garner holding a gun while wearing a black hooded sweatshirt.

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<sup>1</sup> Garner was convicted of aggravated robbery in 2011.

Officer Schroeder also saw a video on Garner's Snapchat account that depicted Garner holding the same gun in various poses while wearing a red T-shirt. The video included a timestamp indicating that it was posted "5h ago." Based on Officer Schroeder's experience as a law-enforcement officer, he believed that the gun was a firearm, and not an airsoft or BB gun, because of its extended magazine and larger barrel diameter. Officer Schroeder told Minneapolis Police Sergeant Peterson from the Weapons Investigation Unit about Garner's Snapchat video.

On March 7, a CRI whom Officer Schroeder had used before informed him that Garner was on the Megabus headed to Minneapolis from Milwaukee and that he had a gun. Officer Schroeder shared that information with Sergeant Peterson, and Sergeant Peterson surveilled the Megabus station with other members of the Weapons Investigation Unit. They observed Garner leave a bus with a red backpack and enter a vehicle. Sergeant Peterson, Officer Schroeder, and the other officers followed the vehicle, and Sergeant Peterson instructed Officer Schroeder to "make a felony stop, due to the possible presence of the gun and [Garner's criminal] history." Officer Schroeder stopped the vehicle. Garner was in the back seat wearing the same black hooded sweatshirt that he wore in the Snapchat photo.

After the occupants of the vehicle were removed, Officer Schroeder opened the rear driver's side door and smelled marijuana in the vehicle. Officer Schroeder observed a red and gray backpack behind the driver's seat. He opened the backpack and discovered a handgun with an extended magazine inside. Police arrested Garner for being a prohibited person in possession of a firearm.

The district court denied Garner's motion to suppress. Garner stipulated to the prosecution's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court's suppression ruling, and the district court found him guilty of possession of a firearm by a prohibited person. The district court entered judgment of conviction and sentenced Garner to serve 60 months in prison. Garner appeals.

## DECISION

Garner contends that his conviction must be reversed because the police unlawfully stopped the vehicle in which he was a passenger and the firearm "would not have been discovered if [the] officers had not conducted the illegal stop."<sup>2</sup> *See State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) ("Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed.").

The United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "The touchstone of the Fourth Amendment is reasonableness." *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). Generally, warrantless searches and seizures are per se unreasonable. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). However, a police officer may initiate a limited, investigatory stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880 (1968)).

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<sup>2</sup> Garner does not alternatively argue that even if his seizure was lawful, the warrantless search of the vehicle and backpack was unconstitutional.

In determining whether reasonable suspicion exists, Minnesota courts “consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person.” *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). 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) (quotation omitted). This court reviews a district court’s determination of reasonable suspicion de novo. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

“The reasonable suspicion standard can . . . be met based on information provided by a reliable informant.” *Timberlake*, 744 N.W.2d at 393. “But information given by an informant must bear indicia of reliability that make the alleged criminal conduct sufficiently likely to justify an investigatory stop by police.” *Id.* at 393-94.

When police rely on information provided by an informant, all of the stated facts relating to the informer should be considered in making a totality-of-the-circumstances analysis. Police may rely on an informant’s tip if the tip has sufficient indicia of reliability. When assessing reliability, courts examine the credibility of the informant and the basis of the informant’s knowledge in light of all the circumstances.

*State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000) (quotation and citations omitted), *review denied* (Minn. July 25, 2000).

This court has articulated six factors that are relevant when assessing 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), *review denied* (Minn. June 15, 2004).

Garner argues that the CRI’s tip did not provide a constitutionally adequate basis for his seizure “because the state did not establish that the informant was reliable or that the informant possessed a sufficient basis of knowledge.”

As to the CRI’s reliability, only the second and third reliability factors are relevant here. “The second factor is fulfilled by a simple statement that the informant has been reliable in the past . . . .” *Id.* It is not necessary for officers to provide details regarding the informant’s past veracity. *Munson*, 594 N.W.2d at 136; *Ross*, 676 N.W.2d at 304.

Officer Schroeder’s testimony regarding whether the CRI had given reliable information in the past was limited. As to that issue, he testified only that the CRI was “[r]eliable” and had been used “[m]ultiple times” in the past. Although that testimony does not provide detailed information regarding the CRI’s past veracity, it reasonably conveys that the CRI had provided reliable information in the past. *See State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985) (interpreting language in a search warrant affidavit that an informant “has been used over several years successfully” “in a practical, commonsense manner” to conclude “that the informant had provided accurate information to the police in the past”).

As to the third reliability factor, Garner concedes that the police corroborated the CRI's report that Garner was traveling from Milwaukee to Minneapolis by Megabus. "[C]orroboation 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) (quotation omitted).

Moreover, the Snapchat video also corroborated the CRI's tip. When Officer Schroeder viewed the Snapchat video on March 5, it contained a timestamp indicating that it had been posted "5h ago." Based on his understanding of how Snapchat works, Officer Schroeder testified that timestamps for media uploaded to Snapchat indicate not only when the media was uploaded, but also when the media was created. Officer Schroeder explained that if a Snapchat user takes a photograph and then immediately uploads it to the user's Snapchat account, the photograph will have the timestamp "taken one minute ago." If a user uploads a photograph that was taken a week earlier, the photograph will have the timestamp "taken from memories." Officer Schroeder further testified that because the timestamp on Garner's Snapchat video indicated that it had been posted "5h ago," and not "taken from memories," he believed it was recorded on March 5.

The supreme court has said that a "one-shot type of crime, such as a single instance of possession or sale of some form of contraband, will support a finding of probable cause only for a few days at best." *State v. Cavegn*, 356 N.W.2d 671, 673 (Minn. 1984). Applying that principle in this case, the Snapchat video showing Garner in possession of a

gun approximately 48 hours before the CRI reported that Garner was currently in possession of a gun tends to corroborate the CRI's tip.<sup>3</sup>

Indeed, Garner acknowledges that “[i]f the video was *made* five hours before the officer viewed it, then arguably there would be a sufficient temporal nexus—approximately two days—between the time [he] purportedly possessed the gun and the time he was seized on March 7.” But he argues that “the Snapchat video does not support [his] March 7 seizure because the video showing [him] holding an alleged gun at some unspecified place and time does not support a reasonable suspicion that [he] was in possession of a gun at the time of the stop.” Garner reasons that although “there was a timestamp on the Snapchat video, it is unclear from watching the video whether the timestamp references when the video was *made* or when it was *uploaded*.”

Officer Schroeder's testimony is the only evidence regarding the Snapchat timestamp. Garner did not challenge Officer Schroeder's testimony regarding the meaning of the timestamp or present any evidence to refute it. And the district court expressly found Officer Schroeder's testimony at the evidentiary hearing credible. This court defers to a district court's credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). Thus, Officer Schroeder's testimony establishes that the Snapchat video was

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<sup>3</sup> The caselaw discussing police corroboration of a CRI's tip normally involves circumstances in which the police corroborated the tip after receiving it. *See, e.g., State v. Lester*, 874 N.W.2d 768, 769-70, 772 (Minn. 2016) (stating that police corroborated the details of a CRI's tip by observing a man described by the CRI arrive at the location identified by the CRI within the specified timeframe). We are not aware of any authority that prevents consideration of the corroborative effect of information obtained prior to receiving a CRI's tip.

both recorded and uploaded on March 5. Given the short time between the creation of the video and the receipt of the informant's tip, the video corroborates the tip.

As to the CRI's basis of knowledge, Garner argues that the CRI's information regarding Garner's travel arrangements and whereabouts did not explain the basis for the CRI's assertion that Garner was in the possession of a handgun.

A "basis of knowledge may be supplied directly, by first-hand information, such as when a CRI states that he purchased drugs from a suspect or saw a suspect selling drugs to another" or it may be "supplied indirectly through self-verifying details that allow an inference that the information was gained in a reliable way and is not merely based on a suspect's general reputation or on a casual rumor circulating in the criminal underworld." *Cook*, 610 N.W.2d at 668. Although the record does not contain evidence of first-hand information directly establishing the CRI's basis of knowledge, the Snapchat video allows an inference that the CRI's information was gained in a reliable way and is not merely based on reputation or on rumor. Unlike *Cook*, a case in which we said that "any link between [the defendant] and illegal activity was nonexistent," *id.*, the Snapchat video established a link between Garner and the illegal activity for which he was stopped: possession of a firearm by a prohibited person.

In sum, the record adequately establishes the CRI's reliability and basis of knowledge. And the totality of the circumstances—including Garner's status as a potential suspect in a shots-fired incident, Garner's ineligibility to possess a firearm, the recent Snapchat video showing Garner with a firearm, and the CRI's tip that Garner would be arriving in Minneapolis on a bus with a firearm—provided reasonable articulable suspicion

that Garner was involved in criminal activity when the police stopped him for investigative purposes after he left the bus station. The district court therefore did not err by denying Garner's motion to suppress.

**Affirmed.**