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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0029**

Christopher London Walker, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 16, 2019
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-15-8870

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Rodenberg, Judge; and Kirk,
Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the denial of his postconviction petition, arguing that the postconviction court erred by concluding that the district court did not abuse its discretion by denying his motion to suppress evidence and dismiss the complaint or by denying his motion for a downward durational sentencing departure, and that the postconviction court erred by denying his claim of ineffectiveness of trial counsel. We affirm.

FACTS

Respondent State of Minnesota charged appellant Christopher Walker with one count of ineligible person in possession of a firearm on April 6, 2015.¹ The complaint alleged that Minneapolis police officers received information from a confidential informant who identified Walker as a person who was selling narcotics in the area of 17th and Chicago Avenue in Minneapolis. Minneapolis Police Officers Jarrod Silva and Efrem Hamilton went to the area described by the informant and observed Walker “engage in hand-to-hand transactions consistent with narcotics deals” with “multiple persons.” The officers then followed Walker as he drove to the 3900 block of 6th Avenue North, Minneapolis, where he stopped, opened his trunk, and appeared to move items around. The officers stopped Walker’s vehicle, arrested him, searched the trunk, and found a handgun.

Walker moved to suppress all evidence and dismiss the complaint on the basis that law enforcement illegally searched his vehicle and seized evidence. Following a

¹ Walker stipulated at trial that he was prohibited from possessing a firearm due to a prior second-degree assault conviction.

Rasmussen hearing, the district court denied Walker’s motion. A jury found Walker guilty, and he moved for a downward dispositional and durational sentencing departure. The court denied the motion and sentenced Walker to the statutory mandatory minimum sentence of 60 months. Walker petitioned for postconviction relief without an evidentiary hearing, claiming that the district court erred by denying his suppression motion because law enforcement lacked probable cause to arrest and search him and his vehicle, and by denying his motion for a downward durational sentencing departure, and that his trial counsel provided ineffective assistance. The postconviction court denied the petition.

This appeal follows.

D E C I S I O N

Appellate courts “review the denial of a petition for postconviction relief . . . for an abuse of discretion.” *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). A postconviction court “abuses its discretion if it exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Id.* (quotation omitted). “The postconviction court’s conclusions of law are reviewed de novo.” *Fox v. State*, 913 N.W.2d 429, 433 (Minn. 2018).

I. Denial of motion to suppress and dismiss

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). When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

A. Probable cause to arrest

Walker argues that police lacked probable cause to arrest him because the informant was not actually reliable. “A seizure by warrantless arrest is reasonable if it is supported by probable cause.” *State v. Onyelobi*, 879 N.W.2d 334, 343 (Minn. 2016). “Probable cause exists when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a *specific* individual has committed a crime.” *Id.* (quotation omitted). “The quantum of proof required for a finding of probable cause is more than mere suspicion but less than the evidence necessary for a conviction.” *Id.* (quotation omitted).

1. Informant’s reliability

Walker argues that the informant was not reliable, that the postconviction court erred by concluding that the informant voluntarily came forward, and that police officers therefore lacked probable cause to arrest him. “Whether the information provided by a confidential informant is sufficient to establish probable cause is determined by examining the totality of the circumstances, particularly ‘the credibility and veracity of the informant.’” *State v. Ross*, 676 N.W.2d 301, 303–04 (Minn. App. 2004) (quoting *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999)). We consider six factors when determining the reliability of an 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.

Id. at 304.

At the *Rasmussen* hearing, Officer Silva testified that on April 3, 2015, he had been working with a confidential informant, who had been useful to him and other Minneapolis police officers on prior occasions and had been found to be reliable and truthful in previous cases. *See id.* ("There is no need for law-enforcement officers to provide specifics of the informant's past veracity."). "The second factor is fulfilled by a simple statement that the informant has been reliable in the past" *Id.*

Officer Silva also testified that the confidential informant told him that "a male known to be a narcotics dealer" would be selling narcotics on 16th and Chicago in a gold-colored Saturn, described as a station wagon, and the informant provided a phone number and a physical description, which Officer Silva recapped as follows: "a light-skinned black male with dreadlocks . . . [w]ith dreads, braids – whatever you want to call them." Officer Silva showed the informant a picture of Walker, and the informant verified that Walker was the person described. Officer Silva then observed Walker in a gold Saturn on 16th near Chicago, where he "observed multiple people approach the vehicle on the driver's side. The window was down. [He] observed multiple people conduct hand-to-hand transactions

through this window.” Officer Silva believed that narcotics were being sold out of that vehicle by Walker based on his training and experience.

The informant reported that Walker “was going to head to the north side to re-up, which is common street term for getting more narcotics and would be coming back.” Officer Silva observed Walker travel to the north side of Minneapolis, where he drove “behind a house, and . . . got out of his vehicle and . . . had the trunk open. I observed him digging, moving stuff around – whether it was hiding, grabbing . . . moving panels around.” Officer Silva testified that, based on his training and experience, this activity was consistent with Walker “getting more narcotics again or possibly hiding them.” Similar to the information corroborated in *Ross*, Officer Silva verified Walker’s identity and the type of car he was driving, and observed Walker engage in activity consistent with narcotics dealing and “re-upping,” thereby corroborating the informant’s information. *See id.* at 305 (concluding that probable cause existed when informant provided “a detailed prediction of future behavior that was corroborated by police before the search”).

2. Officers’ observations

Walker also argues that the officers’ observations do not support probable cause for his arrest. We disagree. In *State v. Hawkins*, officers observed the defendant riding a bicycle around an intersection for about 15 minutes, during which the defendant “whistled and waved at approaching vehicles,” which officers described as “a common way for street-level narcotics dealers to get people’s attention and let them know that they are selling narcotics.” 622 N.W.2d 576, 581 (Minn. App. 2001). Officers also observed “two hand-to-hand transactions with other individuals in a manner that [they] concluded was

consistent with a drug transaction and not with innocent behavior.” *Id.* This court concluded that these observations were “sufficient to permit a prudent person to reasonably believe that [the defendant] had engaged in the sale of drugs,” and that probable cause existed to arrest and search the defendant. *Id.*

Similarly, here, investigating officers observed multiple individuals approach the driver’s side window of Walker’s car and engage in hand-to-hand transactions. The officers followed Walker to the north side of Minneapolis where they observed him moving panels in his trunk as if he was hiding something. Both officers testified that this activity was consistent with narcotics dealing, based on their experience and training, which involved hundreds of narcotics cases. *See State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999) (stating that officer “may draw inferences and deductions that might elude an untrained person”).

In this case, citing *Ross*, the postconviction court found that the confidential informant was not a first-time informant, was reliable, and voluntarily came forward; that officers independently corroborated the information given; and that neither the fifth nor sixth *Ross* factor weighed in favor of or against reliability. Walker challenges the postconviction court’s finding that the informant voluntarily came forward, noting that the record contains no evidence about how the informant came to provide information to police, but that the record reveals that police paid for the information. The fact that the informant was paid does not necessarily suggest that the informant did not provide information voluntarily, as opposed to providing information under a threat of prosecution. Regardless, the postconviction court’s other findings regarding the *Ross* factors support the court’s probable-cause determination.

Because the informant was reliable and provided information that the investigating officers corroborated and that would allow a prudent person to reasonably conclude that Walker was engaging in unlawful activity, we conclude that under the totality of the circumstances, probable cause existed to arrest Walker. Because the district court did not err in concluding that police had probable cause to arrest Walker, the postconviction court did not abuse its discretion by denying Walker relief on this claim.

B. Probable cause to search car

Walker argues that police lacked probable cause to search his car because the information obtained from the informant was not reliable. “We review de novo a [postconviction] court’s determination of probable cause as it relates to a warrantless search.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). “A search conducted without a warrant is unreasonable unless it satisfies one of the well-delineated exceptions to the warrant requirement.” *Id.* (quotation omitted). “One such exception is the ‘automobile exception,’ under which the police may search a car without a warrant, including closed containers in that car, if there is ‘probable cause to believe the search will result in a discovery of evidence or contraband.’” *Id.* (quoting *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991)). “Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband.” *Id.* (quotation omitted). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case.” *Id.* “It is a common-sense, nontechnical concept that involves the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act.” *Id.* (quotations omitted). “In addition, the

totality of the circumstances includes reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons.” *Id.* “[An] appellate court must give due weight to reasonable inferences drawn by police officers and to a district court’s finding that the officer was credible and the inference was reasonable.” *Id.* (quotation omitted).

In *Munson*, the supreme court concluded that probable cause to search a defendant’s vehicle existed when a confidential reliable informant (CRI) provided information that a rented green vehicle with Minnesota license plates would arrive at a certain address in St. Paul; the occupants of the vehicle would be three African-American males, two of whom the CRI identified; and the vehicle contained a large amount of crack cocaine hidden somewhere inside or underneath the vehicle. 594 N.W.2d at 132. Officers observed the vehicle, that it was rented, and the two identified individuals, as described by the CRI. *Id.* at 136. The supreme court concluded that the “independent corroboration of even innocent details of an informant’s tip . . . gave the police probable cause to believe that the [vehicle] was carrying illegal drugs and thus justified the search . . . under the motor vehicle exception.” *Id.* at 136–37.

Here, the district court found that the testimony of Officers Silva and Hamilton at the Rasmussen hearing was credible, and that based on the informant’s information and their own observations, the officers believed that Walker was engaged in criminal activity. And the postconviction court concluded that probable cause existed to search Walker’s vehicle based on the “reliability of the CRI’s information coupled with the officers’ independent observations of [Walker] conducting hand-to-hand transactions from his car

and rummaging through the trunk.” We conclude that the postconviction court did not err in its determinations regarding the reliability of the informant and the officers’ corroboration of the informant’s information. Similar to *Munson*, officers corroborated an informant’s information and, beyond *Munson*, independently observed activity that was consistent with criminal activity based on their training and experience with “[300] to 500” narcotics cases. The informant’s information and officers’ corroboration would lead a prudent person to conclude that a reasonable probability existed that narcotics were in Walker’s vehicle. We therefore conclude that under the totality of the circumstances probable cause existed to search Walker’s vehicle. The postconviction court did not abuse its discretion in denying relief on this claim.

II. Denial of downward durational sentencing departure

Walker requested a downward durational sentencing departure following his conviction of ineligible person in possession of a firearm. A defendant convicted of violating Minn. Stat. § 624.713, subd. 1(2) (2014), “shall be committed to the commissioner of corrections for not less than five years, nor more than the maximum sentence provided by law.” Minn. Stat. § 609.11, subd. 5(b) (2014). The statutorily mandated sentence is the presumptive sentence. *State v. Fleming*, 869 N.W.2d 319, 323 n.1 (Minn. App. 2015), *aff’d*, 883 N.W.2d 790 (Minn. 2016). The district court sentenced Walker to the mandatory minimum sentence of 60 months, which was the presumptive sentence. Walker argues that the district court abused its discretion by denying his sentencing-departure motion.

A district court has broad discretion with regard to sentencing departure, and generally appellate courts will not interfere with that discretion. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (stating that “it would be a rare case which would warrant reversal of the refusal to depart”); *accord State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (“We review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.”). “A court may depart from the presumptive sentence only when there are identifiable, substantial, and compelling circumstances to support a departure.” *Solberg*, 882 N.W.2d at 623 (quotation omitted). “A downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* at 624 (quotation omitted).

Before denying Walker’s departure motion, the district court reviewed letters sent on behalf of Walker, a presentence investigation report, the arguments of Walker’s counsel and the prosecutor, and considered facts that could support a downward departure. The court concluded that the facts spoke to Walker’s “person” but were not grounds for a durational departure and denied Walker’s motion. We conclude that the postconviction court did not abuse its discretion by affirming the district court’s denial of Walker’s departure motion. *See id.* at 625 (“Because the guidelines’ goal is to create uniformity in sentencing, departures are justified only in exceptional cases.”).

III. Ineffective assistance of counsel

Walker argues that his trial counsel provided ineffective assistance when he agreed to the introduction of “inadmissible and extremely damaging evidence at trial,” citing the drug-investigation evidence that led to his arrest as evidence that should have been objected

to and excluded. “The United States and Minnesota Constitutions guarantee a criminal defendant the right to effective assistance of counsel.” *Crow v. State*, 923 N.W.2d 2, 14 (Minn. 2019). “To prevail on an ineffective assistance of counsel claim, [an] appellant must show both that (1) his trial counsel’s representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*; see also *Strickland v. Washington*, 466 U.S. 668, 687–92, 104 S. Ct. 2052, 2064–67 (1984) (establishing two-part test for ineffective-assistance-of-counsel claims). Appellate courts review a postconviction court’s application of the *Strickland* test “de novo because it involves a mixed question of law and fact.” *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

At a pretrial hearing, the district court heard the state’s argument that the drug-investigation evidence would be “helpful for the jury to understand the officer’s state of mind and ultimately the reason for searching the vehicle . . . and finding the firearm and ammunition.” Walker’s counsel responded: “I don’t disagree. I think the jury needs to hear the immediate episode evidence to understand what happened. I don’t have an objection.”

In his opening statement, Walker’s counsel stated:

This was a drug investigation that the police were conducting, and what the state didn’t tell you is that there were many officers involved surveilling my client for alleged drug transactions. They’re watching him closely And why do I mention this? This is not a gun case They are not asking about a gun. They don’t have any information about a gun. You’re not going to hear any testimony from anybody that says I’ve ever seen Mr. Walker with a gun. They rely – when I say “they,” the police rely heavily on a[n informant], which, by the

way, you won't hear from And markedly and really importantly, never mentions that Mr. Walker has a gun [I]t's not anywhere on the radar of the police that are surveilling my client.

On cross-examination of Officer Silva, Walker's counsel asked, "During your surveillance of Mr. Walker, do you ever see him with a weapon whenever he got out of the car allegedly," and asked Officer Hamilton whether anybody gave him any information about whether Mr. Walker would have a gun. And in his closing argument, Walker's counsel again brought up the fact that the informant never mentioned anything about Walker possessing a firearm and that "the purpose of the investigation" was not whether Walker had a firearm.

"In evaluating claims of ineffective assistance of counsel, there is a strong presumption that counsel's performance was reasonable and this court does not review matters of trial strategy or the particular tactics used by counsel." *Crow*, 923 N.W.2d at 14 (quotation omitted). And the supreme court has "repeatedly stated that we generally will not review attacks on counsel's trial strategy." *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). The supreme court's "reluctance to scrutinize trial tactics is grounded in the public policy of allowing counsel to have the flexibility to represent a client to the fullest extent possible." *Id.* In *Opsahl*, the supreme court concluded that a postconviction court did not abuse its discretion when it rejected an ineffective-assistance-of-counsel claim based on a failure to investigate and challenge evidence because those decisions fall "within the realm of defense strategy," and the court was "in no position to second-guess counsel's decision" on trial strategy. *Id.*

Here, the postconviction court found that Walker's trial counsel did not object to the drug-investigation evidence as a matter of trial strategy and denied Walker's claim because "[n]o matter how debatable trial counsel's decision was to not object to the admission of this evidence, it was clearly an informed and conscious decision. This Court finds that trial counsel's decision was a reasonable trial tactic." The record supports the postconviction court's findings and conclusion. The record clearly shows that Walker's counsel's strategy was to include the drug-investigation evidence to show the jury that despite the surveillance and the informant's information, no one saw or heard of Walker possessing a firearm. *See State v. Smith*, 476 N.W.2d 511, 515 (Minn. 1991) (stating that in ineffective-assistance-of-counsel claims, the "distorting effects of hindsight must be filtered out" (quotation omitted)). Choosing to object or not object to evidence is trial strategy. *See Leake v. State*, 737 N.W.2d 531, 542 (Minn. 2007) ("Decisions about objections at trial are matters of trial strategy."). We therefore conclude that the postconviction court did not abuse its discretion in denying Walker's ineffective-assistance-of-counsel claim. Because we decide this case based on the first *Strickland* prong, we need not review Walker's arguments on prong two. *See Mosley*, 895 N.W.2d at 591 ("If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement.").

Walker also argues that the postconviction court erred by refusing to consider documentation he submitted about a disciplinary action pending against his trial counsel. The court did not consider the disciplinary information because it involved "cases unrelated to this one." In *Smith*, the supreme court concluded that a loss of a law license during trial

was relevant in an ineffective-assistance-of-counsel claim, as “there *may be a rare case* where the substantive reasons for loss of licensure are so egregious, so notoriously bad, that it might be said that these reasons alone render the court proceedings unfair and unreliable.” 476 N.W.2d at 514 (emphasis added). But the supreme court rejected a defendant’s claim of ineffectiveness of counsel when the defendant alleged that his counsel’s disciplinary proceedings “preoccupied” him, concluding that nothing in the record showed that the attorney’s impending suspension created any distracting preoccupation, because the alleged misconduct involved other clients. *Id.* at 516. Similarly here, Walker’s counsel’s disciplinary proceedings involved other clients and other matters, and Walker points to no facts in the record to show how the disciplinary proceedings affected counsel’s representation. Walker’s argument therefore is unavailing. *See id.* (“Speculation by the defendant is not enough,” in claiming disciplinary proceedings impact a counsel’s representation).

Affirmed.