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Minn. R. Civ. App. P. 136.01, subd. 1(c)*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0360**

State of Minnesota,
Respondent,

vs.

Rafeti Alexander de Sala de la Rosa,
Appellant.

**Filed February 1, 2021
Reversed and remanded
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-19-6069

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Police arrested appellant after a confidential informant gave officers a picture of a man and told them that he would arrive at a location within a general timeframe with cocaine. After the arrest, officers discovered cocaine in the backseat of the Uber vehicle

carrying appellant, and in his home through a later warranted search. Respondent charged appellant with three controlled-substance crimes. Appellant moved to suppress all evidence found in the search of the Uber vehicle and his home. The district court denied his motion. After a trial on stipulated evidence, the district court found appellant guilty of all charges. In this appeal, he challenges the district court's denial of his motion to suppress evidence on the ground that the evidence was the fruit of his unlawful arrest. We agree, and reverse and remand.

FACTS

Officer Schroeder first met and arrested the confidential informant (CI) in this case a day before appellant Rafeti Alexander de Sala de la Rosa's arrest. CI agreed to "work[] off" CI's own case by providing information to Officer Schroeder. This was CI's first time providing information to law enforcement. The day of CI's arrest, CI told Officer Schroeder that within the previous 72 hours CI bought narcotics from a drug dealer near 40th Street and Chicago Avenue in Minneapolis and had witnessed this drug dealer selling narcotics in the past. CI did not know the drug dealer's name or address. The next day, CI told Officer Schroeder that within a timeframe, this drug dealer would deliver cocaine to the area of Conga Latin Bistro on Hennepin and Central Avenue in Northeast Minneapolis. CI provided Officer Schroeder a Facebook profile picture of this drug dealer and told Officer Schroeder that the drug dealer was a DJ at the Conga Latin Bistro. The Facebook picture lacked a full name.

Shortly after Officer Schroeder received this tip, he began conducting surveillance of the Conga Latin Bistro from a Wells Fargo parking lot located nearby. Within 45

minutes, an Uber vehicle (Uber) pulled into the Wells Fargo parking lot. In the Uber, Officer Schroeder saw two people: a driver and appellant seated in the backseat on the passenger's side. The Uber did not commit any traffic violations as it approached the parking lot, but Officer Schroeder believed that the Facebook picture provided by CI matched appellant so he radioed other officers.

It is unclear from the record whether the Uber stopped on its own or if officers stopped the Uber. Nonetheless, at gun point, officers approached the Uber, pulled both occupants out of the Uber, arrested them, and placed them in handcuffs. Once in handcuffs, officers searched both occupants for weapons and placed them in the backseats of squad cars. Officers then transported both occupants to the police station. Officers did not question either occupant or confirm any information before or during their stop or arrest. Only after officers arrested the driver did they learn that he was an Uber driver.

During the search of appellant's person, officers did not find any contraband. But officers did find appellant's Minnesota ID which listed his home address. The Uber driver confirmed that he picked appellant up from that same address. Officer Schroeder searched the Uber and discovered a small baggie of cocaine in the map pocket of the rear-passenger seat. Officers then took the Uber to the police station to search it further. At the precinct, officers discovered 27.83 grams of cocaine in a hide can¹ located on the floor of the Uber near where appellant sat.

¹ A hide can is a can or bottle of soda with a top or bottom that unscrews to expose a void where narcotics are often hidden.

Relying on this information and within an hour of appellant's arrest, Officer Schroeder applied for a search warrant of appellant's home. Officers executed the search warrant and found 13.7 grams of cocaine in appellant's bedroom. Respondent State of Minnesota charged appellant with second-degree possession of a controlled substance, Minn. Stat. § 152.022, subd. 2(a)(1) (2018); third-degree possession of a controlled substance, Minn. Stat. § 152.023, subd. 2(a)(1) (2018); and fifth-degree possession of a controlled substance, Minn. Stat. § 152.025, subd. 2(1) (2018). Appellant moved to suppress all evidence found in the search of the Uber and his home on the ground that the evidence was fruit of his illegal arrest. The district court denied appellant's motion to suppress. Appellant waived his right to a jury trial and proceeded with a trial on stipulated evidence. Minn. R. Crim. P. 26.01, subd. 3. The district court found appellant guilty on all three charges. This appeal followed.

DECISION

Appellant challenges the district court's denial of his motion to suppress evidence discovered in the search of the Uber and his home, arguing that the evidence was the fruit of his unlawful arrest. "When facts are not in dispute, as here, we review a pretrial order on a motion to suppress de novo and determine whether the police articulated an adequate basis for the search or seizure at issue." *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (citing *State v. Flowers*, 734 N.W.2d 239, 247-48 (Minn. 2007)). "When reviewing the legality of a seizure or search, an appellate court will not reverse the [district] court's findings unless clearly erroneous or contrary to law." *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997). We review de novo whether a search or seizure is justified by

reasonable suspicion or by probable cause. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The United States and Minnesota Constitutions guarantee an individual's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search or seizure conducted without a warrant is presumptively unreasonable unless the state proves that an exception to the warrant requirement applies. *Flowers*, 734 N.W.2d at 248. Here, officers did not have a warrant to arrest appellant or to search the Uber in which he rode. For the search and seizure to be constitutional, therefore, they "must fall within one of the well-delineated exceptions to the warrant requirement." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). The district court held and respondent argues that two exceptions to the warrant requirement apply to the search of the Uber: (1) search incident to lawful arrest, and (2) *Terry* stop.

I. The search-incident-to-lawful-arrest exception to the Fourth Amendment warrant requirement did not authorize officers to search the Uber.

Appellant argues that his arrest was unlawful because it lacked probable cause for two reasons: the respondent failed to establish (1) the CI's reliability, and (2) the CI's basis of knowledge. Thus, appellant contends that the search-incident-to-lawful-arrest exception does not apply. "A search incident to a lawful arrest is a well-recognized exception to the warrant requirement under the Fourth Amendment." *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015). Under this exception, "[p]olice may search a vehicle incident to a recent occupant's arrest." *Arizona v. Gant*, 556 U.S. 332, 351, 129 S. Ct. 1710, 1723 (2009). But

there must be probable cause to arrest at the time that the search occurs. *State v. Cornell*, 491 N.W.2d 668, 671-72 (Minn. App. 1992).

“To establish probable cause, the police must show that they reasonably could have believed that a crime has been committed by the person to be arrested.” *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997). Courts examine the totality of the circumstances to determine whether the information provided by a confidential informant is enough to establish probable cause. *State v. Ross*, 676 N.W.2d 301, 303-04 (Minn. App. 2004), *review denied* (Minn. June 15, 2004). “If a case is close, the lack of a warrant may weigh against finding probable cause.” *Id.* at 304 (citing *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000), *review denied* (Minn. July 25, 2000)). The “credibility and veracity of the informant” is particularly important. *Id.* (quoting *Munson*, 594 N.W.2d at 136).

An informant’s tip may establish probable cause if it has sufficient indicia of reliability. *In re Welfare of G.M.*, 560 N.W.2d at 690. Courts consider six factors when determining the reliability of confidential information:

- (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.

Ross, 676 N.W.2d at 304.

Only two of the six factors, the third and sixth, are at issue here. In its analysis of factor three, the district court found that CI’s tip was corroborated because CI “provided

information that accurately predicted future activity of [appellant]—he would bring cocaine to the Latin Conga Bistro at a certain time.” Officer Schroeder testified that CI told him that appellant would deliver cocaine to Conga Latin Bistro, and then on cross-examination, Officer Schroeder clarified that CI stated appellant would deliver cocaine to the general area. In his application for a search warrant, Officer Schroeder claims that CI told him appellant would deliver cocaine to a Wells Fargo Bank near Conga Latin Bistro. Based on Officer Schroeder’s statements, it is nearly impossible to know where CI said appellant would deliver the cocaine. But it was not until after appellant’s arrest that Officer Schroeder discovered cocaine in the Uber. The district court erred by considering evidence obtained *after* the arrest to establish that there was probable cause *for* the arrest. *Henry v. United States*, 361 U.S. 98, 103, 80 S. Ct. 168, 171 (1959) (stating a defendant’s “arrest is not justified by what the subsequent search discloses”); *State v. Walker*, 584 N.W.2d 763, 769 (Minn. 1998) (“The legality of the arrest is determined based on the information the police took into consideration when making the arrest, not what was uncovered thereafter.”).

Respondent, however, argues that CI’s tip was sufficiently corroborated under *Ross*, because CI provided a detailed prediction of future activity. We disagree. Our review of *Ross* supports a finding that CI’s tip was not sufficiently corroborated. In *Ross*, a confidential reliable informant (CRI)² provided officers information that crack cocaine would be delivered to a particular address, at a specific time, by a suspect identified as “O,”

² A CRI is an informant that has previously provided law enforcement with a reliable tip.

and provided O's license plate number. *Ross*, 676 N.W.2d at 303. Officers conducted a vehicle registration check which revealed that the license plate was registered to the defendant. *Id.* While officers conducted surveillance of the particular address, CRI called them and stated that the defendant was actually driving a maroon rental car and that he was wearing a black golf hat and a blue shirt. *Id.* Police saw the defendant arrive at the particular address, at the specific time CRI provided, dressed as CRI described, and driving a maroon rental car. *Id.* Police detained and handcuffed the defendant, and searched the trunk of his car. *Id.*

In *Ross*, the district court suppressed the evidence finding there was no evidence of CRI's reliability. *Id.* We reversed and concluded that because officers verified CRI's information including "the time and place of arrival, the car, the hat, the shirt, and a given name," the third factor regarding CRI's reliability "lean[ed] heavily in favor of finding probable cause." *Id.* at 305. And we noted that the "information predicting future behavior by [the defendant] . . . was verified by law-enforcement prior to the search." *Id.*

Unlike CRI in *Ross*, CI did not tell Officer Schroeder the specific address appellant would arrive at, the specific time he would arrive, how he would arrive, what he would be wearing, or what his name was. The tip CI provided Officer Schroeder contained general details unlike those in *Ross*. And the corroboration present here—that appellant arrived in the general area of his place of work within a general timeframe—is neither specific enough nor sufficient enough to establish CI's reliability. It does not link appellant to criminal activity. *See id.* at 304 ("An informant's reliability is not enhanced if the informant merely gives information that is easily obtained."); *Cook*, 610 N.W.2d at 668 (stating innocuous

details that lack incriminating aspects cannot establish a link between the CRI and illegal conduct).

In its analysis of factor six, respondent argues that CI made a statement against interest when CI admitted to previously purchasing drugs from appellant. While informants are minimally more reliable if they make a statement against their own interest, “courts remain reluctant to believe the typical ‘stool pigeon’ who is arrested and who, at the suggestion of the police, agrees to cooperate and name names in order to curry favor with the police.” *State v. Ward*, 580 N.W.2d 67, 71-72 (Minn. App. 1998). And, “a statement against interest establishes reliability only when combined with another factor, such as corroboration or coming forward voluntarily.” *Id.* at 72. Officer Schroeder testified that after arresting CI, CI provided information to work off CI’s own criminal case. Thus, CI is a “stool pigeon” whom courts are reluctant to believe. *Id.* at 71-72. None of the other factors of reliability have been established here. After examining the totality of the circumstances, we conclude that CI’s tip lacked a sufficient indicia of reliability to establish probable cause for appellant’s arrest under the *Ross* factors.

Even if there were sufficient indicia of reliability for CI’s tip, “[t]he information obtained from the [informant] must still show a basis of knowledge.” *Cook*, 610 N.W.2d at 668. Respondent argues that the district court properly found that CI had a sufficient basis of knowledge because CI bought drugs from appellant “within the last 72 hours and had personally witnessed [a]ppellant sell narcotics to others.” We disagree.

An informant’s basis of knowledge may be established by showing the informant had firsthand knowledge or “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.”

Id. An informant's statement that they observed an event first-hand “entitles [their] tip to greater weight than might otherwise be the case.” *Illinois v. Gates*, 462 U.S. 213, 234, 103 S. Ct. 2317, 2330 (1983). “Assessment of the [informant's] basis of knowledge involves consideration of the quantity and quality of detail in the [informant's] report and whether police independently verified important details of the informant's report.” *Cook*, 610 N.W.2d at 668 (citing *Alabama v. White*, 496 U.S. 325, 331-32, 110 S. Ct. 2412, 2417 (1990)).

The district court incorrectly concluded that because CI had bought drugs from appellant in the previous 72 hours and witnessed appellant sell drugs to others, there was a sufficient basis of knowledge for CI's tip. This information does not establish a sufficient basis of knowledge for how CI knew that appellant would be in the general area of his place of employment, within a general time period, with cocaine. As appellant correctly points out, the record lacks any details about how CI gained firsthand knowledge. The self-verifying details here—that appellant would arrive at his workplace at a general time—do not support an inference that CI gained the information in a reliable way that was not merely based on appellant's general reputation.

After examining the totality of the circumstances, we conclude that respondent did not establish CI's basis of knowledge and probable cause did not support appellant's arrest. The district court erred when it found that the search of the Uber was a valid search incident to lawful arrest.

II. The *Terry* stop exception to the warrant requirement of the Fourth Amendment did not authorize officers to search the Uber.

Respondent contends that the *Terry* stop exception to the warrant requirement of the Fourth Amendment permitted the officers to search the Uber appellant occupied. “It is well settled that in accordance with the Fourth Amendment of the United States Constitution a police officer may not stop a vehicle without a reasonable basis for doing so.” *In re Welfare of G.M.*, 560 N.W.2d at 691 (quoting *Marben v. Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980)). The *Terry* exception, however, permits officers to conduct a limited investigatory stop of a vehicle—a *Terry* stop—to investigate suspected criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). A valid *Terry* stop requires that officers have a reasonable, articulable suspicion of criminal activity. *Id.* The reasonable, articulable suspicion standard is met when the officer “observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *In re Welfare of G.M.*, 560 N.W.2d at 691).

Here, the district court held that the *Terry* stop exception to the warrant requirement of the Fourth Amendment authorized officers’ search of the Uber. But a *Terry* stop only authorizes a *limited investigatory stop* of a vehicle, not a *warrantless search* of a vehicle. Here, officers did not conduct *any* investigation between the time the Uber stopped and appellant’s arrest. Officer Schroeder agreed that officers “did not confirm any kind of information with the occupants [of the Uber] prior to their stop and arrest” and instead,

officers “[p]ulled them right out of the vehicle.” In short, the officers skipped the investigatory part of a *Terry* stop and went directly to an arrest.³

Because officers did not conduct a limited investigatory stop of the Uber, we conclude that the district court erred when it determined that the *Terry* stop exception to the warrant requirement of the Fourth Amendment authorized officers to search the Uber.

III. The district court erred in failing to suppress evidence.

Having determined that appellant’s warrantless arrest and the later search of the Uber were not valid under either the search-incident-to-lawful-arrest or *Terry* exceptions to the warrant requirement, we turn to whether the district court erred when it failed to suppress the evidence. Appellant argues that evidence discovered through the search of the Uber is inadmissible as fruit of his unlawful arrest and the district court erred in failing to suppress the evidence. Appellant also contends that any evidence found in his home “when executing the search warrant issued following his unlawful arrest is also fruit of the officers’ unlawful conduct” and was inadmissible.

A. Evidence discovered through the unlawful search of the Uber must be suppressed.

Evidence seized as a result of a violation of the Constitution must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007). When officers lack probable

³ A *Terry* search is “a carefully limited frisk for weapons.” *State v. Dickerson*, 481 N.W.2d 840, 846 (Minn. 1992) (quoting *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884). And the purpose of a *Terry* search “is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.” *Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S. Ct. 2130, 2136 (1993) (quotation omitted). Thus, *Terry* did not permit officers to search the vehicle in any event.

cause to arrest a defendant but conduct a subsequent search, the search is improper and violates the Constitution. *Walker*, 584 N.W.2d at 769.

Here, without probable cause, officers arrested appellant and then searched the Uber in which he rode. While searching the Uber, officers discovered cocaine in a map pocket and in a hide can. Because appellant's arrest lacked probable cause, the later search of the Uber was improper. The officers' seizure of evidence discovered in the Uber violated the Constitution. We conclude the district court erred in failing to suppress the evidence discovered during the unlawful search of the Uber.

B. Evidence discovered during the search of appellant's home must be suppressed.

Unlawfully seized evidence cannot "be used to furnish probable cause" for a subsequent search warrant. *State v. Krech*, 399 N.W.2d 203, 206 (Minn. App. 1987), *aff'd on other grounds*, 403 N.W.2d 634 (Minn. 1987). But if lawfully obtained information establishes probable cause for the search warrant, "and, by itself and apart from any tainted information, would have justified issuance of the search warrant, the evidence seized pursuant to the warrant is admitted." *State v. Hodges*, 287 N.W.2d 413, 416 (Minn. 1979). We use a two-part test to analyze whether an independent source of information supporting probable cause for the search warrant "is genuinely independent" of the tainted information. *State v. Lieberg*, 553 N.W.2d 51, 55 (Minn. App. 1996). First, we must decide "whether the decision of the issuing magistrate was 'affected' by the tainted information." *Id.* at 55. We answer this question by considering whether an affidavit without the tainted information would establish probable cause. *Id.* Second, we must

determine whether the tainted information “prompted law enforcement officials to seek the warrant.” *Id.* When an unlawful search prompted authorities to seek a warrant, the evidence must be suppressed. *Id.* at 58.

Here, tainted information in Officer Schroeder’s affidavit affected the decision of the issuing magistrate. Officer Schroeder’s affidavit contained the following information: (1) Officer Schroeder received a tip from CI that appellant would deliver a large amount of cocaine to the Wells Fargo parking lot, (2) officers surveyed the Wells Fargo parking lot and saw appellant sitting in the backseat of the Uber, (3) officers found cocaine in the Uber, (4) officers found about \$500 on appellant’s person, (5) officers found appellant’s Minnesota ID on him and determined his home address, (6) appellant stated he lived at the address listed on his Minnesota ID, and (7) the Uber driver stated that he picked appellant up from that address. Removing the tainted information from Officer Schroeder’s affidavit that officers obtained from appellant’s illegal arrest leaves only two facts: (1) Officer Schroeder received a tip that appellant would deliver cocaine somewhere around the Wells Fargo parking lot, and (2) Officer Schroeder saw appellant sitting in the backseat of an Uber. This information does not establish probable cause to search appellant’s home.

The tainted information prompted Officer Schroeder to seek the warrant. Less than an hour after arresting appellant, Officer Schroeder applied for a warrant to search appellant’s home. Officer Schroeder testified that he drafted the search warrant based on the information officers learned through appellant’s unlawful arrest.

We conclude that lawfully obtained information does not establish probable cause for the search warrant. Thus, the district court erred in admitting evidence discovered during the search of appellant's home.

IV. Conclusion

Officers discovered cocaine in the Uber appellant occupied only because of an unlawful arrest and search. No exception to the warrant requirement applies. Officers similarly discovered cocaine in appellant's home only as a result of an invalid search warrant. Nothing in the record supports a conclusion that lawfully obtained information supported the search of appellant's home. We conclude that the district court erred by not suppressing the evidence discovered as a result of the search of the Uber and appellant's home. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.