STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0193

State of Minnesota,
Respondent,

vs.

Ronald Anthony Falk,
Appellant.

Filed December 19, 2022
Affirmed
Halbrooks, Judge[*]

Hennepin County District Court
File No. 27-CR-20-23734

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Brayanna J. Bergstrom, Special Assistant Public Defender, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant Ronald Anthony Falk challenges his conviction of fifth-degree drug possession, arguing that the district court erred by not suppressing evidence that resulted from an unlawful search and seizure. We affirm.

FACTS

On November 5, 2020, at 8:12 p.m., a male individual called 911 and told the dispatcher that, between 8:00 p.m. and 9:00 p.m., a man named "Anthony Falk" would be selling methamphetamine to the 911 caller's 17-year-old son at a Subway restaurant in Richfield. Dispatch sent an officer from the Richfield Police Department (the lead officer) to the Subway, and the lead officer arrived a few minutes later. Dispatch subsequently sent three other officers to assist the lead officer. The lead officer and another officer parked in the CVS parking lot across the street from the Subway, facing the store. The other two officers parked in a nearby Dunkin' Donuts parking lot and could not see the Subway.

For approximately one hour, the lead officer used binoculars to surveil the Subway, where an adult male in street clothes and a juvenile male in a Subway uniform were performing closing duties. It was dark, and although the binoculars were not "particularly strong," they provided a "noticeably closer, more detailed [view] than a squad video." The lead officer found a booking photo of "Ronald Falk" and concluded that the adult male in the Subway was the same person. The juvenile male was later identified as E.I. Falk and E.I. finished cleaning the Subway at approximately 9:10 p.m. and left through the front doors.

Falk and E.I. were talking and smoking what appeared to be cigarettes in front of the Subway when the lead officer saw them exchange an item. The lead officer could not see what the item was. But, based on her narcotics training and experience, she believed that she had observed a hand-to-hand drug transaction. The lead officer radioed the other officers, told them what she had seen, and asked them to make contact with Falk and E.I. All four officers left their posts and drove to the Subway.

When the officers arrived on scene, Falk was holding a cigarette in his right hand and had his left hand near his left front pants pocket. When Falk saw the police pull up, Falk slid his left hand inside his left pocket and then quickly removed it, slightly raised both hands with his palms facing down, and then dropped both hands simultaneously. Apart from these quick movements, Falk remained in place as the officers approached him. One of the officers (the arresting officer) made contact with Falk, asked Falk to put out his cigarette, and told Falk that he was going to pat him down. Falk complied and agreed to be patted down.

The arresting officer placed Falk's hands behind his back to detain him and perform a protective-weapons search, also known as a pat-frisk. During that search, the arresting officer felt a small jar in Falk's left front pants pocket. Based on his narcotics training and experience, the arresting officer believed that the jar contained drugs. The arresting officer reached inside Falk's pocket, removed the jar, and said, "Oh, wow, that's a rock of crack." The arresting officer then handcuffed Falk, searched Falk's person, and found what he suspected to be marijuana and drug paraphernalia.

Respondent State of Minnesota charged Falk with one count of fifth-degree drug possession in violation of Minn. Stat. § 152.025, subd. 2(1) (2020). The state amended its complaint to add one count of second-degree sale of drugs to a minor in violation of Minn. Stat. § 152.022, subd. 1(6) (2020). Falk moved to suppress all evidence, arguing that it was unlawfully obtained during an illegal search and seizure. The district court held a contested hearing on the matter, during which the state introduced testimony from the lead officer and the arresting officer, as well as dashboard-camera video from two of the squad cars on scene.

The district court denied Falk's motion to suppress. In its order, the district court credited the officers' testimony and concluded that (1) the 911 caller was a concerned citizen who was presumptively reliable, (2) the arrest of Falk was supported by probable cause, and (3) the search of Falk was lawful. The parties subsequently stipulated to the state's facts and proceeded to a bench trial under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the pretrial ruling. The state dismissed the second-degree sale-of-drugs-to-a-minor charge. The district court found Falk guilty of fifth-degree drug possession, stayed imposition of Falk's sentence, and ordered drug-related probation conditions under Minn. Stat. § 609.135 (2020). This appeal follows.

DECISION

When reviewing a pretrial order on a motion to suppress evidence, we examine the district court's factual findings for clear error and its legal conclusions de novo. *State v. Brown*, 932 N.W.2d 283, 289 (Minn. 2019). When the facts are not disputed, as is the case here, we review a district court's ruling on a motion to suppress de novo and

determine whether the police articulated an adequate basis for the challenged police conduct. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are unreasonable under both federal and state law unless a recognized exception to the warrant requirement applies. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 474 (1971); *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). The state bears the burden of showing that such an exception applies. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

"A search incident to a lawful arrest is a well-recognized exception to the warrant requirement." *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015) (citing *Arizona v. Gant*, 556 U.S. 332, 338 (2009)). "Under this exception, the police are authorized to conduct a full search of the person who has been lawfully arrested." *Id.* at 767 (quotation omitted). The search can occur before the arrest, but the police must have probable cause for the arrest at the time of the search. *In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997). We review a district court's probable cause determination de novo. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The police have probable cause to arrest an individual without a warrant when an ordinary person, viewing the totality of the circumstances, "would entertain an honest and strong suspicion" that the individual has committed a crime. *Ortega*, 770 N.W.2d at 150. "[T]he 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." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). Accordingly, we "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).

The district court determined that the police had probable cause to arrest Falk based on the 911 caller's tip and the lead officer's observations. Accordingly, the district court concluded that the search of Falk was lawful because it was incident to a valid arrest. Falk argues that neither the tip nor the lead officer's observations individually nor the two together were sufficient to establish probable cause, and thus that the search of Falk was unlawful. We are not persuaded.

The 911 caller's tip was reliable.

The district court determined that the 911 caller was a concerned citizen and therefore was presumptively reliable. Accordingly, the district court concluded that the 911 caller's tip and the lead officer's observations gave the police probable cause to arrest Falk and thereby search his person. Falk argues that the 911 caller was an anonymous informant who was not reliable based on the factors set forth by this court in *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004), *rev. denied* (Minn. June 16, 2004).

When determining whether an informant's tip can provide the basis for probable cause, we consider the totality of the circumstances, including the credibility and veracity of the informant and the source of the informant's knowledge. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999); *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000), *rev. denied* (Minn. July 25, 2000). Minnesota law recognizes several kinds of

informants, including concerned citizens, confidential informants, and anonymous informants. *See State v. McCloskey*, 453 N.W.2d 700, 703 (Minn. 1990) (explaining that courts "recognize[] that each informer is different and that all of the stated facts relating to the informer should be considered in making a totality-of-the-circumstances analysis"); *State v. McGrath*, 706 N.W.2d 532, 540 (Minn. App. 2005) (distinguishing concerned citizens from other types of informants), *rev. denied* (Minn. Feb. 22, 2006); *Ross*, 676 N.W.2d at 304 (detailing the factors used to determine the reliability of confidential informants).

"A 'concerned citizen' is an informant who provides information in his or her capacity as a witness to a crime, for whom a law enforcement officer is relieved of having to establish credibility and veracity independently through corroboration or a history of providing reliable information." *McGrath*, 706 N.W.2d at 540. Concerned citizens are different from other informants because they seek "to aid law enforcement out of concern for society or for personal safety," not because they desire leniency or immunity from prosecution. *Id.* Accordingly, concerned citizens are "preferred" informants and are presumptively reliable. *Id.*; *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007).

In contrast, neither confidential informants nor anonymous informants are presumed to be reliable. *See McCloskey*, 453 N.W.2d at 703; *Ross*, 676 N.W.2d at 304. Courts determine whether these informants are reliable based on the following factors: whether the informant (1) is a first-time informant, (2) has given reliable information in the past, (3) has provided information that the police can corroborate, (4) voluntarily comes

forward, (5) is involved in a "controlled purchase,"[1] and (6) provided information against the informant's interest. *Ross*, 676 N.W.2d at 304; *see McCloskey*, 453 N.W.2d at 703-04.

Based on the record before this court, we cannot conclude that the 911 caller was a concerned citizen. Nevertheless, we conclude that the 911 caller was reliable because: (1) he voluntarily provided the police with information that the officers could and did corroborate, (2) he provided the police with information that enabled the officers to follow up with him, and (3) he acted against his and his son's interests by reporting the suspected drug transaction involving his son. We consider each of these factors in turn.

First, the Minnesota Supreme Court has held that an informant is reliable if the "details of the tip have been sufficiently corroborated so that it is clear the informant is telling the truth on this occasion." *State v. Siegfried*, 274 N.W.2d 113, 115 (Minn. 1978); *see also McCloskey*, 453 N.W.2d at 704 (concluding that even "minimal corroboration" is relevant to the probable-cause analysis); *State v. Holiday*, 749 N.W.2d 833, 844 (Minn. App. 2008) (affirming the district court's probable-cause determination in part because the police were able to corroborate the informant's tip); *Ross*, 676 N.W.2d at 304 (including providing information that can be corroborated among the factors that courts consider when determining whether an informant is reliable). Here, the 911 caller provided the police with very specific information that the officers could and did corroborate. The 911 caller told dispatch that "Anthony Falk" would be selling methamphetamine to the caller's juvenile son between 8:00 p.m. and 9:00 p.m. at the Subway store in Richfield. When the

[1] A "controlled purchase" is a drug transaction that is organized by law enforcement and executed by a police informant. *See State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998).

lead officer began surveilling the store, she observed an adult male, whom she identified as Falk based on a booking photo, and a juvenile male (E.I.) performing closing duties. Shortly after 9:00 p.m., the lead officer saw Falk and E.I. leave the store and exchange an item. Each of these observations aligns with the 911 caller's tip, indicating that the 911 caller was telling the truth and therefore was reliable. *See Siegfried*, 274 N.W.2d at 115; *Ross*, 676 N.W.2d at 304.

Second, an informant's reliability is enhanced when the informant provides the police with identifying information that enables the police to follow up with the informant. *State v. Timberlake*, 744 N.W.2d 390, 394 (Minn. 2008) (citing *Davis*, 732 N.W.2d at 183). Relatedly, an informant's use of the 911 system contributes to a determination that the informant is reliable because the 911 system has features that enable the police to trace and identify callers. *Navarette v. California*, 572 U.S. 393, 400-01 (2014); *see City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 890 (Minn. 1988) (holding that a 911 caller who identified himself as a gas station attendant at the Q Petroleum Station in Minnetonka was reliable in part because the police were able to verify his identity and holding that the police were justified in assuming that the caller described himself truthfully). Here, the 911 caller used the 911 system and identified himself as the father of the juvenile male who was working at the Subway store in Richfield at the time of the call, thereby strengthening his reliability. *See Timberlake*, 744 N.W.2d at 394; *Shepherd*, 420 N.W.2d at 890.

Third, because the police justifiably assumed that the 911 caller was the father of the juvenile male, *see Shepherd*, 420 N.W.2d at 890, the 911 caller acted against his and his son's interests by reporting the suspected drug transaction. When the 911 caller

informed the police that Falk would be selling drugs to his juvenile son, the 911 caller had a motive to tell the truth about his son's involvement with drugs to protect him, even if it also implicated his son in criminal activity. The fact that the 911 caller acted against his and his son's interests when he provided the tip further suggests that he was reliable. *Ross*, 676 N.W.2d at 304.

In sum, the totality of the circumstances show that the 911 caller's tip was reliable.

The police had probable cause to arrest Falk based on the 911 caller's tip and the lead officer's observations.

As discussed, probable cause exists when an ordinary person, viewing the totality of the circumstances, "would entertain an honest and strong suspicion" that a crime had been committed. *Ortega*, 770 N.W.2d at 150. The totality of the circumstances includes reasonable inferences made by police officers based on their training and experience. *Lester*, 874 N.W.2d at 771. We give "due weight" to these inferences and to a district court's finding that they were reasonable. *Id.* (quotation omitted).

Falk urges this court to reject the district court's determination that the lead officer's testimony was credible. We decline to do so. As an error-correcting court, this court will not substitute its judgment for that of the district court on witness credibility. *State v. Hahn*, 799 N.W.2d 25, 39 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011). Accordingly, we review district court's credibility determinations for clear error. *See State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016) (noting that this court defers to the district court's credibility determinations), *rev. denied* (Minn. Nov. 15, 2016); *Brown*, 932 N.W.2d at 289 (noting that this court reviews the district court's findings for clear error). "Findings of

fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010). Because the lead officer's testimony is supported by the record, the district court did not clearly err in crediting it. *See id.* Accordingly, we consider the lead officer's testimony when determining whether the police had probable cause to arrest Falk.

Here, the 911 caller's tip and the lead officer's observations gave the police probable cause to arrest Falk after the hand-to-hand transaction occurred.[2] Following the 911 call, dispatch sent the lead officer to the Subway store in Richfield. Upon her arrival, the lead officer saw an adult male in plain clothes (Falk) helping a juvenile male in a Subway uniform (E.I.) close the store. The lead officer identified Falk based on a booking photo and observed Falk and E.I. for an hour. At approximately 9:10 p.m.—around the time that the 911 caller said the drug transaction would occur—Falk and E.I. left the store and exchanged an item. Based on her narcotics training and experience, the lead officer believed that she had witnessed a drug deal. These observations, in addition to the 911 caller's tip, would leave an ordinary person with an "honest and strong suspicion" that a crime had been committed. *See, e.g.*, *McCloskey*, 453 N.W.2d at 700-04 (affirming a probable-cause determination based on corroborated information from a confidential informant and the defendant's criminal record); *Holiday*, 749 N.W.2d at 843-44 (affirming a probable-cause determination based on partially corroborated information from a

[2] The parties agree that Falk was under arrest when the arresting officer placed Falk's hands behind his back. Accordingly, we consider whether the police had probable cause to arrest Falk at that point.

confidential informant, the defendant's suspicious but noncriminal behavior during a controlled drug sale, and the defendant's criminal record). Based on this record, the police had probable cause to arrest Falk after the hand-to-hand transaction occurred. Therefore, the search of Falk was incident to a valid arrest. Accordingly, the district court did not err by denying Falk's motion to suppress.[3]

Affirmed.

[3] Falk also argues that the police did not have reasonable suspicion to stop him or search his person under *Terry v. Ohio*, 392 U.S. 1 (1968). Because we conclude that the police had probable cause to arrest Falk after the hand-to-hand transaction occurred, we do not address whether the stop and frisk was lawful under *Terry*.