

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0885**

State of Minnesota,
Respondent,

vs.

Carlos Angelo Casarez,
Appellant.

**Filed April 17, 2023
Affirmed
Slieter, Judge**

Mahnomen County District Court
File No. 44-CR-20-143

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

Julie Bruggeman, Mahnomen County Attorney, Mahnomen, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max Brady Kittel, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant Carlos Casarez challenges his conviction of first-degree drug possession
and possession of a firearm as an ineligible person, arguing that the district court erred by

not suppressing evidence discovered during the warrantless seizure of his automobile. Because the seizure of his vehicle was supported by probable cause, we affirm.

FACTS

The parties stipulated to the prosecution's case to preserve appellate review of the district court's pretrial suppression ruling. *See* Minn. R. Crim. P. 26.01, subd. 4. The following facts derive from the July 7, 2020 suppression hearing.

Sometime after dark on March 5, 2020, a confidential reliable informant (CRI) reported to law enforcement "that [he] had met up with [C.D.] and another unknown male sometime that day, and they were discussing a possible drug deal." The CRI further reported that he had "identified what [he] recognized as a gallon Ziploc bag, approximately a quarter full of large shards of methamphetamine" under the "hood of a car, a silver Lincoln," "with some suspension issues in the back that caused the car to sag and a large red sticker on the rear driver's side portion of the car." The CRI did not identify the location of the vehicle, but he "mentioned that the male and [C.D.] had talked about going to White Earth that evening." The CRI described the male as "possibl[y] Native American wearing a ball cap and glasses."

Officers searched for the silver Lincoln and discovered that a vehicle matching the CRI's description had dropped C.D. off at the Shooting Star Casino shortly before 9:00 p.m., then visited the StarMart gas station in the casino complex before driving north on U.S. Highway 59. Surveillance video showed that the driver of the vehicle was wearing a baseball cap and eyeglasses. Casino staff was asked to notify law enforcement if the silver Lincoln returned, and local law enforcement continued to watch for the vehicle. Later that

night, an officer was notified that the vehicle had returned to the casino. Casino staff, using his “Player’s Card,” located the driver inside the casino and identified him as Casarez. The officer observed Casarez leave the casino and drive the silver Lincoln to a “nearby residence” then return to the casino.

Officers met the next morning and decided to obtain a search warrant to search the silver Lincoln, but, before a warrant application could be submitted, their meeting was interrupted by news from the casino’s surveillance staff that Casarez had left the hotel, gotten into the silver Lincoln, and had driven to the StarMart gas station. Officers responded to StarMart and made immediate contact with Casarez as he was standing in front of the silver Lincoln. An officer handcuffed Casarez and patted him down for weapons. No weapons or contraband were found during the pat search, and Casarez was transported to the sheriff’s office.

Officers had the silver Lincoln towed to a secure location where they subsequently executed a search warrant,¹ finding a firearm and a large amount of methamphetamine in the vehicle.

The state charged Casarez with first-degree drug possession, in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2018), and ineligible person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2019). Casarez moved to suppress the evidence, claiming the officers lacked probable cause justifying the warrantless seizure of his vehicle. The district court denied Casarez’s suppression motion. Following the

¹ Officers obtained a warrant to search the vehicle after it had been seized.

stipulated-evidence trial, the district court found Casarez guilty on both counts. Casarez appeals.

DECISION

“When reviewing a district court’s pretrial order on a motion to suppress evidence, ‘we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.’” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)). “We give great deference to a district court’s findings of fact and will not set them aside unless clearly erroneous.” *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010). “Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred.” *Id.* “If we find reasonable evidence to support the district court’s findings of fact, we will not disturb those findings.” *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008) (quotation omitted).

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. Ordinarily, the warrantless seizure of personal property is “*per se* unreasonable within the meaning of the Fourth Amendment.” *United States v. Place*, 462 U.S. 696, 700 (1983). One exception to the warrant requirement is the automobile exception, which allows law enforcement to “search a vehicle without a warrant . . . if they have probable cause to believe the search will result in a discovery of evidence or contraband.” *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991) (citing *United States v. Ross*, 456 U.S. 798 (1982)). Probable cause to seize and search a vehicle exists when the “facts and

circumstances” would lead a “reasonably prudent [person] to believe that the vehicle contains contraband.” *State v. Johnson*, 277 N.W.2d 346, 349 (Minn. 1979); *see also State v. Roy*, 265 N.W.2d 663, 665 (Minn. 1978) (holding that probable cause for a warrantless search of a vehicle pursuant to the automobile exception also justified towing the vehicle without a warrant).

Whether information provided by a confidential informant can establish probable cause “depends on the totality of the circumstances of the particular case, including the credibility and veracity of the informant.” *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). In close cases, “the lack of a warrant may weigh against finding probable cause.” *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004), *rev. denied* (Minn. June 15, 2004).

Casarez argues that law enforcement lacked probable cause to seize his motor vehicle because the basis for the seizure of the vehicle—the CRI’s tip—was stale and was not sufficiently reliable to establish probable cause.² We address each argument in turn.

Staleness of CRI’s Tip

Probable cause exists if “certain identifiable objects . . . may probably be found at the present time.” *State v. Ward*, 580 N.W.2d 67, 72 (Minn. App. 1998) (quoting *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *rev. denied* (Minn. Jan. 14, 1985)). Generally, a single incident of criminal activity will only support a finding of probable cause for a few days. *Id.* Factors for evaluating whether information is stale include

² Respondent State of Minnesota did not file a brief in this appeal. This matter therefore proceeds pursuant to Minn. R. Civ. App. P. 142.03, which provides that if a respondent does not file a brief, the case shall be determined on the merits.

“whether there is any indication of ongoing criminal activity, whether the articles sought are innocuous or incriminating, whether the property sought is easily disposable or transferable, and whether the items sought are of enduring utility.” *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998).

Casarez argues the CRI’s tip was stale because vehicles are typically used to transport, not store, drugs. We are not persuaded.

Officers discovered the vehicle less than 24 hours after receiving the tip. The vehicle had stopped at a gas station on a main highway after leaving the casino, a temporary accommodation, and the CRI alleged that the vehicle was transporting a significant amount of methamphetamine. Considering the totality of these circumstances, the tip was not stale. *See State v. Demry*, 605 N.W.2d 106, 109 (Minn. App. 2000) (holding probable cause existed for the search of a vehicle’s bumper based on information provided by an informant four to six weeks before the search occurred), *rev. denied* (Minn. Mar. 28, 2000); *see also Souto*, 578 N.W.2d at 750 (finding probable cause did not exist for the search of a home based on information received six to ten months prior).

Casarez points to caselaw indicating that persons who deal large quantities of drugs typically store them at home. *See e.g., Novak v. State*, 349 N.W.2d 830, 833 (Minn. 1984) (stating that a person who deals large quantities of drugs is likely to store drugs at their residence); *State v. Bynum*, 579 N.W.2d 485, 487 (Minn. App. 1998) (stating that it is reasonable to infer that one who sells drugs from their automobile would keep a supply of drugs at their residence, especially when the vehicle is seen parked at the person’s residence overnight), *rev. denied* (Minn. Aug. 18, 1998). But Casarez has identified no authority,

and we have found none, to suggest that a CRI's tip of drug-related criminal activity in a *motor vehicle* becomes stale earlier than a tip of drug-related criminal activity in a *residence*. The fact that vehicles are typically used to transport drugs does not lessen their connection with criminal activity because possessing methamphetamine is crime regardless of whether it is being stored at a residence or transported in a vehicle. *See Demry*, 605 N.W.2d at 109. Furthermore, in this case, less than 24 hours elapsed between the CRI's tip and the search of the vehicle, which is substantially less than the weeks-long time lapse that was upheld in *Demry*. *Id.*

Reliability of the CRI's Tip

There are six factors for determining the reliability of a confidential 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.

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

Casarez concedes the first factor is neutral because the CRI was not a first-time informant. Casarez also concedes that the second factor favors the tip's veracity because the CRI had previously provided reliable information. However, Casarez argues that all remaining factors indicate that the CRI's tip was not reliable. Our review of the remaining *Ross* factors persuades us otherwise.

The third *Ross* factor reflects the idea that corroborated information, specifically information that is not easily obtainable, tends to be more reliable. *See id.* at 304-05. A CRI's predication of future behavior that is corroborated by law enforcement is particularly compelling in determining whether the information is reliable. *Id.* at 305. In this case, the CRI informed law enforcement that the male driving the silver Lincoln with the methamphetamine under the hood talked about going to "White Earth," which officers understood meant that the vehicle and methamphetamine would be transported to the White Earth Reservation. The CRI's prediction was corroborated by surveillance video showing C.D. being dropped off by a vehicle matching the CRI's description at the Shooting Star Casino, which is on the White Earth Reservation. Thus, this factor lends credit to the tip's veracity.

Casarez argues that the third *Ross* factor undermines the tip's veracity because it is based on the district court's finding that the CRI predicted "the person Defendant will be associating with . . . in Mahnomen." Casarez argues that the CRI did not accurately predict the person or location, making this finding clearly erroneous.

Although the CRI's prediction of the person with whom Casarez would be associating with once in Mahnomen was not corroborated, it does not change the fact that much of the CRI's tip, as we have already explained, was corroborated. Additionally, the city of Mahnomen is within the White Earth Reservation. Thus, the district court's finding that the male driving the silver Lincoln would be traveling to Mahnomen it is not clearly erroneous.

The fourth *Ross* factor, whether the CRI came forward voluntarily, supports the tip's veracity. The CRI contacted law enforcement with the tip about the silver Lincoln carrying methamphetamine under its hood. The CRI's contact was not previously arranged by law enforcement, nor was the tip related to any ongoing investigations. The record therefore suggests that the CRI's contact was voluntary.

The fifth *Ross* factor is neutral in relation to the tip's veracity because the CRI did not conduct a controlled buy.

The sixth *Ross* factor is neutral in relation to the tip's veracity because nothing in the record suggests that the CRI made a statement against self-interest.

On balance, the *Ross* factors establish that the CRI's tip was sufficiently reliable to establish probable cause that Casarez's vehicle would contain evidence of a crime. And because this information had not become stale by the time police made contact with Casarez at the gas station, police were authorized to seize his vehicle without a warrant pursuant to the automobile exception. We therefore affirm the district court's denial of Casarez's motion to suppress because probable cause supported the warrantless seizure of his vehicle.³

Affirmed.

³ Casarez also argues that the district court applied the wrong standard for his detention by finding that it was an investigatory stop supported by reasonable, articulable suspicion. Casarez maintains his detention was a *de facto* arrest, requiring probable cause. We need not address this issue because his detention did not yield any evidence which was used against him.