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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1428**

State of Minnesota,
Appellant,

vs.

David Wokeph Natee,
Respondent.

**Filed March 20, 2023
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-21-17142

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

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Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant argues that (1) the district court's pretrial suppression order in
respondent's favor had a critical impact on the state's ability to prosecute the case, and

(2) the district court erred by suppressing evidence because the district court did not properly credit the veracity and basis of knowledge of the confidential reliable informant. We affirm.

FACTS

In September 2021, police officers with the Minneapolis Police Department Gun Investigation Unit received a tip from a confidential reliable informant (the CRI) that respondent David Wokeph Natee was near Lake Street and 12th Avenue South in a blue BMW SUV. The CRI reported that Natee was in possession of a firearm and drugs, and that the firearm was concealed in the waistband of his pants. Natee is prohibited from possessing a firearm because of a prior felony conviction.

Officers went to the area about 30 minutes later and found a blue BMW SUV parked one block away from the Lake Street and 12th Avenue intersection. Natee was the sole occupant of the vehicle. Officers approached Natee and took him into custody. Officers found a firearm in the waistband of Natee's pants and discovered a bag containing drugs in the back seat of the vehicle. Natee acknowledged that the drugs belonged to him, but claimed the firearm belonged to his wife and he was only carrying it for protection.

Appellant State of Minnesota charged Natee with one count of unlawful possession of a firearm and one count of first-degree possession of a controlled substance. Natee filed a pretrial motion to suppress evidence of the firearm and the drugs. The district court held an evidentiary hearing on Natee's suppression motion and heard testimony from an officer who works as an investigator in the gun investigation unit. Following the hearing, the district court granted Natee's motion. The district court determined that the state did not

adequately establish the basis for the CRI’s knowledge of a crime and that the information underlying Natee’s arrest was not sufficiently corroborated. The district court determined that the information received from the CRI “was insufficient to establish probable cause to arrest and search the car and therefore evidence obtained from that arrest and search is suppressed.”

The state appeals.

DECISION

I. Critical Impact

The state’s ability to appeal in a criminal case is limited. *State v. Lugo*, 887 N.W.2d 476, 481 (Minn. 2016) (citation omitted). In the case of a pretrial order, the state must establish that unless the district court’s ruling is reversed, the alleged error will have a “critical impact” on the outcome of the trial. *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001), *rev. dismissed* (Minn. June 22, 2001). Critical impact exists “where the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution.” *State v. Ault*, 478 N.W.2d 797, 799 (Minn. App. 1991) (quotation omitted). Here, the suppression of the state’s evidence related to the firearm and the controlled substances meets this requirement. Thus, the critical-impact requirement is satisfied and we turn to a consideration of whether the district court’s suppression order was erroneous.

II. Suppression of Evidence

“When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90,

98 (Minn. 1999) (citing *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992)). We review de novo the legal issue of whether a search was justified, and we review findings of fact for clear error. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The United States and Minnesota Constitutions guarantee the right of the people to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This guarantee extends to the right of the people to be secure in their motor vehicles. *Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984); *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). Warrantless searches and seizures are unreasonable unless a recognized exception to the warrant requirement applies. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). The level of suspicion required for a search or seizure is less than that required for an arrest. *See Alabama v. White*, 496 U.S. 325, 330 (1990) (noting that the reasonable-suspicion standard is “obviously less demanding than . . . probable cause”). A seizure requires reasonable, articulable suspicion of a violation of law, *Terry v. Ohio*, 392 U.S. 1, 19-22 (1968), while a seizure amounting to an arrest generally requires probable cause, *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). The state bears the burden of proving that a warrantless search or seizure was constitutionally permissible. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

Here, the state agrees that the officers did not perform a *Terry* stop of Natee, but instead arrested him. The state argues that police officers had probable cause to do so because the CRI provided reliable information that Natee was in possession of a firearm and drugs. The state also argues that because officers had probable cause to arrest Natee, they also had authority to conduct a search incident to that arrest. Again, “[a] warrantless

arrest is reasonable if supported by probable cause.” *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). Probable cause may be established by information provided by a CRI. *State v. Ross*, 676 N.W.2d 301, 304-05 (Minn. App. 2004), *rev. denied* (Minn. June 15, 2004).

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”); *see also State v. McGrath*, 706 N.W.2d 532, 540-42 (Minn. App. 2005) (distinguishing between confidential informants and concerned citizens), *rev. denied* (Minn. Feb. 22, 2006). A CRI has been defined as someone who has provided reliable information to the police in the past that led to an arrest. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999); *see also* 2 Wayne R. LaFare, *Search & Seizure* § 3.3(a) (6th ed. 2004) (noting that informant’s credibility is often established because of the informant’s past performance).

“Whether the information provided by [an informant] is sufficient to establish probable cause is determined by examining the totality of the circumstances, particularly the credibility and veracity of the informant.” *Ross*, 676 N.W.2d at 303-04 (quotation omitted). When determining the reliability of an informant, we consider:

- (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.

The crux of this appeal turns on the second and third considerations.¹

Informant’s past history with the police department

An informant’s prior collaboration with the police enhances the veracity of the tip because it puts the informant in “a position to be held accountable.” *McCloskey*, 453 N.W.2d at 704. The officer testified that the CRI worked with other law enforcement officers for about two years and provided reliable and accurate information. The district court found that the CRI “had a two-year record with the Minneapolis Police Department in providing timely and reliable information that resulted in charges.” The district court determined that the CRI’s past history with the police department leaned toward reliability.

“Having a proven track record is one of the primary indicia of an informant’s veracity.” *Munson*, 594 N.W.2d at 136. But “[r]ecitation of facts establishing [an informant’s] reliability by his proven ‘track record’ . . . does not by itself establish probable cause.” *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *rev. denied* (Minn. July 25, 2000). The informant “must still show a basis of knowledge.” *Id.* This basis of knowledge “may be supplied directly, by first-hand information,” or “indirectly through

¹ The district court also reviewed the fourth consideration, which provides that an informant “is presumably more reliable if the informant voluntarily comes forward.” *Ross*, 676 N.W.2d at 304. Although the informant came forward voluntarily with the information, the police paid him \$400 for the information. The district court therefore found this consideration was neutral.

self-verifying details that allow an inference that the information was gained in a reliable way” and may not be based on the suspect’s general reputation or on rumor. *Id.* “Recent personal observation of incriminating conduct has traditionally been the preferred basis for an informant’s knowledge.” *State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985).

The district court found that the CRI did not have a basis of knowledge about Natee’s activities, and we agree with this determination. The CRI told officers that he personally observed Natee in a blue BMW SUV in possession of drugs and saw a firearm in the waistband of his pants. Beyond this description, however, we agree with the district court that the information provided was scant. The CRI provided no details about how he was able to personally observe Natee in possession of drugs or a firearm. The CRI did not provide a detailed description of the vehicle, such as the make, model, or license plate number. The CRI also failed to provide a physical description of Natee or describe what he was wearing. While the CRI told officers that Natee was in possession of drugs, the CRI did not claim that they personally observed any drug sales. And as to the firearm, the CRI generically described it as a “black semi-automatic firearm.” Given this record, we determine the second consideration does not favor a probable-cause finding.

Corroboration

The third consideration also weighs against a finding that the police officers had probable cause to arrest Natee and search his vehicle. An informant’s “[v]eracity can be established . . . by showing that details of the tip have been sufficiently corroborated so that it is clear the informant is telling the truth on this occasion.” *State v. Holiday*, 749 N.W.2d 833, 840 (Minn. App. 2008) (quotation omitted). Here, the record shows that the

police officers did little to investigate the CRI's tip so that they could corroborate the CRI's information about the firearm or the drugs to establish that a crime occurred. Officers reviewed Natee's criminal history and learned that he had a felony drug conviction for drug possession. Natee is prohibited from possessing a firearm because of this conviction.

Officers went to the area about 30 minutes after receiving the CRI's tip and saw a blue BMW SUV parked one block away from Lake Street and 12th Avenue. Natee was the sole occupant of the vehicle.

But officers did not ascertain whether Natee committed a crime before arresting him. A police officer may conduct a brief investigatory stop if the officer has a reasonable, articulable suspicion that a person has engaged in criminal activity. *Terry*, 392 U.S. at 19-22. Additionally, an officer may conduct a brief stop when observing a traffic violation. *See State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (permitting a police officer to make a brief investigatory stop when the officer observes even an "insignificant" violation of traffic law). The officers did not make a brief investigatory stop here. Instead, they arrested Natee based on the CRI's tip alone. Although officers eventually recovered a firearm from Natee's waistband and drugs from inside the vehicle, evidence obtained after an arrest cannot establish probable cause for the arrest. *Henry v. United States*, 361 U.S. 98, 103 (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."). The record merely shows that police officers

corroborated only easily obtainable facts such as the color of Natee's car and its approximate location. This information is insufficient to sustain a probable-cause finding.

Caselaw supports our conclusion. In *Cook*, an informant reported a crime and provided police officers with the defendant's "appearance and present location." 610 N.W.2d at 669. This court reasoned that the information about the defendant's appearance and location was "easily obtainable by anyone" and that there was "nothing suspicious about the time and place of events." *Id.* Additionally, the informant's information "did not predict any future behavior on [the defendant's] part." *Id.* We therefore determined that the tip did not establish probable cause. *Id.* We acknowledge that, in *Cook*, the informant did not claim to have personally observed any illegal activity. *Id.* at 668-69. In this case, by contrast, the CRI claimed to have personally observed illegal conduct. But the CRI failed to provide a basis of knowledge for this information.

We similarly held in *State v. Albrecht* that an informant's tip did not establish probable cause. 465 N.W.2d 107, 108 (Minn. App. 1991). In *Albrecht*, an informant reported to police that the defendant was selling marijuana inside his home and provided officers with a description of the defendant's home and directions to his home. *Id.* at 108-09. The informant also indicated that the defendant had a red and white truck parked outside when he was at home. *Id.* Based on this information, officers obtained a search warrant for the defendant's home. *Id.* On appeal, we determined that the tip was inadequate to establish probable cause because the facts provided by the informant were "easily obtained facts and conditions [that] by themselves [were] inadequate to support a finding of probable cause." *Id.* at 109.

Applying these cases, the district court found that the information provided by the CRI was “no more able to establish probable cause than the information in *Cook* and *Albrecht*.” We agree. The CRI identified Natee by name and said that he was at a particular intersection in Minneapolis in a blue BMW SUV. The CRI also reported that Natee was in possession of a firearm and drugs. Although officers found Natee sitting in a blue BMW SUV near the Lake Street and 12th Avenue intersection, this information could be easily obtained and cannot form the basis for a warrantless arrest.

The state argues that the district court “required a level of corroboration that is not necessary according to [Minnesota] caselaw.” The state relies on *Ross*, in which an informant provided officers with a description of the defendant and information about where he would be engaging in future drug sales. 676 N.W.2d at 303. But *Ross* is distinguishable from this case. In *Ross*, the informant provided “detailed” information, describing what the defendant was wearing, what vehicle he was driving, the license plate number of the vehicle, and a description of when the defendant was going. *Id.* at 303-04. We determined that the informant was sufficiently reliable. *Id.* at 304-05. *Ross* also instructs that when evaluating probable cause based on an informant’s tip, an informant’s detailed prediction of a suspect’s future behavior is a “key distinguishing characteristic” from situations in which an informant shares only “easily obtain[ed] information and not inside information.” *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”). Here, the CRI did not provide detailed information about Natee or predictive

information for the police to test the veracity of the CRI's personal knowledge. As a result, we do not consider *Ross* persuasive.

Based on the record before us, we agree with the district court that the officers lacked probable cause to arrest Natee. We thus hold that the district court did not err by concluding that the CRI's tip did not establish probable cause for Natee's arrest and suppressing the evidence.

Affirmed.