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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1341**

State of Minnesota,
Respondent,

vs.

Gerald Willie Dixon,
Appellant.

**Filed August 12, 2024
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-20-21468

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Presiding Chief Judge; Cochran, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from the judgment of conviction for unlawful possession of a firearm, appellant challenges the district court's pretrial order denying his motion to suppress evidence obtained from the warrantless search of a minivan. Appellant argues

the district court erred when it concluded that the search was lawful under the automobile exception to the search-warrant requirement, and, in a pro se supplemental brief, argues that his arrest was not supported by probable cause. Because we conclude the district court did not err by determining that the search of appellant's vehicle was permitted under the automobile exception, and because appellant did not preserve his other argument for appeal, we affirm.

FACTS

Respondent State of Minnesota charged appellant Gerald Willie Dixon with one count of felony possession of a firearm by an ineligible person in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2020), after law enforcement found an assault-style rifle in a minivan. At a scheduled hearing, Dixon orally moved to suppress evidence of the rifle, arguing the minivan search was not authorized by an exception to the search-warrant requirement because the search lacked probable cause. The state opposed the motion and presented testimony from two Minneapolis Police Department officers, a patrol officer and an undercover investigator with the gun unit. The district court also admitted video recordings from the patrol officer's body-worn camera and from a city-owned surveillance camera focused on an intersection south of where the minivan was parked. The district court reviewed a longer, confidential version of the surveillance video in camera.

The evidence received at the hearing established the following facts. On October 6, 2020, at around 8:15 a.m., the investigator was surveilling the intersection of Logan Avenue North and Lowry Avenue when he saw something suspicious. The investigator

was located just south of the intersection in an unmarked vehicle. The investigator saw a man, later identified as Dixon, holding a large, long, blanket-covered object as one would hold a rifle. Dixon was standing at the intersection near a gas station. After observing Dixon holding the blanket-covered object, the investigator used binoculars and observed a gun stock “sticking out from underneath the blanket.” The investigator concluded that there may be “a long gun” underneath the blanket, meaning there may be a gun like “a shotgun or a rifle.” Around the same time, a confidential reliable informant (CRI) told the investigator that there was a man at the intersection carrying a rifle underneath a blanket.¹

Shortly thereafter, the investigator observed Dixon walk northbound. The investigator then relocated his vehicle closer to the minivan in question. The investigator testified that he observed Dixon enter the minivan through the passenger-side sliding door. The investigator relayed his observations to a patrol officer, whom he had contacted for assistance. The patrol officer then drove to the area to arrest Dixon. The patrol officer initially approached a red car on the opposite side of the street as the minivan. The investigator, watching nearby, redirected the patrol officer to the minivan. The patrol officer saw Dixon sitting inside the minivan. As he approached the minivan, Dixon exited through the passenger-side sliding door, leaving the door slightly ajar. The patrol officer handcuffed Dixon and placed him under arrest. The patrol officer then looked into the minivan through the open sliding door and saw a blanket in plain view next to where Dixon had been sitting. The patrol officer slid the minivan door open further, moved the blanket,

¹ “A CRI is a distinct type of informant characterized by a proven track record of accurate tips” *State v. Wiggins*, 4 N.W.3d 138, 149 (Minn. 2024).

and found an assault-style rifle. The investigator, who arrived as the patrol officer was placing Dixon under arrest, also saw the rifle. The patrol officer secured the firearm before having the vehicle towed. The video evidence shows that a little less than ten minutes elapsed between when the investigator first saw Dixon at the intersection carrying an object resembling a long gun under a blanket and when the patrol officer arrived at the minivan after being directed there by the investigator.

At the omnibus hearing, defense counsel argued the state lacked probable cause to search the minivan for two reasons. First, defense counsel argued that “[n]obody confirmed that there was in fact a firearm” under the blanket when the investigator first saw Dixon. Second, defense counsel argued that the investigator was not “in a position to be able to observe [Dixon] going to and from [the] van.” To support this second argument, defense counsel pointed to the confusion over the red car, which the patrol officer approached before the minivan. Defense counsel also called into question the investigator’s credibility. In response, the state emphasized that the investigator testified that he saw Dixon get into the minivan and accurately redirected the patrol officer away from the red car and towards the minivan. The state also emphasized that the patrol officer observed Dixon exit the minivan as he approached and then saw the blanket in the minivan next to where Dixon had been sitting.

The district court concluded that the search of the minivan was supported by probable cause and therefore lawful under the automobile exception to the warrant requirement. Weighing the investigator’s testimony, the district court credited the relevant parts and rejected the defense’s claim that the investigator was not in a position to observe

Dixon going to and from the minivan.² The district court emphasized that the investigator's ability to direct the patrol officer to the correct minivan showed that he had a clear view of Dixon. And the district court also credited the patrol officer's testimony in concluding that the search of the minivan was supported by probable cause and denying the motion to suppress.

The parties agreed to a stipulated-evidence trial pursuant to Minnesota Rules of Criminal Procedure 26.01, subdivision 4. The agreement preserved Dixon's ability to appeal the district court's denial of his motion to suppress but waived his right to appeal any other pretrial issues. The district court found Dixon guilty as charged and sentenced him to 48 months of imprisonment with credit for 935 days served.

This appeal follows.

DECISION

On appeal, Dixon argues that the district court erred by concluding the search of the minivan was supported by probable cause. Dixon further argues, in his pro se supplemental brief, that his arrest was unsupported by probable cause. We address Dixon's arguments in turn.

² The district court did not credit all of the investigator's testimony. After reviewing the longer version of the surveillance video in camera, the district court concluded that the investigator did not drive north on Logan Avenue to reposition his vehicle as the investigator recalled at the hearing, but instead must have taken a different route.

I. The district court did not err by determining that a search of the minivan was authorized by the automobile exception to the warrant requirement.

The United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is presumptively unreasonable unless it satisfies an established exception to the warrant requirement. *State v. Barrow*, 989 N.W.2d 682, 685 (Minn. 2023). The state bears the burden to prove an exception to the warrant requirement applies. *State v. Milton*, 821 N.W.2d 789, 799 (Minn. 2012).

One well-established exception to the warrant requirement, the “automobile exception,” authorizes police officers to search a car if they have probable cause to believe the search “will result in a discovery of evidence or contraband.” *Barrow*, 989 N.W.2d at 685 (quotation omitted). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case.” *State v. Torgerson*, 995 N.W.2d 164, 169 (Minn. 2023) (quotation omitted). “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.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (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.* Probable cause exists when the totality of the facts and circumstances show that there is a “fair probability that contraband or evidence of a crime will be found in a particular place.” *Torgerson*, 995 N.W.2d at 169 (quotations omitted).

Dixon challenges the district court's pretrial order concluding there was probable cause to support the search of the minivan under the automobile exception and denying his motion to suppress evidence from the search. In an appeal from a pretrial order on a suppression motion, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Wilde*, 947 N.W.2d 473, 476 (Minn. App. 2020), *rev. denied* (Minn. Sept. 29, 2020). "A factual finding is clearly erroneous if it does not have evidentiary support in the record or if it was induced by an erroneous view of the law." *State v. Ezeka*, 946 N.W.2d 393, 403 (Minn. 2020) (quotation omitted).

The district court determined that the search was supported by probable cause based on several key findings of fact, including: (1) the investigator saw a man holding an object, concealed by a blanket, as one would hold a long gun; (2) using his binoculars, the investigator saw a gun stock or butt sticking out from under the blanket and was concerned it was a rifle; (3) around the same time, a CRI told the investigator that a man was carrying a rifle under a blanket at the same intersection; (4) after relocating his vehicle, the investigator saw the man enter a minivan through the sliding passenger-side door; (5) the patrol officer, under the investigator's direction, saw the man exiting the minivan, leaving the sliding door ajar; and (6) the patrol officer observed a blanket in the minivan in plain view next to where he had seen Dixon sitting before exiting the vehicle.

Based on the totality of the circumstances, we conclude that the district court's factual findings establish that the search of the minivan was supported by probable cause. Minnesota Statutes section 624.7181, subdivision 2 (2020), prohibits carrying "a BB gun, rifle, or shotgun on or about the person in a public place." The investigator reasonably

believed Dixon had violated that statute by carrying a long gun in public based on the fact that he saw Dixon carrying a blanket-covered object like a long gun, he saw a gun stock underneath the blanket, and a CRI told the investigator that a man was carrying a rifle under a blanket at that location. The investigator also testified that, after relocating his vehicle, he saw Dixon get into a minivan. The patrol officer, who was contacted by the investigator, later arrested Dixon at the minivan. After the arrest, the patrol officer saw a blanket in the minivan in plain view where Dixon had been sitting. Under the totality of these circumstances, it was reasonable to believe that the minivan contained evidence of a crime: the long gun Dixon had been holding in a public place minutes earlier. Accordingly, the search was supported by probable cause, and the search was lawful under the automobile exception.

To convince us otherwise, Dixon advances four arguments: the investigator did not observe Dixon placing the firearm in the minivan; the CRI's basis of knowledge was not established in the record; possession of a firearm in public is not "obviously a crime or contraband"; and the automobile exception to the warrant requirement did not apply after Dixon was arrested. We are not persuaded.

The Investigator's Observations

Dixon claims that law enforcement lacked probable cause to search the minivan because the investigator "did not testify that he saw that [Dixon] was carrying anything when he got into the van." This argument is unpersuasive because the state did not need to prove that law enforcement observed Dixon place the firearm in the minivan before conducting the search under the automobile exception. *See State v. Yarbrough*,

841 N.W.2d 619, 622 (Minn. 2014) (“[D]irect observation of evidence of a crime at the place to be searched is not required.”). Instead, the state needed only to establish probable cause—a “fair probability that contraband or evidence of a crime” would be found in the place to be searched. *Torgerson*, 995 N.W.2d at 169 (quotation omitted). Here, the record reflects that the officers reasonably believed, based on their observations, that there was a fair probability that the firearm would be found in the minivan. Those observations included: Dixon carrying a blanket-covered object resembling a long gun in public, Dixon’s presence in the minivan within ten minutes of the investigator’s observation, and the patrol officer’s observation of a blanket in the minivan in plain view next to where Dixon had been sitting before exiting. Moreover, the district court heard the officers’ testimony and found it credible. We defer to the district court’s credibility determination. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012).

CRI’s Basis of Knowledge

Dixon also argues that the state did not establish “the [CRI’s] basis of knowledge for what he told” the investigator—namely, there was a man carrying a rifle under a blanket at the intersection—and therefore probable cause is lacking. This argument is unavailing for two reasons. First, the district court concluded that the investigator “had probable cause before receiving the CRI’s information” and thus “the CRI’s information only added to the probable cause already possessed by the officer.” We agree that probable cause existed independent of the CRI’s tip for the reasons discussed above.

Second, even if the CRI’s information is considered, the record supports the conclusion that the tip has sufficient indicia of reliability. To determine whether a CRI’s

tip has “sufficient indicia of reliability” to establish probable cause, we typically consider the CRI’s reliability and the basis of their knowledge. *State v. Mosley*, 994 N.W.2d 883, 890 (Minn. 2023) (quotation omitted). A CRI’s track record of providing accurate information to police can establish reliability. *Id.* Police also can establish that a CRI’s basis of knowledge is satisfactory by corroborating the tip. *Id.* at 891.

Here, the state established that the CRI’s tip was reliable. The investigator testified that the CRI has provided reliable, verifiable information “dozens of times.” *See State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (holding that CRI was reliable because CRI “had given the police reliable information in the past”). And the CRI’s basis of knowledge was established by the investigator’s concurrent corroboration of the tip through the investigator’s own observation of Dixon with a blanket covering an object resembling a long gun and the patrol officer’s plain-view observation of the blanket in the minivan next to where Dixon had been sitting before the officer’s search of the minivan. Accordingly, we conclude the CRI’s tip was reliable. And like the district court, we conclude that the CRI’s tip was not necessary to find probable cause but only provided further support for that determination.

Possession of the Firearm

Dixon also argues that the investigator’s observation of Dixon carrying a blanket-wrapped object did not necessarily indicate illegal activity, either because Dixon could have had a permit to carry or the object could have been a facsimile. But Minnesota caselaw provides that an officer’s observation of an individual in possession of a firearm in a public place is sufficient to create a reasonable suspicion that unlawful activity is

occurring, unless the officer knows that the suspect is carrying the firearm in compliance with the terms of a valid permit. *State v. Williams*, 794 N.W.2d 867, 872-73, 875 (Minn. 2011) (explaining that a permit is an affirmative defense to an unlawful-possession offense, but the absence of a permit is not an element). And probable cause to search under the automobile exception requires only a fair probability that evidence or contraband will be found in the place to be searched. *Torgerson*, 995 N.W.2d at 169. It does not require absolute certainty that the object the officer observed was in fact a firearm and not a facsimile. *See Williams*, 794 N.W.2d at 873. As a result, neither the fact that the investigator did not know whether Dixon had a permit nor the possibility that the object could have been a facsimile negate the probable cause that Dixon unlawfully possessed a firearm.

Automobile Exception After Arrest

Lastly, in his pro se supplemental brief, Dixon argues that the officers would have had time to secure a warrant to search the vehicle and therefore should have done so rather than conducting a warrantless search. Dixon emphasizes that any exigency justifying a warrantless search ended once he was arrested. This argument was not raised below, and therefore it is forfeited. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (“This court generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure.”). Even if this argument was not forfeited, the automobile exception to the search-warrant requirement applies when officers have probable cause to believe a car contains evidence or contraband. *Barrow*, 989 N.W.2d at 685. The automobile exception does not cease as soon as a defendant is in custody. *See*

State v. Schell, 994 N.W.2d 326, 330-31 (Minn. App. 2023) (holding that the automobile exception still justified search of vehicle on impound lot six days after defendant’s arrest), *rev. denied* (Minn. Oct. 25, 2023). In other words, the officers did not need to seek a warrant because they had probable cause to search the minivan under the automobile exception irrespective of Dixon’s arrest.

In sum, because the search of the minivan was supported by probable cause and therefore lawful under the automobile exception, the district court properly denied Dixon’s motion to suppress.

II. Dixon did not preserve for appeal his argument that his arrest lacked probable cause.

Dixon also argues in his supplemental brief that there was not probable cause to arrest him. Dixon did not make this argument to the district court, and the district court did not consider it in its pretrial order. Because Dixon agreed to a stipulated-evidence trial, our review “is expressly limited to the pretrial ruling by the district court.” *State v. Marsh*, 931 N.W.2d 825, 829 (Minn. App. 2019), *rev. denied* (Minn. Sept. 17, 2019); *see also* Minn. R. Crim. P. 26.01, subd. 4. Dixon agreed to preserve his ability to appeal “only . . . that pretrial ruling from [the district court judge] as to the search of the van.” The pretrial ruling did not concern whether there was probable cause to arrest Dixon. Therefore, Dixon forfeited the issue when he agreed to proceed under rule 26.01, subdivision 4.³ *See Marsh*, 931 N.W.2d at 829 (concluding defendant forfeited challenge

³ Even if Dixon’s argument was not forfeited and we agreed that his arrest lacked probable cause, it would not warrant suppression of the gun because the gun was not discovered as

that the warrant was overbroad when pretrial ruling concerned whether the officers exceeded the scope of the warrant).

Affirmed.

a fruit of Dixon's arrest. Rather, the gun was a fruit of the minivan search under the automobile exception, which was supported by probable cause gathered independently of Dixon's arrest and likely would have occurred even if Dixon had been merely detained and not immediately arrested. *See State v. Richards*, 552 N.W.2d 197, 203 n.2 (Minn. 1996) (describing independent-source and inevitable-discovery doctrines which would prevent suppression of the gun here).