

*This opinion is nonprecedential except as provided by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
A23-1589**

State of Minnesota,
Respondent,

vs.

Xavier Isaac Rodriguez,
Appellant.

**Filed November 25, 2024
Affirmed
Reyes, Judge**

Kandiyohi County District Court
File No. 34-CR-21-744

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his convictions of second-degree controlled-substance possession and possession of drug paraphernalia, arguing that the district court should have

suppressed incriminating evidence because the search warrant that led to the discovery of evidence lacked probable cause. We affirm.

FACTS

Officers suspected appellant Xavier Isaac Rodriguez of involvement in an armed robbery in Yellow Medicine County.¹ While officers investigated the robbery, a confidential informant (CI) contacted a Yellow Medicine County Sheriff's Office investigator. The CI informed the investigator that the CI's electronic communications with appellant revealed that appellant was present at a certain Holiday Inn in Willmar. The investigator passed the CI's tip to an officer (affiant) working for a drug and gang taskforce.

Relying on this information, officers went to the Holiday Inn. Although appellant's name did not appear on the guest registry, the officers learned that appellant's friend and former romantic partner's name did appear. The officers began surveilling the room where they believed the friend to be staying.

While surveilling the room, the officers observed through a window an individual that, according to the affiant, matched appellant's description. The individual returned to the window but tried to conceal his identity. The officers later observed an individual take a photo of the officers from what they thought to be another window in the same room. At some point during the surveillance, the affiant spoke with the CI, who informed the affiant that appellant posted an image of himself on his social media account in what appeared to be a hotel room.

¹ In describing these facts, we rely on the district court's omnibus order and the search-warrant application.

Shortly thereafter, the affiant sought and obtained a search warrant authorizing officers to search the hotel room and appellant's person for firearms, ammunition, and money. Appellant allegedly used these items in the commission of the robbery or obtained them from the robbery. Officers executed the search warrant at the hotel room later that night, where they encountered appellant. After identifying what they suspected to be controlled substances, officers obtained a second search warrant for controlled substances. Appellant does not challenge this second warrant. Among other objects, officers recovered methamphetamine paraphernalia and various substances that lab testing revealed to be methamphetamine.

Respondent State of Minnesota charged appellant with: (1) second-degree controlled-substance possession; (2) possession of drug paraphernalia; and (3) possession of a small amount of marijuana. *See* Minn. Stat. §§ 152.022, subd. 2(a)(1), .092(a), .027, subd. 4a (2020). Appellant moved to suppress the evidence obtained in the search, arguing that the search warrant lacked probable cause. The district court denied appellant's motion.

The parties agreed to a trial on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 4, to preserve the pretrial suppression issue, at which the district court found appellant guilty of Count I and Count II and not guilty of Count III. The district court sentenced appellant to 108 months in prison on Count I.

This appeal follows.

DECISION

The district court properly denied appellant's motion to suppress evidence officers obtained in the hotel-room search because probable cause supported the search warrant.

Appellant argues that the district court erred by denying his motion to suppress by finding the CI (1) reliable and (2) with a sufficient basis of knowledge to serve as the source of information in the search-warrant affidavit. We disagree.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, [appellate courts] 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) (quotation omitted). However, appellate courts give “great deference” to the issuing judge’s determination of probable cause at the time of the warrant’s issuance. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001).

The U.S. and Minnesota Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Absent exceptions, officers must secure a search warrant supported by probable cause before conducting a search. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *see State v. Bradford*, 618 N.W.2d 782, 795 (Minn. 2000) (listing exceptions to search-warrant requirement).

To determine whether probable cause exists for a warrant, appellate courts assess whether, under the totality of the circumstances, the issuing judge had a substantial basis for determining that a “fair probability that contraband or evidence of a crime will be found in a particular place” existed. *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). In arguing that the district court erred by

finding the CI reliable, appellant relies exclusively on *State v. Ross*, 676 N.W.2d 301, 304, *rev. denied* (Minn. June 15, 2004), which outlines several factors that courts may consider when assessing the reliability of a known CI when that CI's information serves as the probable-cause basis for a search warrant.² *Id.* However, our supreme court “[has] not specifically endorsed” these factors, noting that caselaw “contemplates a totality of the circumstances analysis for the assessment of probable cause, and such an assessment could include the factors listed in *Ross*.” *State v. Mosley*, 994 N.W.2d 883, 887 n.4 (Minn. 2023). Our analysis is therefore not limited to the *Ross* factors but rather looks at the totality of the circumstances.

The totality-of-the-circumstances test includes reviewing the veracity and basis of knowledge of “persons supplying hearsay information.” *State v. McCloskey*, 435 N.W.2d 700, 702-03 (Minn. 1990) (citing *Gates*, 462 U.S. at 438). Appellate courts generally limit their review of whether there is probable cause to the warrant application and any supporting affidavits. *See Zanter*, 535 N.W.2d at 633; *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *rev. denied* (Minn. Feb. 22, 2006).

² The *Ross* factors include:

- (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.

676 N.W.2d at 304.

I. The district court properly found the CI to be reliable.

Appellant argues that the district court erred by finding the CI to be reliable. Courts presume that a first-time citizen informant or a confidential reliable informant (CRI) is reliable. *State v. Wiggins*, 4 N.W.3d 138, 149 (Minn. 2024). For an informant to have this status, the application must also designate a first-time citizen informant as “not part of the criminal milieu” and a CRI as having a “proven track record of accurate tips.” *Id.*

When a CI is not presumptively reliable, a court may nonetheless find the CI reliable when indicators of reliability are present. *Id.* Indicators of reliability include identifying oneself to police, providing statements against interest, and corroboration of facts in the tip. *Id.* In contrast, indicators of unreliability include involvement with criminal activity and providing “information that conflicts with other known facts.” *Id.*

In denying the suppression motion, the district court reasoned that the “informant’s status as a known, private citizen” with no known involvement in the defendant’s criminal matter and who does not “work[] with the government to curry favor. . . . supports a finding that the information they provided to law enforcement was credible.” The district court also found that officers substantially corroborated the CI’s tips because (1) the hotel registry listed appellant’s friend in the room where officers found appellant; (2) officers saw an individual matching appellant’s description at what they believed to be the hotel room at which the friend’s name appeared on the guest registry; and (3) officers observed that individual attempting to conceal his identity.

Appellant contends that the district court erred because the relevant *Ross* factors support finding the CI unreliable, arguing that: (1) the CI is not a presumptively reliable

first-time citizen informant; (2) the CI is not a presumptively reliable CRI; (3) the affidavit fails to corroborate the CI's statements; (4) officers failed to corroborate the CI's tips sufficiently; and (5) the CI did not make an incriminating statement that would enhance the CI's reliability. We disagree with appellant's assertion that the warrant application's failure to designate the CI as a first-time citizen informant or a CRI weighs against finding the CI reliable. The failure to designate the CI accordingly merely means that the CI is not *presumptively* reliable. *See Wiggins*, 4 N.W.3d at 149. When these presumptions do not apply, other factors may show reliability. *See id.*

More specifically, appellant argues that the information in the warrant lacked corroboration because the CI never gave a physical description of appellant, never alleged that appellant engaged in illegal activity, and lacked information that appellant possessed the firearm, ammunition, and money that the search warrant listed. Notwithstanding these points, the warrant application shows significant indicators of corroboration. Here, the affidavit notes that officers went to the specific hotel that the CI mentioned in the tip. There, they learned that appellant's friend booked a room at the hotel. Officers additionally observed an individual that matched the description of appellant in the window of the room that appellant's friend purportedly reserved. The affidavit further states that the same individual returned to the window and attempted to obscure his identity. Looking at the totality of the circumstances, these facts make the CI's information more reliable by offering information that supports the CI's tip that appellant was present at the hotel.

Additionally, officers' knowledge of the CI's identity enhances the CI's reliability. *See id.* at 149. The absence of any indication that the CI did not contact police voluntarily

offers further support to the CI's reliability. *See id.* Based on these facts, we conclude that, because there are sufficient indicators of the CI's reliability in the warrant application, the district court did not err by determining that probable cause supported the warrant, especially considering the "great deference" appellate courts give to the issuing judge's probable-cause determination. *See Rochefort*, 631 N.W.2d at 804.

II. The CI had a sufficient basis of knowledge.

Appellant also argues that the search warrant lacked probable cause because the CI had an insufficient basis of knowledge for the tips included in the warrant application. We are not convinced.

As mentioned above, a CI must have an adequate basis of knowledge for the information the CI provides. *McCloskey*, 435 N.W.2d at 702-03. A CI may supply this information directly by first-hand information 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." *Cf. State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (applying this analysis to case involving CRI rather than CI). An informant's "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). When evaluating the CI's basis of knowledge, this court looks to the "quantity and quality of detail in the [CI's] report and whether police independently verified important details of the informant's report." *Cf. Cook*, 610 N.W.2d at 668.

Here, the affidavit indicates that the CI learned of appellant's specific location by directly communicating with appellant via social media and had seen a recent photograph of appellant in what appeared to be a hotel room. These communications included a discussion of appellant's plans to leave the state at a time when officers suspected him of robbery, raising an inference under *Wiley* that the CI recently observed appellant engaging in incriminating conduct. 366 N.W.2d at 269. Under *Cook*, there is a sufficient basis of knowledge because the CI provided officers with firsthand information by giving them appellant's specific location. *Cf.* 610 N.W.2d at 668. Officers then independently verified details of the CI's report. *Cf. id.* Because the warrant application provides sufficient indicators of the CI's reliability and basis of knowledge, the district court correctly determined that probable cause supported the search warrant under the deferential substantial-basis standard.

Affirmed.