STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1652

State of Minnesota,
Respondent,

vs.

David Michael Lee,
Appellant.

Filed October 14, 2008
Affirmed
Schellhas, Judge

Clay County District Court
File No. K9-06-2425

Lori Swanson, Attorney General, Tibor M. Gallo, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Brian J. Melton, Clay County Attorney, 807 North Eleventh Street, P.O. Box 280, Moorhead, MN 56560 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his conviction of possession of stolen property, arguing that the police lacked a sufficient basis to stop his vehicle and that the evidence presented at the stipulated-facts trial was insufficient to support his conviction. We affirm.

FACTS

In the early afternoon of November 21, 2006, Detective Jeff Larson of the Moorhead Police Department received a phone call from a cooperating criminal defendant (CCD) with whom Detective Larson had previously worked on a narcotics investigation, which led to the prosecution of several individuals.[1] Detective Larson considered the past information provided by the CCD to be valuable and true. The CCD informed Detective Larson that appellant David Michael Lee had recently left his house driving a new, silver Toyota 4-Runner with license plates stolen from a similar vehicle. The CCD also informed Detective Larson that appellant was heading to an address in south Fargo to meet someone and that there was a warrant outstanding for appellant's arrest.

Following the call from the CCD, Detective Larson checked the city computer and found an outstanding arrest warrant for a David Michael Lee, and he went to the south

[1] At the suppression hearing, Detective Larson testified the CCD had cooperated with police in the past in the hopes that he could get consideration or a reduction in charges he was facing for drug possession. At the time the CCD contacted Detective Larson regarding appellant, the CCD was facing charges with a possible sentence of 120 months. Detective Larson testified that he had made no promises to the CCD about any benefit he may receive as a result of his tip regarding appellant.

Fargo address provided by the CCD to find appellant but could not locate him there. Late that afternoon, Detective Larson received another phone call from the CCD, who said he was in a vehicle following appellant's stolen vehicle and provided Detective Larson with the license-plate number of the stolen vehicle. As the CCD followed appellant's vehicle, he communicated the details of his travel to Detective Larson, who radioed the details to patrol-division officers who were looking for appellant. The CCD informed the police that he believed that appellant was likely to attempt to flee from police.

Detective Larson informed Lieutenant Joel Scharf of the CCD's tip. Lieutenant Scharf was assigned to the patrol division of the Moorhead Police Department. He observed the stolen vehicle and noted that the driver matched the basic description of appellant. He and Officer Vogel of the Moorhead Police Department followed appellant's vehicle into a retail parking lot and positioned their vehicles in an attempt to cut off any avenue of appellant's escape.

When appellant saw Officer Vogel's vehicle directly in front of his with its emergency lights activated, appellant put his vehicle into reverse and quickly backed up until he saw Lieutenant Scharf's car directly behind him. The officers approached appellant's vehicle with their guns drawn and apprehended him. Later, police learned that there were multiple warrants outstanding for appellant's arrest and that the vehicle he was driving had been reported stolen from a dealership in Aberdeen, South Dakota, in September 2006. Police also learned that the license plates on the stolen vehicle were registered to a 2004 Toyota 4-Runner from Little Falls, Minnesota, with a different vehicle identification number than the vehicle in appellant's possession.

The prosecution charged appellant with one count of receiving stolen property and one count of driving after cancellation as inimical to public safety. After pleading guilty to both counts, appellant withdrew his pleas and moved to suppress the evidence obtained as a result of the stop of his vehicle. Appellant argued that the police lacked a sufficient basis to stop his vehicle because they failed to corroborate important information from the CCD's tip and failed to establish the CCD's basis for knowledge of appellant's criminal activity. At the suppression hearing in January 2007, both Detective Larson and Lieutenant Scharf testified. Appellant called no witnesses and did not testify. The district court denied appellant's suppression motion, and appellant proceeded with a stipulated-facts trial. In April 2007, the district court found appellant guilty of possession of stolen property. The driving-after-cancellation charge was dismissed by agreement of the parties. The district court sentenced appellant to 17 months in prison, stayed for five years, probation, payment of restitution, and a fine of $50. This appeal follows.

D E C I S I O N

The Stop

We review a district court's determination regarding the legality of a warrantless search or seizure, including a stop based on reasonable, articulable suspicion, de novo to determine whether it erred in suppressing or not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004); *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

"The factual basis required to support a stop is minimal." *Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000). All the police must show is "that the

stop was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (quotations omitted). The totality of the circumstances is considered when determining whether reasonable suspicion existed, and even seemingly innocent facts may be relevant to this evaluation. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007).

An informant's tip may be adequate to support an investigative stop if the tip has sufficient indicia of reliability. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997).

> There are six factors for determining the reliability of confidential, but not anonymous, informants: (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.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004). An informant's reliability is established "by sufficient police corroboration of the information supplied, and corroboration of even minor details can lend credence to the informant's information where the police know the identity of the informant." *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (quotation omitted).

Here, the district court found that (1) the CCD had provided Detective Larson with reliable information in the past, (2) the police had corroborated information provided by

the CCD, and (3) the CCD had voluntarily come forward with the tip. The record contains support for each of these findings. Detective Larson worked with the CCD on a previous investigation, and the CCD had provided reliable information in that investigation. Detective Larson and Lieutenant Scharf corroborated details in the CCD's information, including the existence of an arrest warrant for appellant, the number of the license plate on the stolen vehicle, and the direction of appellant's travel. Finally, the CCD contacted Detective Larson voluntarily without any promises from Detective Larson about consideration he might receive as a result of his cooperation. The totality of the circumstances demonstrates that the CCD's tip had sufficient indicia of reliability to justify the stop of appellant's vehicle.

The Arrest

Police officers have probable cause to arrest a person if they reasonably believe that a person has committed a crime, based on their observations, inferences, and experience. *State v. Olson*, 436 N.W.2d 92, 94 (Minn.1989), *aff'd*, 495 U.S. 91, 110 S. Ct. 1684 (1990). Appellant argues that the police arrested him before they verified that the vehicle he was driving was actually stolen. But in addition to the information about appellant's alleged criminal activity, the CCD cautioned police that appellant was likely to flee from police, and, in fact, when appellant saw the police cars, he immediately took action suggesting that he intended to flee. Lieutenant Scharf testified at the suppression hearing:

> I directed Officer Vogel to block [appellant's] route of escape forward with his patrol vehicle and I blocked him in from behind. As soon as Officer Vogel pulled up in front of [the]

> vehicle, [appellant] quickly began to accelerate backwards and then came to a stop in front of me.

Based on appellant's own conduct and the totality of the circumstances, the police had probable cause to arrest appellant. *See State v. Ingram*, 570 N.W.2d 173, 178 (Minn. App. 1997) ("Minnesota courts have generally held that resisting arrest and flight from a police officer, even if prompted by illegal police conduct, are intervening circumstances sufficient to purge the illegality of its primary taint."), *review denied* (Minn. Dec. 22, 1997).

Appellant challenges the CCD's credibility on the basis that the CCD was facing serious felony charges and a possible prison sentence. But appellant also acknowledges that "a conclusory statement that an informant has been used successfully in the past is sufficient to support an informant's credibility." *See, e.g.*, *Munson*, 594 N.W.2d at 136; *State v. Wiley* 366 N.W.2d 265, 269 (Minn. 1985). As previously noted, Detective Larson testified that he considered the CCD to be reliable and that the CCD had provided useful information in the past. The district court properly considered the CCD to be credible.

Appellant also challenges the CCD's basis of knowledge. Appellant cites *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000), in arguing that "[d]etails that are entirely innocuous and lack any incriminating aspects that might corroborate the [CCD's] claim that the defendant was involved in illegal activity are not 'important.'" But appellant's reliance on *Cook* is misplaced. In *Cook*, this court affirmed a district court decision that the police lacked probable cause based on an

informant's tip evidence where the informant's tip was based on entirely innocuous details, which did not include "any incriminating aspects that might corroborate the [informant]'s claim that Cook was selling drugs. . . ." 610 N.W.2d at 668. We affirmed the district court's determination that an informant's tip failed to establish probable cause for an arrest where the informant had not purchased drugs from Cook and had not witnessed Cook selling drugs to anyone else. *Id.* The informant only informed the police about Cook's clothing, physical appearance, vehicle, and present location. *Id.* The informant failed to provide police with any information to predict Cook's future behavior. *Id.* Based on those facts, we held that the information provided by the informant failed to demonstrate any link between Cook and illegal activity. *Id.*

Here, the CCD not only provided information relating to appellant's vehicle, but also details of his direction of travel and destination as well as information relating to a warrant for his arrest. The police were able to corroborate the existence of the warrant and the direction of appellant's travel. These were not entirely innocuous details.

The Warrant

Appellant contends that the district court's finding that Detective Larson confirmed the warrant is clearly erroneous. But the record demonstrates that the district court was correct and that appellant's arguments are without merit. Detective Larson testified that after the first phone call, "I looked through the city's computer [and] I found a David Michael Lee with current arrest warrants." The following exchange took place on cross-examination:

> DEFENSE: And you testified earlier that you had done a computer check to see if there were in fact outstanding warrants between the first call and the second call. Is that correct?
>
> DETECTIVE LARSON: Right.
>
> DEFENSE: [Y]ou go on to write, it was later learned that [appellant] had numerous warrants for his arrest? Do you recall writing that?
>
> DETECTIVE LARSON: What I stated on direct was that I knew he had a warrant, which I believe was in our local computer. I believe he had like a local warrant, maybe a DOC hold or something. So I didn't know that he had numerous warrants is what I'm trying to get across to you in that sentence, sir.
>
> . . . .
>
> I knew he was wanted. I just didn't know how many people wanted him.

Detective Larson's testimony that he confirmed an arrest warrant for appellant prior to the stop is corroborated by Lieutenant Scharf's testimony:

> I was provided information that [appellant] was being reported as sitting still behind a train in the downtown area of Moorhead and that a confidential informant was relaying information directly to Detective Larson about [appellant]. Detective Larson also relayed to me that [appellant] was wanted on an outstanding warrant and the vehicle he was driving was stolen.

The district court's finding reflects that the court believed the police officers' testimony about the arrest warrant. We defer to the district court's credibility determinations. *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 22 (Minn. App. 2008). Moreover, as previously stated, the record supports the district court's finding that Detective Larson

verified the warrant prior to appellant's arrest. The police had a sufficient basis to stop appellant's vehicle and probable cause to arrest appellant.

Sufficiency of the Evidence

Appellant argues that the evidence is insufficient to support his conviction of possession of stolen property.

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court will not disturb the verdict if the factfinder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). "[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). "While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. The factfinder, however, is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430. "We review criminal bench trials the same as jury trials when

determining whether the evidence is sufficient to sustain convictions." *State v. Davis*, 595 N.W.2d 520, 525 (Minn. 1999) (quotation omitted).

To find that a criminal defendant has committed the offense of receiving stolen property, the factfinder must find, beyond a reasonable doubt that (1) the property was taken by someone without the consent of the owner and with the intent of permanently depriving the owner of possession of the property; (2) the defendant received the property; (3) the defendant knew or had reason to know the property was stolen; and (4) the defendant's conduct took place on a specific date in a specific county in Minnesota. 10 *Minnesota Practice*, CRIMJIG 16.48 (2006); *see also* Minn. Stat. § 609.53 (2006). Here, no dispute exists about the first, second, and fourth elements. The district court found that the property in question was stolen, that it was in appellant's possession, and that the offense took place on November 21, 2006 in Clay County, Minnesota. Appellant does not challenge these findings.

Appellant challenges the district court's finding on the third element: that he knew or had reason to know the property was stolen. In finding that this element was proven beyond a reasonable doubt, the district court stated:

> [G]iven the CCD's knowledge that the vehicle was stolen, [appellant's] reaction to police officers and attempt to flee, the fact that the vehicle's plates did not match the vehicle he was driving, the fact that the vehicle was a new car, and the fact that the vehicle was recently stolen, [appellant] knew or had reason to know the Toyota 2006 4-Runner . . . was stolen.

The district court relied on *State v. French*, 400 N.W.2d 111, 116 (Minn. App. 1987) ("Unexplained possession of recently stolen property supports a conclusion that appellant

knew the property was stolen. Moreover, the evidence of flight suggests consciousness of guilt.") (citations omitted), *review denied* (Minn. Mar. 25, 1987).

Appellant offered no explanation for his possession of the stolen vehicle. Appellant now argues that this lack of explanation makes his case distinct from those cited by the district court. Specifically, appellant argues that his case is distinct from *State v. Boykin*, 285 Minn. 276, 279, 172 N.W.2d 754, 757 (1969), where the defendant gave an explanation for his possession of stolen property, and our supreme court found his explanation unsatisfactory. This is a distinction without a difference. "It is well established that unexplained possession of stolen property within a reasonable time after a burglary or theft will in and of itself be sufficient to sustain a conviction." *State v. Bagley*, 286 Minn. 180, 188, 175 N.W.2d 448, 454 (1970) (citing *State v. Jatal*, 152 Minn. 262, 188 N.W. 284 (1922); *State v. Anderson*, 155 Minn. 132, 192 N.W. 934 (1923)); *see also State v. Carter*, 293 Minn. 102, 104-05, 196 N.W.2d 607, 609 (1972). In *Carter*, the defendant similarly failed to offer any explanation for his possession of a stolen motorcycle and even tried to deny knowledge of it. *Carter*, 293 Minn. at 105, 196 N.W.2d at 609. Our supreme court stated that a jury could "easily infer knowledge from these facts." *Id.* Contrary to appellant's argument, his failure to offer any explanation for his possession of the vehicle lends support to his conviction of possession of stolen property.

Appellant also argues that the evidence that he attempted to flee does not point unerringly to his guilt. Appellant offers the alternative theory that he was attempting to flee because he knew there were warrants for his arrest. But "the evidence of flight

suggests consciousness of guilt." *French*, 400 N.W.2d at 116. Moreover, we must view the evidence of appellant's flight in the light most favorable to the conviction, as we would view all the evidence presented, for the purpose of determining whether the evidence could lead the district court to reach the verdict it did. *See Webb*, 440 N.W.2d at 430 (stating that evidence must be viewed in light most favorable to the conviction to determine if it is sufficient to allow the factfinder to reach the decision it did).

Appellant offered no alternative theory to the district court to explain his possession of the vehicle. "We will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture." *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).

The record does not contain evidence that contradicts the district court's findings of fact as related to appellant's conviction of possession of stolen property. When viewed in the light most favorable to the conviction, the evidence is sufficient to support the conviction.

Affirmed.