STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0810

State of Minnesota,
Respondent,

vs.

Sirvontes Demico Bills,
Appellant.

Filed October 2, 2017
Affirmed in part, reversed in part, and remanded
Peterson, Judge

Hennepin County District Court
File No. 27-CR-14-2810

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

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

PETERSON, Judge

In this appeal from his conviction of and sentence for second-degree controlled-substance crime, appellant argues that (1) a confidential informant's tip did not provide

probable cause to support a warrantless stop and search that resulted in the discovery of drug evidence and (2) he is entitled to be resentenced under the Drug Sentencing Reform Act of 2016 because his conviction was not yet final when the act became effective. We affirm appellant's conviction but reverse his sentence and remand to the district court for resentencing in accordance with *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017).

FACTS

On January 29, 2014, Officer Jeffrey Werner, who works primarily in narcotics investigations for the Minneapolis Police Department, received information from a confidential reliable informant (CRI) that a man nicknamed "Insane" would be going to an apartment building at 2100 Bloomington Avenue South in Minneapolis to sell crack cocaine. The CRI did not give Werner a physical description of the man, but Werner was acquainted with "Insane" from previous interactions, and he knew that his real name was Sirvontes Bills, the appellant here. Werner showed the CRI appellant's picture, and the CRI confirmed that appellant was the man he was talking about. The CRI said that appellant would arrive at 2100 Bloomington Avenue within an hour in a teal-green minivan with the license-plate number 594BDH.

Werner and other officers set up surveillance at the apartment building. After several minutes, Werner saw a teal-green minivan drive up and a black male passenger get out of the van and go up to the apartment door. Werner observed "a very brief conversation which followed a hand to hand transaction" between appellant and an unidentified woman at the apartment building's back door. Werner was familiar with hand-to-hand transactions in narcotics cases and described them as "an interaction between two parties where both

hands are extended and it appears that an object is exchanged." Werner acknowledged that he did not see an actual object exchanged and he did not interview the woman he observed.

Officers stopped the minivan and confirmed that the passenger who had engaged in the hand-to-hand transaction was appellant. Police found about seven grams of crack cocaine on appellant's person. Both appellant and the driver of the minivan were arrested. Appellant was charged with second-degree controlled-substance offense (possession).

Appellant moved to suppress the drug evidence, arguing that the warrantless stop and search were not based on probable cause and, therefore, were unconstitutional. Werner testified at the hearing on the motion. He did not explain why he believed the CRI was reliable, but when asked what a CRI is, he said, "A confidential reliable informant is . . . a person that has worked for the Police Department for a certain amount of time that has been proven to be reliable, has provided information usually that has led to the arrest of parties, recovery of narcotics or firearms." He agreed that this CRI's information had led to convictions or prosecutions in the past. Werner said that if an informant does not have a track record, he refers to them as a "confidential informant," omitting the reference to reliability. The district court denied appellant's motion.

Appellant stipulated to the prosecution's case in order to obtain review of the district court's pretrial ruling, and the district court found appellant guilty of second-degree controlled-substance crime. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court sentenced appellant to 75 months, a downward departure from the presumptive sentencing range of 92 to 129 months given appellant's criminal-history score of seven. *See* Minn. Sent. Guidelines 4.A (Supp. 2013).

Appellant filed a notice of appeal on May 17, 2016, and moved for a stay in order to pursue a postconviction remedy. By postconviction petition, appellant asked the district court to apply the provisions of the Drug Sentencing Reform Act (DSRA), and the district court ruled that the act did not apply retroactively to crimes committed before the effective date of August 1, 2016. This court reinstated appellant's appeal.

D E C I S I O N

I.

Appellant argues that the drug evidence found following the warrantless stop and search must be suppressed because the police acted in reliance on an informant's tip but the reliability of the informant was not established. A warrantless search or seizure is per se unreasonable under the United States and Minnesota Constitutions, subject to a few exceptions. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *see State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992). Under one of those exceptions, police may arrest a felony suspect without a warrant in a public place based on probable cause. *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998). If the warrantless arrest is valid, police may conduct a warrantless search incident to arrest. *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). We review the district court's findings of fact for clear error. *State v. Dickey*, 827 N.W.2d 792, 796 (Minn. App. 2013). The district court's determination whether a police officer had probable cause to make a warrantless search or seizure is a question of law, which we review de novo. *Id.*

Probable cause for an arrest exists if the facts would lead a reasonable person to have an honest and strong suspicion that the suspect is guilty of a crime. *Cook*, 610 N.W.2d

at 667. "The lawfulness of an arrest is determined by an objective standard that takes into account the totality of the circumstances." *Id.*

Probable cause can be established through information provided by a CRI. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). "Where a probable cause determination is based on an informant's tip, the informant's veracity and the basis of his or her knowledge are considerations under the totality [of the circumstances] test." *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). A CRI's reliability can be established based on previous accurate information given to the police or "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." *Id.* (quotation omitted).

Werner testified that his informant was a CRI and explained that the CRI designation meant that this individual had provided accurate information in the past that led to arrests and prosecutions. The CRI told Werner that "Insane" would arrive at a specific address within a short period of time, he would be driving a teal-green minivan with a specific license-plate number, and he would sell crack cocaine. Werner, who recognized the street name "Insane," showed the CRI a photo of appellant, and the CRI confirmed that this was the person he knew as "Insane." Werner immediately began surveillance of the address; within minutes, a teal-green minivan with the specified license-plate number arrived; a man matching appellant's appearance got out of the passenger side of the minivan; and this man engaged in a short conversation with a woman who appeared

at the back door of the apartment building. When officers stopped the minivan, Werner confirmed that the passenger was appellant.

Werner did not testify to the source of the informant's information, which is a consideration in assessing an informant's credibility. *See Cook*, 610 N.W.2d at 668. But, unlike the informant in *Cook*, this CRI provided predictive information, stating that the teal-green minivan would arrive at 2100 Bloomington within one hour. *See id.* at 668-69 (affirming suppression of evidence when source of CRI's information was not known, defendant's car was parked at a certain building, and no predictive information was given). A teal-green minivan with the specified license-plate number arrived as the CRI said it would, which corroborated the CRI's information. The CRI also said that the man in the picture that Werner showed him was the man that he knew as "Insane," and Werner knew before he showed the picture that appellant's street name was "Insane." Finally, Werner observed what he described as a "hand to hand transaction," which he said was typical of a narcotics exchange. The district court acknowledged that Werner did not see an item exchanged, but he "observed both parties reach their hand out to interact with the other, they then pulled their hands back and immediately parted ways in different directions." The total interaction lasted 10 to 15 seconds.

Viewing the totality of the circumstances, we conclude that the CRI's information, the corroboration of details of that information, and the predictive quality of the information are sufficient to establish probable cause. The district court did not err by refusing to suppress the evidence.

II.

Appellant argues that provisions of the DSRA should apply to mitigate his sentence. The DSRA changed the threshold weights of drugs required to commit various controlled-substance crimes. *See* Minn. Stat. § 152.022, subd. 2(a)(1) (2016); 2016 Minn. Laws ch. 160, § 4, at 579-80. The DSRA also changed the presumptive sentencing ranges under the Minnesota Sentencing Guidelines for various categories of crimes. 2016 Minn. Laws ch. 160, § 18, at 590-91.

The Minnesota Supreme Court's recently issued opinion in *Kirby* holds that the amelioration doctrine requires that a person whose conviction was not yet final on the effective date of section 18 of the DSRA must be sentenced in accordance with the DSRA-amended provisions of the sentencing guidelines. *Kirby*, 899 N.W.2d at 496. We, therefore, reverse appellant's sentence and remand to the district court for resentencing in accordance with the DSRA-amended provisions of the sentencing guidelines. When resentencing, the district court cannot impose a sentence greater than the sentence the district court originally imposed. *See State v. Prudhomme*, 303 Minn. 376, 380, 228 N.W.2d 243, 246 (1975) (stating that after a sentence has been set aside, district court must not resentence defendant to a longer sentence).

Affirmed in part, reversed in part, and remanded.