STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1950

State of Minnesota,
Appellant,

vs.

Deangelo Dewayne Christon,
Respondent.

Filed March 22, 2011
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-10-32716

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Mark D. Nyvold, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Stauber, Judge.

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

WORKE, Judge

In this pretrial appeal, the state argues that the district court clearly erred in concluding that the stop, arrest, and search of respondent's vehicle were illegal when officers (1) had reasonable suspicion of criminal activity to conduct an investigatory stop,

and (2) plainly viewed contraband in the vehicle, which provided probable cause to search the vehicle. We affirm.

D E C I S I O N

The state argues that the district court clearly erred in suppressing the handgun found in respondent Deangelo Dewayne Christon's vehicle. "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 . . . the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's findings of fact to determine whether they are clearly erroneous, and we defer to the district court on credibility assessments. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (stating that district court findings are not reversed unless clearly erroneous, and great deference is given to district court determinations regarding witness credibility), *aff'd sub nom. Minn. v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993)). "In a pretrial appeal, the state must demonstrate [that] (1) the [district] court 'clearly and unequivocally erred' in its judgment, and (2) the error will have a 'critical impact' on the outcome of the trial unless reversed." *State v. Aubid*, 591 N.W.2d 472, 477 (Minn. 1999) (quoting *State v. Joon Kyu Kim*, 398 N.W.2d 544, 547 (Minn. 1987)).

Critical Impact

Critical impact can be shown when "the lack of the suppressed evidence completely destroys the state's case." *Kim*, 398 N.W.2d at 551. The state charged respondent as a prohibited person in possession of a firearm in violation of Minn. Stat.

§ 624.713, subd. 1(2) (2008). The district court suppressed the handgun, without which the state's case is destroyed. The state has shown critical impact.

Clear and Unequivocal Error

The state argues that the officers did not require reasonable suspicion to lawfully approach respondent's already-stopped vehicle. The state correctly asserts that a temporary seizure does not occur when an officer simply approaches a driver in an already-stopped vehicle. *See State v. Alesso*, 328 N.W.2d 685, 687 (Minn. 1982). But here officers did not merely walk up to respondent's parked vehicle; officers relied on information provided by a confidential informant (CI). The CI reported to Officer Geoffrey Toscano that on July 15, someone called "Country" would be driving a "red Chevy Blazer" with "Minnesota license plate [number] 415-BRW," in the area of "24th Street East and 13th Avenue South," between 7:40 p.m. and 7:45 p.m., carrying heroin and a gun. The CI did not know "Country's" actual or legal name, but described him as a "black male," between 24-28 years old, who stood approximately six feet tall, and who wore braids or dreadlocks.

Officer Toscano and the CI parked in the area where the CI indicated that "Country" would be arriving. Several unmarked and marked squad cars were also set up in the area. At approximately 8:00 p.m., a vehicle matching the description provided by the CI arrived. The CI confirmed the driver's identity as "Country." The vehicle stopped, but nobody exited the vehicle. Toscano ordered the marked squad to conduct a stop even though the vehicle was already parked. The vehicle was parked for approximately 20 seconds when the marked squad parked behind it and activated its

lights. At least two unmarked squads pulled in, and officers ordered the vehicle's occupants out at gunpoint. Officers handcuffed the occupants, and "Country" was identified as respondent. Respondent was seized at this point, because a reasonable person would not have believed that he was free to leave after ordered out of a vehicle at gunpoint and handcuffed. *See In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993) (stating that a person has been "seized" when, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave"). Additionally, Officer Toscano testified at the suppression hearing that he ordered the stop of the parked vehicle, stating that "if a squad pulls in behind you . . . with no lights on . . . [you] can just drive away. So pull in and turn the lights on, [you] realize the squad's behind [you]." Thus, the officers intended for this to be a stop, and not a situation when an officer merely approached a parked vehicle.

The state contends that even if a stop occurred, it was supported by reasonable suspicion. To lawfully seize a person temporarily to investigate a crime, an officer must have a reasonable, articulable suspicion that the person was or will be engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968); *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). To justify an investigative stop, a police officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. This court must analyze the totality of the circumstances to determine whether the officer who made the stop is able to articulate a particularized and objective basis for suspecting the stopped person of criminal activity. *State v. Kvam*, 336

N.W.2d 525, 528 (Minn. 1983). In applying the *Terry* standard, "Minnesota case law shows how very low the threshold is to stop a vehicle in order to carry out the duty to investigate possible violations of the law." *State v. Claussen*, 353 N.W.2d 688, 690 (Minn. App. 1984). "All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity." *State v. Johnson*, 257 N.W.2d 308, 309 (Minn. 1977).

Officers relied only on information provided by the CI in initiating the stop. Information of criminal activity that is reported by a reliable informant may be considered to meet the reasonable-suspicion standard. *Adams v. Williams*, 407 U.S. 143, 147, 92 S. Ct. 1921, 1924 (1972). An investigative stop based on an informant's tip must be sufficiently reliable. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). An informant who has given reliable information in the past is likely to be currently reliable, and an informant's reliability can be established by police corroboration of the informant's information. *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004).

In *State v. Cook*, we affirmed the district court's decision to suppress evidence seized after a warrantless arrest based on an informant's tip that did not include "any incriminating aspects that might corroborate the [] claim that Cook was selling drugs." 610 N.W.2d 664, 668-69 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). In *Cook*, the informant had not purchased drugs from Cook and had not witnessed Cook selling drugs to anyone else. *Id.* at 668. The tip included information only of Cook's clothing, physical appearance, vehicle, and present location. *Id.*

Here, the CI had never given police information in the past. The CI contacted Officer Toscano because the CI "was working off a [narcotics] case," which required him

to provide information on a "certain amount of cases"; if he lost contact with officers, he would be charged. Toscano did not know if the CI had a prior criminal history. Further, the CI's information was not corroborated; the CI never told Toscano that he purchased drugs from or sold drugs to respondent; and the CI never told Toscano that he saw respondent buy drugs from or sell drugs to anyone. The CI never explained how he knew that "Country" would be at this place and time with heroin and a gun. Toscano's search for someone with the alias "Country" retrieved at least three names, none of which were respondent. And Toscano did not run the license-plate number provided by the CI.

The district court concluded that the CI was not reliable and that the stop could not be based on information the CI provided. Without the information from the CI, the officers would not have approached respondent's vehicle. Thus, the district court did not clearly err in concluding that the stop was illegal. Under the exclusionary rule, evidence seized in violation of the constitution generally must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 178 (Minn. 2007).

Exceptions

The state argues that two exceptions to the warrant requirement apply in this case, which render the suppression of the handgun clearly erroneous. The federal and state constitutions guarantee individuals the right to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is per se unreasonable unless it fits under a warrant-requirement exception. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). The state bears the burden of demonstrating that a search was justified by an established exception to the warrant

requirement. *State v. Anderson*, 388 N.W.2d 784, 787 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

The state argues that the plain-view and automobile exceptions apply. The plain-view exception "permits a police officer 'to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be.'" *State v. Griffin*, 336 N.W.2d 519, 522 (Minn. 1983) (quoting *Washington v. Chrisman*, 455 U.S. 1, 5-6, 102 S. Ct. 812, 816 (1982)). Officers initiating the stop found the following items: a box of ammunition on the dashboard, a handgun under the driver's seat, and heroin on the center console. But the officers made these discoveries after the seizure, which was illegal; therefore, the plain-view exception does not apply.

The automobile exception provides that warrantless searches of automobiles are not unreasonable if supported by probable cause to believe that the vehicle is transporting contraband. *Munson*, 594 N.W.2d at 135. Probable cause triggering the automobile exception exists when the officer is aware of facts and circumstances that are sufficient to warrant a reasonable person to believe that the automobile contains items that the officer is entitled to seize. *State v. Pederson-Maxwell*, 619 N.W.2d 777, 781 (Minn. App. 2000). Because there was not even reasonable suspicion to conduct an investigatory stop, the state has failed to meet the higher burden of probable cause to believe that the automobile was transporting contraband.

Affirmed.