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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-503**

State of Minnesota,
Respondent,

vs.

William Forrest Murphy,
Appellant.

**Filed March 1, 2012
Affirmed
Minge, Judge**

Dakota County District Court
File No. 19HA-CR-08-3529

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

James C. Backstrom, Dakota County Attorney, Phillip D. Prokopowicz, Assistant County Attorney, Christopher Beck, Certified Student Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Minge,
Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's denial of his motion to suppress evidence collected during a search of his vehicle. Appellant asserts that the evidence was obtained as a result of excludable statements and during a nonconsensual search. We affirm.

FACTS

The Inver Grove Heights Police Department received a phone call from appellant William Murphy's wife. She told an officer that Murphy was transporting illegal drugs in his semi-truck and that Murphy had asked her to meet him at a truck stop in Inver Grove Heights. Murphy's wife stated that the truck was blue, the trailer was white, and she identified the writing on the truck. The officer relayed the information to a Dakota County Drug Task Force (DTF) agent, who drove to the truck stop. Not seeing the truck at that location, the agent called Murphy's wife who confirmed the information and added that Murphy had previously transported large quantities of marijuana to Minnesota from California. Murphy's wife phoned the DTF agent shortly thereafter to tell him that Murphy had just called her, stating that his truck was being unloaded across the highway from the truck stop. Seeing a truck matching the description backed up against a loading dock at a business across the highway, the DTF agent called other officers for assistance.

Three officers in three squad cars promptly responded and surrounded Murphy's semi-truck while he was in the cab. The squad cars did not have their sirens or emergency lights activated, and no firearms were displayed by officers during the course of the interaction. One officer approached the driver's door of the truck and asked

Murphy to step down from the semi-truck. As Murphy did so, he handed his driver's license to the officer. The officer asked Murphy if there was anything in the vehicle that he was not supposed to have, to which Murphy responded that there was "a little bit of weed." The officer asked where it was, and Murphy told him that it was in a pouch next to the driver's door. The officer asked if he could retrieve it, and Murphy said that he could. The officer asked if there were any other illegal items in the vehicle, and Murphy responded that there were not. The officer asked if Murphy "minded if [they] looked th[r]ough the rest of the vehicle," to which Murphy responded, "go ahead." The officer asked if he was sure it was alright, and Murphy said "yes, go ahead and look."

Two officers began to search the cab of the semi-truck, while another officer stood outside with Murphy. One officer found a pipe and a wooden box containing a modest quantity of green leafy material that looked and smelled like marijuana. At that point the DTF agent arrived, identified himself, and told Murphy that he had been watching him for some time. He asked if Murphy knew why the officers were there, and Murphy said that he did not. The agent asked if there was anything else in the truck that they should know about. Murphy responded that "it" was in a peanut butter jar in a green bag, and clarified when asked by the agent that he thought "it" was cocaine. Still searching the cab of the semi-truck, an officer found a green bag containing clothing, toiletries, and a peanut butter jar wrapped in a plastic bag. The officer opened the peanut butter jar and found a plastic baggie inside the peanut butter. The contents were later tested and found to be 464.18 grams of crystalline methamphetamine. Once the jar was found, Murphy was advised of his *Miranda* rights.

Murphy was charged with two counts of first-degree controlled substance crimes. The district court denied Murphy's motion to suppress the methamphetamine as the result of an unlawful search and seizure. Murphy agreed to a stipulated trial to preserve these evidentiary issues for appeal, was found guilty by the district court, and was sentenced. This appeal follows.

D E C I S I O N

The issue on appeal is whether the district court erred in declining to suppress the evidence found in Murphy's semi-truck. Murphy argues that the evidence of his possession of controlled substances resulted from an illegal search. Murphy alleges that his consent was not voluntarily given because it occurred during a custodial interrogation, which should have been preceded by advising him of his constitutional rights. The state argues that Murphy was not in custody at the time that he gave his consent to the search, and that his consent was voluntarily given. Although we have considered these issues, we find it unnecessary to decide them because police had probable cause to search Murphy's truck and would have inevitably discovered the methamphetamine through legal means.

“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—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). In exceptional circumstances, “it is proper for an appellate court to decide an issue not raised on appeal . . . when the reasoning relied upon by the appellate court is neither novel nor questionable.” *State v. Jones*, 516 N.W.2d 545, 548

n.5 (Minn. 1994) (quoting *State v. Glidden*, 455 N.W.2d 744, 746 (Minn. 1990)) (alteration in original).

Under the United States and Minnesota Constitutions, unreasonable searches and seizures are prohibited. U.S. Const. amend. IV; Minn. Const. art. I, § 10. With a few exceptions, warrantless searches are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). One such exception applies to searches of motor vehicles transporting contraband. *United States v. Ross*, 456 U.S. 798, 806–07, 102 S. Ct. 2157, 2163 (1982). This exception allows police to “search an automobile without a warrant if they have ‘probable cause for believing that [the] vehicles are carrying contraband or illegal merchandise.’” *State v. Demry*, 605 N.W.2d 106, 108 (Minn. App. 2000) (quoting *Ross*, 456 U.S. at 808, 102 S. Ct. at 2164 (alteration in original)), *review denied* (Minn. Mar. 28, 2000).

Probable Cause

Probable cause to search must be based on “objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers.” *Ross*, 456 U.S. at 808, 102 S. Ct. at 2164. Probable cause means that there is “a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

To determine whether an informant’s tip establishes probable cause to arrest or search, this court considers the totality of the circumstances, including the informant’s basis of knowledge, veracity, and reliability. *State v. Munson*, 594 N.W.2d 128, 136

(Minn. 1999); *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). “The independent corroboration of even innocent details of an informant’s tip may support a finding of probable cause.” *Munson*, 594 N.W.2d at 136. In assessing the reliability of an informant’s tip, this court may also consider the basis of the informant’s knowledge. *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). In addition to other indications of reliability, “a first-time citizen informant is presumably reliable; . . . an informant’s reliability can be established if the police can corroborate the information; . . . the informant is presumably more reliable if the informant voluntarily comes forward; . . . [and] an informant is minimally more reliable if the informant makes a statement against the informant’s interest.” *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004); *see also State v. Siegfried*, 274 N.W.2d 113, 115 (Minn. 1978) (noting that reliability is indicated “where the tip implicates someone the informer would be expected to protect”). The presumption of reliability for a first-time citizen informant is “especially true when [the informer] . . . is not involved in the criminal underworld and . . . has no track record as a police informant.” *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004) (quotation omitted).

In this case, Murphy’s wife contacted police in Inver Grove Heights to report that a crime was being committed. Murphy’s wife identified the location at which Murphy was to meet her to give her the drugs, identified Murphy as the individual that would be driving the truck, identified the color of both the truck and the trailer, and identified the specific writing that would be on the side of the truck. The DTF agent drove to the location where Murphy had told his wife that he would meet her. The agent did not see

the truck and contacted Murphy's wife again, who reiterated the details to the agent. During this conversation, Murphy's wife also stated that Murphy had previously brought large quantities of marijuana hidden in the side compartments of his semi-truck cab from California. Because the DTF agent had not yet seen the truck Murphy's wife described, he asked her to call him if anything changed. About half an hour later, Murphy's wife called the agent, telling him that the truck was unloading lettuce across the highway from the originally planned meeting location. The DTF agent drove to the location across the highway and observed a semi-truck matching the description backed up against a loading dock. At that point, the agent called uniformed police officers, asking them to initiate contact with the semi-truck.

Murphy's wife not only provided extensive details about the truck and the drug-related activity, but she was also a credible informant. Her relationship to Murphy was that of a close family member. She voluntarily came forward to the police to report this information, implicating someone she normally would be expected to protect. Murphy's wife disclosed her identity, which indicated that her information was more reliable than an anonymous tip. Finally, she was not involved in the illicit drug trafficking, nor is there any indication that she was otherwise involved in criminal activity. All of these considerations combine to indicate that the information that she was providing was verifiable and reliable.

Inevitable Discovery

The final question is whether the discovery of the illegal drugs was inevitable. "The inevitable discovery doctrine permits the inclusion of evidence otherwise excluded

under the exclusionary rule if the police would have inevitably discovered the evidence, absent their illegal search.” *State v. Martinez*, 579 N.W.2d 144, 148 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. July 16, 1998). “If the state can establish by a preponderance of the evidence that the fruits of [the] search ‘ultimately or inevitably would have been discovered by lawful means,’” the evidence resulting from the challenged search is admissible. *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (quoting *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509 (1984)). Inevitable discovery “involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment.” *Id.* (quoting *Nix*, 467 U.S. at 444–45 n.5, 104 S. Ct. at 2509 n.5).

Here, Murphy’s wife indicated that he had previously transported large quantities of marijuana in the cab of his semi-truck. The DTF agent and police officers knew that they would have to carefully search the cab area of the truck. The agent and officers were at the scene prepared to conduct this search, presumably even if they did not receive consent. The initial discovery of marijuana was a small quantity associated with personal use. Based on the wife’s information, the officers and DTF agent were looking for a larger, more valuable quantity of illegal drugs in the cab. The cab area of the truck was not an unusual location that would be difficult for a trained DTF agent to search. Based on the record, we conclude that it is clear that the illegal drugs Murphy seeks to suppress would have inevitably been discovered through a legal search of the vehicle and that the district court did not err in declining to suppress the controlled-substance evidence found in Murphy’s semi-truck.

Because of the circumstances in which the police received the information and the extensive detail provided, we conclude that the police had probable cause to search the cab of Murphy's semi-truck for drugs. This conclusion appears without any reference to "speculative elements" or extrapolation from facts found in hindsight. Because we conclude that the police had probable cause to search Murphy's vehicle under the automobile exception and the discovery was inevitable, we find it unnecessary to address whether the law enforcement officers were required to advise Murphy of his constitutional rights before questioning him and whether he voluntarily consented to the search of his vehicle.

Affirmed.

Dated: