STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0374

State of Minnesota,
Appellant,

vs.

Darris Lamar Jackson,
Respondent.

Filed September 3, 2013
Reversed
Ross, Judge

Hennepin County District Court
File No. 27-CR-12-40035

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

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

William M. Ward, Hennepin County Public Defender, Paul J. Maravigli, Assistant Public Defender, Angela F. Bailey, Assistant Public Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Rodenberg, Judge.

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

ROSS, Judge

In this appeal from a pretrial order suppressing evidence of drugs that police found in Darris Jackson's Trailblazer, the state argues that the police had probable cause to search under the automobile exception to the warrant requirement after receiving detailed information from a confidential reliable informant. Because the district court's decision will critically impact the state's ability to prosecute Jackson, we will review the pretrial order. And because the district court erred in its legal judgment by suppressing the evidence, we reverse.

FACTS

Shortly before 9:30 p.m. on December 4, 2012, a confidential reliable informant sent a text message to Minneapolis police officer Jeffrey Werner informing the officer that he was the passenger in a car that contained crack cocaine that had just been obtained in a drug exchange. The informant sent another message saying that he and the drug dealer would soon travel from St. Paul to the Sheraton Hotel in South Minneapolis for another drug deal. The informant gave the officer the driver's first name (Darris), a description of Darris (black male, twenty-five to thirty years old, five feet ten inches tall, medium build, and a short afro), a description of the car (white Chevy Trailblazer with Minnesota license plates 600 JCY), and the location of the drugs within the vehicle (the glove compartment).

The informant sent another message to Officer Werner at around 10:00 p.m. saying that they were "en route" to the Sheraton. Officer Werner and other officers

awaited them. Soon he noticed a white Chevy Trailblazer with Minnesota license plates 600 JCY traveling eastbound from Chicago Avenue and turning north on Elliot Avenue toward the Sheraton. It traveled past the Sheraton parking lot and continued on Elliot, a dead-end street. The Trailblazer then made a U-turn and headed south on Elliot.

Officer Werner directed the officers to stop the Trailblazer and take the occupants into custody. The officers found the informant and Darris Jackson inside and took them, and the Trailblazer, to the third precinct. Officers searched the Trailblazer's glove compartment and found more than twenty grams of crack cocaine. The state charged Jackson with second-degree controlled substance crime (possession), under Minnesota Statutes section 152.022, subdivision (2)(a)(1) (2012).

Jackson moved the district court to suppress the evidence of drugs found in his Trailblazer, arguing that the informant was not sufficiently reliable to justify the stop, arrest, and search. The district court conducted a hearing where Officer Werner testified that he had worked with the informant over the previous seven or eight months. The informant provided him with information twice, on one occasion leading to an arrest. The informant had never given false information to Officer Werner, and he had provided details about people and activity that Officer Werner had corroborated. Officer Werner justified searching the Trailblazer at the precinct rather than on the street near the stop based on concerns for officer safety.

Jackson claimed that when he arrived at the informant's house, the informant asked him for a ride to the Sheraton in Minneapolis to meet a woman. Jackson said he agreed to drive the informant to the Sheraton in exchange for gas money.

The district court determined that the informant was reliable but that the information that he provided lacked sufficient indicia of reliability to arrest Jackson. It therefore held that "[t]here was no probable cause supported by specific, articulable facts to warrant a stop" and that "[t]here was insufficient probable cause to stop and arrest [Jackson]." It concluded also that "the subsequent warrantless search was illegal." The district court then dismissed the complaint.

The state appeals.

D E C I S I O N

I

The state may appeal a pretrial order in a criminal case if the district court's alleged error, unless reversed, has a critical impact on the outcome of trial. Minn. R. Crim. P. 28.04, subds. 1(1), 2(1). It obviously does here. Dismissal of the complaint satisfies the critical-impact test. *See State v. Varnado*, 582 N.W.2d 886, 889 n.1 (Minn. 1998). The district court suppressed evidence of the crack cocaine that police found in Jackson's Trailblazer and then dismissed the complaint. Without this evidence, the state cannot prosecute Jackson. The district court's order therefore critically impacts the prosecution.

II

The state argues that the district court erred by suppressing the evidence from Jackson's Trailblazer. When the facts of a case are largely undisputed, the district court's suppression ruling presents a question of law, which this court independently reviews.

State v. Cook, 610 N.W.2d 664, 667 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

Both the United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are generally unreasonable. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). But a warrantless search is reasonable if it falls within an exception to the warrant requirement. *See State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). One such exception is the automobile exception, which allows police to search a vehicle if they have probable cause to believe that the vehicle is carrying contraband. *Id.*

The district court determined that the search was not supported by probable cause because the informant's information was not reliable enough. An informant's information can establish probable cause to search a vehicle. *See id.* at 136. Whether the information is sufficient to establish probable cause depends on the totality of the circumstances. *State v. Ross*, 676 N.W.2d 301, 303–04 (Minn. App. 2004). Six factors help to determine reliability:

> (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.

Id. at 304. Only the second and third factors apply in this case.

The informant has previously provided reliable information to police. "Having a proven track record is one of the primary indicia of an informant's veracity." *Munson*, 594 N.W.2d at 136. Officer Werner testified that the informant had given him specific information on two occasions—one resulting in an arrest—and that the informant had never given him false information. This is not enough because "[t]he information obtained from the [informant] must still show a basis of knowledge. The basis of knowledge may be supplied directly, by first-hand information, such as when [an informant] states that he purchased drugs from a suspect or saw a suspect selling drugs to another." *Cook*, 610 N.W.2d at 668 (citation omitted). The informant passes this test. Officer Werner testified that the informant had sent him a text message saying that he had been in Jackson's Trailblazer when Jackson received crack cocaine from two people in a St. Paul parking lot. He reported that Jackson placed the drugs in the glove compartment of the Trailblazer. And he stated that he and Jackson were traveling from St. Paul to the Minneapolis Sheraton to engage in another drug deal. On this level of detail, we cannot agree with the district court's statement that the police lacked sufficient "incriminating aspects that might corroborate" the informant's claim that Jackson possessed drugs in the Trailblazer.

The district court relied on *Cook*, a case in which the informant described the defendant's clothing, physical appearance, vehicle, and extant location. *Id. Cook* is not controlling here. In *Cook*, we determined that the reported details "fail[ed] to offer any explanation for the basis of the [informant's] claim that Cook was selling drugs." *Id.* We observed that the informant did not claim that he had purchased drugs from Cook or that

he had seen Cook selling drugs. *Id.* And the police corroborated only those details that lacked incriminating aspects, such as verifying that the vehicle parked in a lot and that the man leaving a YMCA and getting into the vehicle matched a description of Cook. *Id.* We later clarified that a key element missing in *Cook* was that the informant predicted future behavior. *See Ross*, 676 N.W.2d at 305. We distinguished the *Ross* informant from the *Cook* informant because "there was information predicting future behavior by [Ross], specifically that he would appear at a specified address at a specified time in a described vehicle, all of which was verified by law-enforcement prior to the search." *Id.*

This case more closely fits *Ross* than *Cook*. Like the informant in *Ross*, the informant here provided details that accurately predicted Jackson's future behavior. The informant indicated that Jackson would be driving a white Chevy Trailblazer with Minnesota license plates 600 JCY and would arrive at the Minneapolis Sheraton near the intersection of Chicago and Elliot Avenues to commence a drug deal. An officer may stop a motorist if he has a reasonable articulable suspicion of criminal activity. *State v. Duesterhoeft*, 311 N.W.2d 866, 867 (Minn. 1981). The reasonable-suspicion standard is not high. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). Here, the police stopped Jackson's Trailblazer based on the detailed information that Darris was transporting cocaine in his glove compartment for another drug deal near the Sheraton. The information and verified behavior easily meets the reasonable-suspicion standard, and once the officers saw that the two occupants—Jackson and the informant—were the two individuals described by the informant, we are satisfied that probable cause to search existed.

The parties raise arguments relating to the search-incident-to-arrest exception to the warrant requirement. The arguments are off the mark. The search-incident-to-arrest exception permits police officers to search the arrestee's person and the area within his immediate control to prevent the arrestee from gaining possession of a weapon or destructible evidence. *Arizona v. Gant*, 556 U.S. 332, 339, 129 S. Ct. 1710, 1716 (2009). Jackson contends that because his arrest was illegal, the evidence collected must be suppressed. But Jackson's arrest has no bearing on the suppression of the evidence because the police lawfully searched the Trailblazer based on probable cause under the automobile exception. "Warrantless searches need only be justified by one exception to the Fourth Amendment warrant requirement." *United States v. Webster*, 625 F.3d 439, 445 (8th Cir. 2010) (noting that officers had probable cause to search an automobile irrespective of the applicability of the search-incident-to-arrest exception); *cf. State v. Armstrong*, 291 N.W.2d 918, 919 (Minn. 1980) (remanding for rehearing when search-incident-to-arrest exception did not apply but the search of the defendant's car might have been justified by the automobile exception).

We also hold that the officers' search of the Trailblazer at the precinct, rather than at the scene of the seizure, was not improper. The Minnesota Supreme Court has ruled that a search conducted under the automobile exception may be conducted at either the scene or later, at the police station. *State v. Johnson*, 324 N.W.2d 199, 202 (Minn. 1982) ("[I]f police may search a vehicle at the scene without first obtaining a warrant, then they constitutionally may do so later at the station without obtaining a warrant."). Because the

police had probable cause justifying the search of Jackson's Trailblazer without a warrant at the scene, they retained that justification at the precinct.

Reversed.