STATE OF MINNESOTA
IN COURT OF APPEALS
A10-27

State of Minnesota,
Respondent,

vs.

Richard Lee Walker,
Appellant.

Filed January 4, 2011
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-08-18878

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

Michael O. Freeman, Hennepin County Attorney, J. Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

On appeal from his conviction of four counts of first-degree controlled-substance crime, appellant argues that the district court erred by (1) denying his motion to suppress cocaine found in his car because the police lacked probable cause to arrest him, and (2) denying his motion to suppress cocaine found during a search of his home because (a) the search warrant was not supported by probable cause and (b) the warrantless entry into his home by police was not supported by probable cause and exigent circumstances. We affirm.

FACTS

Officers George Peltz and Kyle Ruud were working with an individual whom Officer Peltz deemed to be a confidential reliable informant (CRI). The CRI informed the officers that a person nicknamed "Santana" was distributing narcotics in the metro area and that Santana drove a maroon Ford Explorer. The CRI also provided a license-plate number, which Officer Ruud determined to be registered to appellant Richard Lee Walker. The CRI positively identified a picture of appellant as the same person nicknamed Santana. Both appellant's driver's license and vehicle registration listed his address as 6733 81st Place North, Brooklyn Park.

On April 15, 2008, the CRI informed Officer Ruud that appellant would be delivering a quantity of cocaine to the Lowry/Upton area of North Minneapolis within the next 30 minutes. The police set up surveillance at appellant's residence in Brooklyn Park and saw appellant exit the home and get into a maroon Ford Explorer. Following

appellant in unmarked squad cars, the police observed appellant drive directly to the Lowry/Upton area of North Minneapolis without stopping. While the officers were following appellant, the CRI positively identified the vehicle and appellant.

When appellant reached the Lowry/Upton area, the officers asked Minneapolis police officer Jason Andersen, with whom the officers were also working, to stop the vehicle in a marked squad car, and he did. When Officer Andersen approached the driver-side window, he saw a plastic bag containing a white substance in appellant's lap. Based on his experience, Officer Andersen believed that the white substance was cocaine and placed appellant under arrest. The police seized the plastic bag from the driver's seat of the vehicle. The police ultimately determined that the plastic bag contained approximately 79 grams of cocaine.

After Officer Andersen arrested appellant, Officer Ruud obtained a search warrant. Meanwhile, other officers resumed surveillance on appellant's home to prevent any additional narcotics from being destroyed or moved. The officers detained a man who exited the home on foot, and a woman who arrived at the home in a car, entered the home for a short period of time, and then drove away. Neither person possessed narcotics. The police brought both persons back to the home.

Because of the officers' observed activity at appellant's home and their lack of manpower, they decided to "freeze" the home by entering it and detaining everyone within to prevent the destruction of evidence while they waited for Officer Ruud to arrive with a search warrant. Officer Ruud testified that, in his experience, some narcotics dealers have a plan to destroy evidence if the dealer does not contact people at the home

within a certain time after a delivery. Two uniformed officers approached the home while other plain-clothed officers surrounded it. The officers detained the individual who answered the door and held him in the living room along with the man and woman previously stopped. The officers then searched the inside of the home for additional people. They did not search the home for drugs or seize any evidence before Officer Ruud arrived with the search warrant. Upon executing the search warrant, the officers found approximately 368 grams of cocaine in the home.

On April 16, 2008, the state charged appellant with two counts of first-degree controlled-substance crime for the cocaine found in his residence. Before trial, appellant moved to suppress all evidence seized from the home. The district court denied the motion, concluding that the warrantless entry was justified by probable cause and exigent circumstances, and that the search warrant was supported by probable cause.

On August 31, 2009, the state amended its complaint to include two additional counts of first-degree controlled-substance crime for the cocaine found in appellant's car. Appellant moved to suppress the cocaine seized from his car, and the district court denied the motion, concluding that the police had probable cause to arrest appellant. Appellant waived his right to a jury trial, and to preserve evidentiary issues for appeal in accordance with *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), he stipulated to the facts set forth in the amended complaint, reports from the investigating police officers, a drug-analysis report, and the application for the search warrant with the supporting affidavit. The district court convicted appellant of all four counts contained in the amended complaint. This appeal follows.

D E C I S I O N

"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). This court accepts the district court's underlying factual determinations unless they are clearly erroneous. *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007). "Findings of fact are not clearly erroneous if there is reasonable evidence to support them." *State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002).

Reliability of Confidential Informant

The police in this case relied heavily on the CRI's information provided to Officers Peltz and Ruud as the basis for the stop of appellant's car and probable cause for his arrest. Appellant argues that the information the CRI provided was insufficient to support either the stop of his car or probable cause for his arrest because the CRI "was not credible and his basis of knowledge was not properly established."

"Whether the information provided by a confidential informant is sufficient to establish probable cause is determined by examining the totality of the circumstances, particularly the credibility and veracity of the informant." *State v. Ross*, 676 N.W.2d 301, 303–04 (Minn. App. 2004) (quotation omitted). Courts consider various factors to determine the reliability of confidential, but not anonymous, informants, of which two are pertinent here: (1) "an informant who has given reliable information in the past is likely also currently reliable"; and (2) "an informant's reliability can be established if the police can corroborate the information." *Id.* at 304. The fact that an informant has given

reliable information in the past "is fulfilled by a simple statement that the informant has been reliable in the past because this language indicates that the informant had provided accurate information to the police in the past and thus gives the magistrate reason to credit the informant's story." *Id.* (quotations omitted). Law-enforcement officers need not provide specifics of the informant's past veracity. *Id.*

Here, Officer Ruud testified that this particular CRI had provided the police with accurate information in the past that led to arrests for narcotics-related offenses. This testimony is sufficient to establish the CRI's past veracity. And the police were able to corroborate the specific details of the CRI's information. The police confirmed that a maroon Ford Explorer with a specific license plate number described by the CRI was registered to appellant. After seeing a picture of appellant, the CRI confirmed that appellant was the man distributing narcotics. The CRI informed the police that appellant would be leaving his home within 30 minutes and would be delivering drugs to the Lowry/Upton area of Minneapolis. Shortly after the tip, the police observed appellant leave his residence in a maroon Ford Explorer and drive directly to the Lowry/Upton area without stopping.

But "[r]ecitation of facts establishing a CRI's reliability by his proven 'track record[]' . . . does not by itself establish probable cause." *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (citing 2 Wayne R. LaFave, *Search & Seizure* § 3.3(b), at 121 (3d ed. 1996)), *review denied* (Minn. July 25, 2000). "The information obtained from the CRI must still show a basis of knowledge." *Id*. at 668. The basis of knowledge may "be supplied indirectly through self-verifying details that allow an inference that the

information was gained in a reliable way and is not merely based on a suspect's general reputation or on a casual rumor circulating in the criminal underworld." *Id.*

Here, the CRI provided detailed information that indicates firsthand knowledge that the police corroborated. The CRI accurately described appellant, his vehicle, what time he would be leaving his residence, and where he was going. This level of information allows an inference that the tip was based on the CRI's firsthand knowledge. We conclude that the CRI was reliable because he had provided accurate information in the past, the police were able to corroborate the information provided in this instance, and the CRI's tip was based on his firsthand knowledge.

Validity of the Stop of Appellant's Car

Without conceding that the CRI's information was insufficient to support probable cause for appellant's arrest, the state argues that the information was sufficient to support the stop of appellant's car and the stop led to the officer seeing cocaine in appellant's lap, which provided sufficient probable cause for appellant's arrest.[1] We agree. Under the collective-knowledge doctrine, the knowledge of Officers Peltz or Ruud that the CRI provided was imputed to Officer Anderson. *See State v. Loving*, 775 N.W.2d 872, 881 (Minn. 2009) (stating that "[w]hen more than one officer is involved in an investigation,

[1] Although the state did not argue this theory before the district court, we will consider the argument. "A respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003).

the *entire* knowledge of the police force is pooled and imputed to the arresting officer for the purpose of determining if sufficient probable cause existed for an arrest").

We conclude that the CRI's information imputed to Officer Anderson provided a reasonable, articulable suspicion that appellant was engaging in criminal activity such that the officer's stop of appellant's car was justified.[2] *See Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968) (holding that to conduct a limited stop for investigatory purposes, the police must have specific articulable facts, together with rational inferences, that warrant intrusion).

Probable Cause for Appellant's Arrest

This court will not set aside a district court's finding that police had probable cause to make an arrest unless it is clearly erroneous. *Loving*, 775 N.W.2d at 881. "Probable cause to arrest exists when the objective facts are such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed." *Id.* (quotation omitted).

When Officer Andersen approached the driver-side window of appellant's car, he saw resting in appellant's lap a clear plastic bag that contained a white substance. Based on his experience as a law-enforcement officer and his imputed knowledge from the CRI, Officer Andersen reasonably believed that the substance in the bag was cocaine.

[2] Officer Andersen testified that he observed appellant fail to signal his turn, and the district court found the officer's testimony credible. *See State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009) (stating that appellate courts defer to factfinder's credibility determinations). Although the officer testified that he stopped appellant based on the CRI's information relayed to him by Officer's Pelt and Ruud, he had a valid independent basis for stopping appellant's car as well.

"[E]vidence seized without a valid search warrant is nevertheless admissible if it is 'in plain view, there was a prior justification for an intrusion, the discovery was inadvertent, and there was probable cause to believe that the items seized were immediately apparent evidence of crime.'" *State v. Bradford*, 618 N.W.2d 782, 795 (Minn. 2000) (quoting *State v. Buschkopf*, 373 N.W.2d 756, 768–69 (Minn. 1985)). Officer Andersen therefore had probable cause to arrest appellant based on his reasonable belief that appellant possessed cocaine. *See State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998) ("Police officers may arrest a felony suspect without an arrest warrant in any public place, including outside a dwelling, provided they have probable cause.").

Because Officer Anderson had probable cause to arrest appellant based on his reasonable belief that the white substance in appellant's lap was cocaine, we need not decide whether the CRI's information was independently sufficient to support probable cause for his arrest. We therefore conclude that the district court did not err by denying appellant's motion to suppress.

Probable Cause for Search Warrant

Appellant argues that the district court erred by denying his motion to suppress the evidence found during the execution of the search warrant in the home because the search warrant was not supported by probable cause.

Both the United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures and provide that warrants must be supported by probable cause. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Generally, a search conducted without a warrant issued upon probable cause is *per se* unreasonable."

State v. Burbach, 706 N.W.2d 484, 488 (Minn. 2005) (quotation omitted). "A search warrant is supported by probable cause if there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Fort*, 768 N.W.2d 335, 342 (Minn. 2009) (quotation omitted). "We consider the totality of the circumstances when making the determination of whether there is probable cause." *Id.* "In reviewing an issuing judge's probable cause determination, we give great deference to the judge's decision." *Id.* (quotation omitted). "We consider whether the information presented in the affidavits provided to support probable cause presents specific facts to establish a direct connection between the alleged criminal activity and the site to be searched." *Id.* (quotation omitted); *see also State v. Souto*, 578 N.W.2d 744, 747–48 (Minn. 1998) (stating that Minnesota courts have "historically required a direct connection, or nexus, between the alleged crime and the particular place to be searched, particularly in cases involving the search of a residence for evidence of drug activity"). "[I]n examining the issuing judge's basis for finding probable cause, we look only to information presented in the affidavit and not to information that the police possessed but did not present in the affidavit." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted).

To determine whether law enforcement has established a direct connection between the alleged criminal activity and the site to be searched, the issuing judge should consider "the type of crime, the nature of the items sought, the extent of the suspect's opportunity for concealment, and the normal inferences as to where the suspect would keep the items." *State v. Pierce*, 358 N.W.2d 672, 673 (Minn. 1984). "Police officers

may rely on training and experience to draw inferences in affidavits, but mere suspicion does not equal probable cause." *State v. Kahn*, 555 N.W.2d 15, 18 (Minn. App. 1996).

Here, in the affidavit supporting the search-warrant application, the issuing judge was presented with specific facts that appellant distributed and sold narcotics in the metro area, drove a maroon Ford Explorer with a known license plate number, and lived at 6733 81st Place, Brooklyn Park. Based on a tip that appellant was making a drug delivery in the Lowry/Upton area, the police observed him exit the 81st Place home, get into a maroon Ford Explorer, and drive directly to the Lowry/Upton area where he was stopped and found with a large quantity of cocaine in the car. The affiant, Officer Ruud, stated that, based on his training and experience, "it is common for narcotics dealers to store quantities of narcotics, along with proceeds and records relating to such, at their home." These facts establish a direct connection between appellant's criminal activity—his cocaine dealing as evidenced by the drugs in his lap in his car—and his home from which he had just left to make a delivery.

Appellant cites *State v. Secord*, 614 N.W.2d 227 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000), arguing that there was no evidence that the narcotics found in the car were part of a larger supply. But *Secord* involved child pornography, the affiant in *Secord* did not indicate that the defendant had additional pornography anywhere else, and the *Secord* court expressly distinguished child pornography from drugs. 614 N.W.2d at 231. "When the district court is informed that a suspect is a drug dealer, it is reasonable to infer that the suspect keeps a supply of drugs to sell. In the absence of any contrary information, it is reasonable to infer that that supply is kept at the suspect's

residence." *Id.* Here, appellant drove directly from his home to the Lowry/Upton area without stopping. The police had no information that appellant kept his supply some place other than in his home. And the fact that appellant, a reported drug dealer, was arrested with a large quantity of drugs increased the likelihood that police would find drug evidence in his home. *See Novak v. State*, 349 N.W.2d 830, 832–833 (Minn. 1984) ("The fact that petitioner dealt in large quantities increased the likelihood that police would find marijuana in a search of his residence.").

Based on his training and experience, Officer Ruud therefore reasonably inferred that appellant kept a supply of drugs at his home. The district court did not err by concluding that the warrant was supported by probable cause.

Warrantless Entry

Appellant argues that the district court erred by concluding that the warrantless entry into his home was justified by exigent circumstances. We disagree.

"The right to be secure in the place which is one's home, to be protected from warrantless, non-consensual intrusion into the privacy of one's dwelling, is an important fourth amendment right." *State v. Olson*, 436 N.W.2d 92, 96 (Minn. 1989), *aff'd*, 495 U.S. 91, 110 S. Ct. 1684 (1990). A warrantless entry and search of a private residence is per se unreasonable unless both probable cause and exigent circumstances exist, *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003). But this case involves only a warrantless entry and a protective sweep of the home to freeze the scene and prevent the destruction of evidence.

In *State v. Alayon*, the Minnesota Supreme court addressed whether an officer could enter a house without a warrant for the limited purpose of securing the premises and preventing the destruction of evidence by those who were in the house pending application for and issuance of a search warrant. 459 N.W.2d 325, 329 (Minn. 1990). Alayon was arrested just outside the front door to his house. *Id.* at 327, 329. The officer then entered the home and conducted a protective sweep to secure the premises and prevent the destruction of evidence by those who were in the house, pending application for a search warrant. *Id*. at 327. The officer "ordered the two women who were seated in the living room to stay seated and then made a brief 60-second 'sweep' of the house." *Id.* The sweep

> was primarily a sweep for the purpose of rounding up those inside the house who would be aware of the seizure of defendant that occurred just outside the home in their conscious presence, i.e., people who might destroy whatever cocaine and other evidence was in the house while the police were obtaining a search warrant.

Id. at 329. The supreme court held that 'the police had probable cause to believe that there was evidence in the house and that it was in imminent danger of destruction while they obtained a warrant. Therefore, an impoundment of the house was justified, along with a brief sweep of the house, to prevent destruction of evidence." *Id*. at 330.

Like in *Alayon*, the officers in this case made a warrantless entry into appellant's home for the limited purpose of securing the premises and preventing the destruction of evidence by those who were in the house, pending application for and issuance of a search warrant. Based on past experiences with drug dealers and the observed activity at

appellant's home, the officers were concerned that drugs would be destroyed by people in the home. We conclude that the officers' warrantless entry and seizure of the premises, along with a brief sweep of the home to prevent destruction of evidence, was justified, based on the totality of circumstances.

Even if the warrantless entry and protective sweep were illegal, the evidence need not be suppressed because the police obtained the evidence based on an independent source—the search warrant. If police could have obtained evidence "on the basis of information obtained independent of their illegal activity," it need not be suppressed. *State v. Richards*, 552 N.W.2d 197, 203–04 n.2 (Minn. 1996) (citing *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407 (1963)). Before admitting evidence pursuant to the independent-source doctrine, "the trial court must determine (1) whether the decision of the issuing magistrate was 'affected' by the tainted information, and (2) whether that information prompted law enforcement officials to seek the warrant." *State v. Lieberg*, 553 N.W.2d 51, 55 (Minn. App. 1996) (quoting *Murray v. United States*, 487 U.S. 533, 542, 108 S. Ct. 2529, 2536 (1988)). The first prong of the test is satisfied if a "sanitized affidavit would establish probable cause." *Id.* The second prong requires the district court to determine, as a factual matter, whether the illegal search prompted the warrant request. *Id.*

Here, the independent-source doctrine applies because the warrantless entry had no effect on the district court's decision to issue the search warrant. The warrant application did not mention the warrantless entry, which occurred while Officer Ruud was in the process of requesting a search warrant. The warrantless entry did not prompt

Officer Ruud's request. The district court therefore did not err by denying appellant's motion to suppress the cocaine in appellant's home.

Because the police saw the cocaine in plain view while conducting a valid stop of appellant's car, the district court did not err by denying his motion to suppress the cocaine found in the car. Because the search warrant was supported by probable cause, the district court did not err by denying appellant's motion to suppress the cocaine found in appellant's home. The police officers' warrantless entry into appellant's home was justified under *Alayon* and did not affect the district court's issuance of the search warrant.

Affirmed.