STATE OF MINNESOTA
IN COURT OF APPEALS
A11-679

State of Minnesota,
Respondent,

vs.

Joseph Anthony Roberson,
Appellant.

Filed April 9, 2012
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27CR1021639

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

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

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

RODENBERG, Judge

On appeal from his conviction of second- and fifth-degree controlled substance crime (possession), appellant Joseph Roberson argues that the district court erred in

concluding that a confidential informant's tip provided police with probable cause to arrest him and, as a consequence, erred in failing to suppress as fruit of an illegal arrest the drug evidence discovered incident to arrest. We affirm.

FACTS

On May 12, 2010, the Minneapolis Police Department was contacted at approximately 3:00 p.m. by a Confidential Informant (CI) who stated that he or she was in contact with two men who were selling narcotics and who had in their possession a large amount of cocaine inside of their vehicle. The CI provided a description of the vehicle, gave its license-plate number, and described the two men allegedly in possession of the cocaine. The CI's description of the two suspects included their approximate ages, heights, builds, hairstyles, and the clothing that they were wearing.

The CI was a first-time informant. His or her identity was known to the police, who could contact the CI if necessary. The CI did not receive payment for the information provided, nor was the information provided as part of any agreement. The CI told the police that he or she had personally observed the two suspects in possession of cocaine.

At approximately 4:50 p.m. that same day, the CI called the police a second time and gave the location where the suspects would arrive in their vehicle. The police set up surveillance at the location identified by the CI. Two officers took a position in a parked, unmarked vehicle in a nearby alley.

Shortly thereafter, at approximately 5:25 p.m., a vehicle with a license-plate number matching the one provided by the CI arrived at the location being watched by the

officers. The officers observed that the vehicle had two occupants whose physical characteristics and clothing matched the details supplied by the CI. Appellant was driving the vehicle.

Appellant parked the vehicle in the alleyway and both men exited the vehicle. The CI then called the officers and positively identified the two men under observation as the individuals who would be in possession of narcotics. The officers could see that appellant was carrying a brown paper bag and a white paper towel in his right hand.

The path taken by appellant and the other suspect brought them alongside the unmarked police vehicle, and the two officers exited their vehicle and identified themselves, guns drawn, as the suspects reached it. At that point, the two men were within 20 feet of the address that the CI had stated would be the destination of the two men allegedly in possession of the cocaine. Appellant immediately dropped the bag and paper towel, and the officers took him and the other suspect into custody, handcuffing them. The paper towel was recovered by another officer, and it contained crack cocaine. The testimony of Officer Jeddeloh, the arresting officer, was that he had intended to arrest the suspects "for narcotics" at the moment that he exited the squad car and identified himself.

At a *Rasmussen* hearing, appellant, acting pro se, raised numerous issues that are not the subject of this appeal. Among the issues raised was a request that the state be ordered to disclose the identity of the CI. The appellant framed this motion as a

Confrontation Clause issue.[1] The district court denied appellant's motion because the state disclaimed any intention of offering any of the CI's statements into evidence at trial. That issue was not appealed. Multiple other pre-trial motions were denied by the district court and were not appealed.

However, the district court interpreted appellant's request to contain an implicit motion to suppress drug evidence because police did not have probable cause to arrest appellant. The district court sua sponte set a motion hearing for later that same day on the "implicit" request to suppress evidence recovered incident to the arrest. The state offered the testimony of Officer Jeddeloh on that issue. At the close of the hearing, the district court found that probable cause to arrest existed and denied appellant's implicit motion to suppress.[2]

D E C I S I O N

The findings of fact on which the district court bases its determination that there is probable cause to arrest are reviewed for clear error. *State v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000). However, the legal conclusion that there was probable cause to arrest is subject to de novo review. *Id.*

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[1] Although appellant did not use reporter volume and page numbers, he appears to have made references to *Crawford v. Washington*, 541 U.S. 36, 50–51, 124 S. Ct. 1354, 1363–64 (2004); *Moore v. United States*, 429 U.S. 20, 21, 97 S. Ct. 29, 30 (1976) (holding that the out-of-court statement of the confidential informant was hearsay without an applicable exception); *Smith v. Illinois*, 390 U.S. 129, 131, 88 S. Ct. 748, 750 (1968) (holding that denying the defendant the opportunity to ask an informant for his real name and residence was a violation of the Confrontation Clause); *Roviaro v. United States*, 353 U.S. 53, 55, 77 S. Ct. 623, 624–625 (1957) (deciding whether the Confrontation Clause required disclosure of the identity of a confidential informant).

[2] The district court expansively and appropriately interpreted appellant's pro se motions. The precise issue on appeal was raised by the district court itself.

Law enforcement officers may arrest a felony suspect without a warrant in any public place so long as they have probable cause to arrest. *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998). The arresting officers may conduct a warrantless search of the suspect incident to a lawful arrest. *Id.* Thus, if appellant's arrest is supported by probable cause, the search conducted following appellant's arrest is lawful.

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." *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (quoting *State v. Carlson*, 267 N.W.2d 170, 173 (Minn. 1978)). The determination that probable cause to arrest exists is based on the totality of the circumstances, and the inquiry is objective, not subjective. *State v. Laducer*, 676 N.W.2d 693, 697 (Minn. App. 2004). The analysis must be based on the information available to police at the time that the arrest is made, and not on any subsequently discovered evidence. *Walker*, 584 N.W.2d at 769. An informant's tip can give rise to probable cause so long as it has sufficient indicia of reliability to satisfy the totality-of-the-circumstances test. *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

To assess the reliability of a CI, "courts examine the credibility of the informant and the basis of the informant's knowledge in light of all the circumstances." *Cook*, 610 N.W.2d at 667. The same standard is applied regardless of whether the CI's credibility is being used to support probable cause to search or probable cause to arrest. *See id.*

(evaluating probable cause to arrest) (citing *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (evaluating probable cause to search)).

Historically, Minnesota courts have analyzed this issue by looking for the presence of one or more of six considerations bearing on the reliability of an informant. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). These considerations are:

> (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.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004) (citing *Ward*, 580 N.W.2d at 71).

Only the first, third, and fourth of these considerations are even arguably present here.

The first consideration, that the informant is a first-time citizen informant, is not present here. Although the record indicates that this was the first time that police had worked with this particular CI, the record does not establish that the CI lacked connections to the criminal underworld, a requirement for this consideration to apply. *See Ward*, 580 N.W.2d at 71 (stating that a first-time citizen informant must lack connections to the criminal underworld). Although the record does not contain specific evidence demonstrating that the CI had connections to the criminal underworld, the very nature of the CI's information suggests such connections existed. Certainly, it cannot be said on this record that the CI lacked connections to the criminal underworld.

With respect to the third consideration, corroboration, *Ward* noted that "[a]n informant's reliability may be established 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." *Ward*, 580 N.W.2d at 71 (quotation omitted). The identity of the CI in this case was known to the police, and the police were able to corroborate the CI's statements as to the make and license-plate number of the appellant's vehicle, the physical characteristics and clothing of appellant and the other man, and the location of where the vehicle would arrive.

With respect to the fourth consideration, voluntary contact, the record indicates that the CI in this case contacted the police voluntarily and was not paid or otherwise compensated for the information provided. *Ward* noted that the presence of this consideration generally increases an CI's credibility because "[w]here an informant voluntarily comes forward (without having first been arrested) to identify a suspect, and in the absence of a motive to falsify information, . . . the informant is presumably aware that he or she could be arrested for making a false report." *Id.*

The appellate courts have considered, in evaluating the credibility of a CI's tip, whether or not the tip accurately predicts future behavior.

In *Munson*, the Minnesota Supreme Court was asked to evaluate whether a CI's tip had provided probable cause to conduct a vehicle search. 594 N.W.2d at 136–37. In that case, a CI had told police that a vehicle with narcotics would arrive at a particular address, and provided a detailed description of the vehicle and its occupants. *Id.* at 132. The vehicle and passengers arrived at the address as described, whereupon it was stopped

by police and searched. *Id.* at 132–133. The supreme court concluded that the police had probable cause to search the vehicle because, among other considerations, they had corroborated the details provided by the CI prior to conducting the search. *Id.* at 136–37.

In *Cook*, the CI's tip "included a description of [the suspect's] clothing, physical appearance, vehicle, and *present* location." 610 N.W.2d at 666 (emphasis added). When police arrived at the location, they found the vehicle parked there, and saw a man matching the description provided by the CI walk out to the vehicle and enter it. *Id.* at 666. This court affirmed the district court's conclusion that, because the CI had not predicted any behavior on the part of the suspect, but merely related his present location, the police did not have probable cause to arrest. *Id.* at 669.

In *Ross*, the CI stated that a vehicle containing narcotics would arrive at a particular location and described the vehicle and its occupant. 676 N.W.2d at 303. This court reinforced the distinction between *Munson* and *Cook*; that the *Munson* CI had predicted future behavior while the *Cook* CI had merely provided the present location of a suspect. *Id.* at 305. This court held in *Ross* that, because the CI correctly predicted that the described vehicle would arrive at a particular location with a described occupant, *Munson* controlled and the search was upheld as having been supported by probable cause. *Id.*

Like the informants in *Munson* and *Ross*, the CI in this case had accurately predicted that the two individuals he claimed would be possessing narcotics would arrive at a particular location and provided a detailed description of the individuals and the vehicle. Events bore out the significant verifiable details provided by the CI, and police

were able to corroborate those details before arresting appellant and the other suspect. Therefore, under *Munson* and *Ross*, the CI's information provided the police with probable cause to arrest.

The district court did not err in holding that, under the totality of the circumstances, there was probable cause to arrest appellant. The CI provided detailed descriptions of appellant, the other suspect, and their vehicle, together with a location at which they would be arriving, all of which police were able to corroborate prior to making an arrest. The CI contacted police voluntarily and was not paid or otherwise compensated for the information. The CI was known to police and presumably knew that he or she could be subjected to criminal penalties for making a false report of a crime. Finally, the CI correctly predicted the suspects' future behavior, indicating that they would arrive in their vehicle at the location where they were arrested. Therefore, the appellant's arrest was lawful, as was the evidence seized incident to the arrest, and the district court correctly denied the implicit motion to suppress.

Affirmed.