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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-329**

State of Minnesota,
Respondent,

vs.

Kevin Donald Turck,
Appellant.

**Filed February 8, 2011
Affirmed
Shumaker, Judge**

Ramsey County District Court
File No. 62-CR-09-13055

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

John Choi, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Peterson, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

On appeal from his conviction of first-degree possession of a controlled substance following a court trial pursuant to Minn. R. Crim. P. 26.01, subd. 4 (2009), appellant,

Kevin Donald Turck, argues that the district court erred when it denied his motion to suppress drug evidence because police conducted an illegal warrantless stop and search of his vehicle based on information provided by a confidential informant. Additionally, Turck argues that his conviction must be reversed because the district court failed to make adequate findings as to each element of the offense of which he was convicted. Because police conducted a lawful stop and search of Turck's vehicle and because the district court made adequate findings on the elements of the offense, we affirm.

FACTS

A confidential informant contacted Sergeant Jason Polinski of the Dakota County Drug Task Force on July 6, 2009, and told him that a person in possession of a large amount of methamphetamine would be at a specific address in St. Paul later that day. The informant had worked with Sergeant Polinski for two years and always produced true and accurate information, leading to multiple felony charges and convictions.

In his initial contact with Sergeant Polinski, the informant did not give any information regarding the suspect's name, gender, race, hair color, height, weight, build, or clothing. Nor did the informant say exactly what time the person would arrive at the St. Paul address; whether the person would be alone or with others; how the drugs would be transported; or the make, model, color, or license number of the vehicle the person would be driving. Furthermore, the informant had never spoken with the person or seen the person with drugs. Nevertheless, the police established surveillance of the address the informant had provided.

While officers were monitoring the St. Paul address, they saw appellant, Kevin Donald Turck, arrive at the residence driving a green Thunderbird with a female passenger. Officers watched Turck enter the residence with a white plastic bag, while the female stayed in the car. Shortly thereafter, Turck returned to the car, carrying a white plastic bag, and drove away. As Turck departed, the informant sent Sergeant Polinski a text message claiming the person leaving the residence in a green Thunderbird with a female passenger possessed a large amount of methamphetamine. Sergeant Polinski testified that as St. Paul police followed the Thunderbird, the informant called and told him the methamphetamine was in a white bag.

St. Paul police stopped the Thunderbird two to three blocks from the St. Paul residence. An officer searched the exterior of the car with the assistance of a drug-detection dog. The dog signaled that it detected narcotics near the driver's door of the Thunderbird. After completing an exterior search of the car with the drug-detection dog, the police opened the driver's side door, and the dog went underneath the driver's seat, retrieved a white plastic bag, and indicated it contained drugs. Police emptied the bag, which included towels, wire, and a can of tire-inflating foam. Suspecting that the can contained drugs, an officer unscrewed the bottom of the can and recovered what appeared to be methamphetamine. Lab tests later confirmed the substance found in the can was approximately 40 grams of methamphetamine.

After Turck was charged with first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2(1) (2008), he moved to suppress the drug evidence seized from the car. He argued the search was illegal because police lacked a

reasonable, articulable suspicion to conduct a traffic stop and because police did not have probable cause to search his vehicle. Turck alleged that the informant's tip was insufficient to establish probable cause that his vehicle contained contraband and that the police failed to corroborate the informant's information.

At the suppression hearing, the district court heard testimony from Sergeant Polinski, St. Paul police officer Jay Thompson, who conducted the narcotics search of Turck's vehicle with Harley, the drug-detection dog, and Sergeant Timothy McCarty, a supervisor in the Narcotics Unit of the St. Paul Police Department, who assisted with the search.

The district court denied Turck's motion to suppress the drug evidence. The court found that the confidential informant was reliable based on evidence that the informant had provided accurate drug-related information in the past resulting in many charges and convictions. The court found that the police had corroborated a sufficient amount of the informant's information when they observed Turck leave the residence with a white bag and drive away in a green Thunderbird with a female passenger, just as the informant had described. The district court held that the police were justified in stopping Turck's car because they had a reasonable, articulable suspicion that Turck was committing a crime, namely, illegal possession of drugs. Further, the court found that the police did not search the car until the drug-detection dog alerted them to the presence of drugs near the driver's side door of the car. The district court concluded that the police had established probable cause and therefore the warrantless search of the vehicle did not violate the Fourth Amendment.

Turck waived his right to a jury trial and submitted the case on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 4 (2009), and *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found Turck guilty of first-degree possession of a controlled substance and sentenced him to 161 months of imprisonment.

This appeal followed.

DECISION

Turck challenges the district court's denial of his motion to suppress drug evidence obtained from the search of his vehicle, arguing that the police illegally stopped his vehicle because they did not have a reasonable, articulable suspicion of criminal activity and that they illegally conducted a warrantless search of his car and seized evidence without probable cause. "When reviewing pretrial orders on motions to suppress evidence, [this court] 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).

Reasonable, articulable suspicion for investigatory stop of Turck's vehicle

Turck alleges that the officers' sole basis for the investigatory stop of his vehicle was uncorroborated information from an informant and that this was legally insufficient to establish a reasonable, articulable suspicion of criminal activity that is necessary for police to conduct a stop.

Police may conduct a limited vehicle stop for investigatory purposes if they have a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968); *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999).

Reasonable, articulable suspicion requires a showing “that the stop was not the product of mere whim, caprice, or idle curiosity.” *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). “The information necessary to support an investigative stop need not be based on the officer’s personal observations, rather, the police can base an investigative stop on an informant’s tip if it has sufficient indicia of reliability.” *In re Welfare of G. M.*, 560 N.W.2d 687, 691 (Minn. 1997). The district court examines the totality of the circumstances to determine whether this standard is met. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983). The district court’s determination of reasonable suspicion as it relates to limited investigatory *Terry* stops is reviewed de novo. *Munson*, 594 N.W.2d at 135.

Confidential informant’s reliability

Turck argues that the confidential informant was not reliable because “police did not sufficiently corroborate the minimal information” the informant provided and therefore did not have a reasonable, articulable suspicion of criminal activity to stop his vehicle.

To determine whether information provided by an informant is reliable, courts examine “the informant and the informant’s source of the information and judge them against all of the circumstances.” *In re G.M.*, 560 N.W.2d at 691. There are six factors for determining the reliability of a confidential informant who is not anonymous:

- (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).

It is undisputed that the informant had worked with Sergeant Polinski for two years and had always provided true and accurate information leading to multiple felony charges and convictions. There is no need for law-enforcement officers to provide specifics of the informant’s past veracity. *Munson*, 594 N.W.2d at 136. Thus, Sergeant Polinski’s general testimony regarding his work with the informant in the past was sufficient. Further, there is no dispute that the informant came forward voluntarily.

The police sufficiently corroborated the informant’s information. Corroboration of specific details of a tip may establish an informant’s reliability. *See State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985) (stating that corroboration of even minor details can “lend credence” to the informant’s information where the police know the identity of the informant); *see also State v. Siegfried*, 274 N.W.2d 113, 115 (Minn. 1978) (holding “[t]he fact that police can corroborate part of the informer’s tip as truthful may suggest that the entire tip is reliable”).

Turck cites *Munson* to support his argument that information was not sufficiently corroborated. In *Munson*, a confidential informant told police that three African-American males possessing a large amount of crack cocaine would arrive at a specific address in St. Paul in one and a half to two hours in “a rented, green 1996 ‘Bronco or Jeep type vehicle’ with Minnesota license plates.” *Id.* at 132. Two hours later, officers

monitoring the address observed a car fitting the informant's description drive by with three passengers, confirmed the vehicle was registered to a rental agency, and then stopped the vehicle. *Id.* at 132-33. The court determined the officers' corroboration of several specific details of the informant's tip provided police with the reasonable, articulable suspicion of criminal activity that was needed to execute a valid *Terry* stop of the vehicle. *Id.* at 136.

Munson, in fact, supports the district court's ruling that an investigatory stop of Turck's car was justified. As in *Munson*, police corroborated several specific details provided by the informant before stopping Turck's vehicle. The informant provided Sergeant Polinski with a specific address in St. Paul where a person possessing a large amount of methamphetamine would arrive later that afternoon. As police monitored the residence, the informant notified Sergeant Polinski that the male exiting the house, driving a green Thunderbird with a female passenger, had a large amount of methamphetamine in a white bag. Officers observed just that.

The informant's historical reliability and the officers' visual corroboration of the informant's tip gave the police reasonable, articulable suspicion of criminal activity to make the investigatory stop of Turck's vehicle.

Turck also asserts that, since officers did not observe any suspected drugs, drug paraphernalia, or other signs of drugs in the car, a drug-detection dog sniff was illegal. To lawfully conduct a drug-detection dog sniff around the exterior of a vehicle stopped for a routine equipment violation, "a law-enforcement officer must have a reasonable, articulable suspicion of drug-related criminal activity." *State v. Wiegand*, 645 N.W.2d

125, 137 (Minn. 2002). The scope of an investigative stop “must be strictly tied to and justified by the circumstances that rendered the initiation of the investigation permissible.” *Id.* at 135. Because the police stopped Turck’s car precisely because they had a reasonable, articulable suspicion of drug-related criminal activity, use of the drug-detection dog did not expand the scope of the investigative stop beyond the circumstances that originally rendered the investigation permissible. The police had a reasonable, articulable suspicion Turck possessed a large amount of methamphetamine when they stopped his vehicle; therefore, the drug-detection dog sniff around the exterior of the vehicle was lawful.

Probable cause to search Turck’s vehicle

“Warrantless searches are per se unreasonable under the fourth amendment,” subject to certain well-established exceptions. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, 508 U.S. 366, 113 S. Ct. 2130 (1993). Under the motor-vehicle exception, police may conduct a warrantless search of an automobile if there is probable cause to believe that the vehicle is transporting contraband or illegal items. *Munson*, 594 N.W.2d at 135-36. Probable cause to search an automobile 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).

When determining 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. Ward*, 580 N.W.2d 67, 71 (Minn.

App. 1998); *see also Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983) (adopting totality-of-the-circumstances approach to probable cause). But these factors are not considered in isolation. *Gates*, 462 U.S. at 233-35, 103 S. Ct. at 2329-30. “[A] deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.” *Id.* at 233, 103 S. Ct. at 2329. “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; *see Gates*, 462 U.S. at 244-46, 103 S. Ct. at 2335-36; *Wiley*, 366 N.W.2d at 269.

Before the police searched Turck’s car, they corroborated the likelihood that drugs were located inside the car when a drug-detection dog signaled the presence of narcotics near the driver’s side door. There were no drugs outside the car, leading the police reasonably to believe that there were drugs inside. The results of the dog sniff, together with the reliable informant’s tips, which were corroborated by police observations, gave the officers probable cause to conduct a warrantless search of Turck’s vehicle. The facts and circumstances were sufficient to warrant a reasonable person to believe that the car contained drugs.

Turck correctly asserts that when police derive probable cause from information provided by an informant, the totality of the circumstances, including the informant’s credibility and veracity, are relevant. *Munson*, 594 N.W.2d at 136. Turck contends that the police did not sufficiently corroborate the informant’s information and that police corroboration of easily obtainable facts is inadequate to support a finding of probable cause. *See id.*; *see also State v. Albrecht*, 465 N.W.2d 107, 109 (Minn. App. 1991). As

previously discussed, police sufficiently corroborated the informant's information to more than innocuous facts, which anyone could obtain. Further, the veracity of an informant can be established by the informant's "proven track record" of providing reliable information. *Munson*, 594 N.W.2d at 136. The informant here has a proven track record, having provided reliable information to Sergeant Polinski for two years which has led to multiple felony charges and convictions. The totality of the circumstances, including the informant's credibility and veracity, supports a finding of probable cause to search Turck's vehicle.

Adequate findings

Turck challenges the adequacy of the district court's findings as to each element of the offense for which he was convicted. Specifically, Turck alleges the district court did not find beyond a reasonable doubt that he (1) knowingly possessed a controlled substance and (2) that he knew or believed the substance was methamphetamine.

"A person is guilty of a controlled substance crime in the first degree if . . . the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing cocaine, heroin, or methamphetamine." Minn. Stat. § 152.021, subd. 2(1) (2008).

The district court found Turck guilty of first-degree possession of a controlled substance, holding that the following was established beyond a reasonable doubt: (1) on July 6, 2009, Turck was in St. Paul, Ramsey County; (2) at that time, he possessed a schedule two controlled substance; (3) the substance was methamphetamine; and (4) the

amount he possessed was more than 40 grams, which exceeds the 25-gram minimum required by Minn. Stat. § 152.021, subd. 2(1).

Turck argues that these findings are insufficient because the court did not use the language recommended by the Minnesota Criminal Jury Instruction Guides that Turck (1) knowingly possessed a controlled substance and (2) knew or believed the substance was methamphetamine. However, the use of the jury instruction guides' language is not required. *State v. Kelley*, 734 N.W.2d 689, 695 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

Because use of the jury instruction guides' language is not mandatory, and because the district court made adequate findings as to the elements of the convicted offense, we affirm.

Alternatively, to the extent Turck is claiming that the evidence is insufficient, this claim cannot be raised because it is beyond the scope of review permitted following a Minn. R. Crim. P. 26.01, subd. 4, stipulated-facts trial, which is limited to pretrial issues. The record shows that Turck knowingly waived his right to appeal issues other than the pretrial drug-suppression issue when he proceeded under Minn. R. Crim. P. 26.01, subd. 4, and signed a waiver in the presence of his attorney, stating in part, "I [] acknowledge that any appellate review will be of the pretrial issue only and not of my guilt, or of other issues that could arise at a contested trial." In addition, Turck waived each right on the record and stated he understood what he was doing, had consulted with his attorney, had enough time to speak with his attorney, and his decision was voluntarily made. The district court explained to Turck the procedures and standards used for a jury

trial. Turck acknowledged he understood and chose to proceed with a stipulated-facts trial. Therefore, the scope of our review is limited to the pretrial issue.

Affirmed.