STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0675

State of Minnesota,
Respondent,

vs.

Maurice Lennell Weatherspoon,
Appellant.

Filed May 27, 2014
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-CR-12-14457

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota, Eric Bain (certified student attorney) (for appellant)

Considered and decided by Stauber, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

HUDSON, Judge

On appeal from his conviction of fifth-degree possession of a controlled substance, appellant argues that (1) police officers unlawfully expanded the scope of his traffic stop;

(2) the district court committed clear error by concluding that he gave voluntary consent to search his vehicle; and (3) the district court did not have a substantial basis for concluding that the search warrant for his home was supported by probable cause. We affirm.

FACTS

A joint task force comprised of the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Bloomington Police Department was engaged in an investigation of narcotics and firearms activity in the Minneapolis area. Appellant Maurice Lennell Weatherspoon was not initially a target of that investigation, but D.W., who had a romantic relationship with appellant, was a target. D.W. was indicted by a federal grand jury. Two cooperating defendants from the federal investigation identified appellant as a cocaine distributor and as D.W.'s cocaine supplier.

Detectives Maloney and McHarg of the Bloomington Police Department were asked to conduct surveillance at appellant's address, and if he left, to conduct a traffic stop and investigation. About an hour after they began surveillance, they saw appellant exit the residence carrying a dark-colored backpack and drive away in a vehicle. Both detectives followed appellant in unmarked vehicles. Detective McHarg initiated a traffic stop after observing appellant make two turns without signaling. Both officers were wearing plain clothes and had their weapons concealed. Detective McHarg approached the driver's side of the vehicle to make contact with appellant, and Detective Maloney walked to the passenger's side to make sure appellant did not reach for a weapon. When Detective McHarg asked appellant if he had any weapons, appellant handed him a

collapsible baton from the center console of the vehicle. Detective McHarg then asked appellant to exit the vehicle; he complied and was not touched, handcuffed, or frisked. Appellant told Detective Maloney that he did not have any other weapons in the car. When asked if he had any marijuana in the car, appellant looked back at the car and said no. When asked if he had any cocaine in the car, appellant again looked back at the car and answered no. Based on Detective Maloney's experience and training, he found it odd that appellant looked back at his car when answering the questions. Detective Maloney testified that his own tone was very conversational and appellant's demeanor was cooperative. Appellant also testified that he was cooperative and did not swear or raise his voice while speaking to the officers.

Detective Maloney asked appellant if he could search the car and testified that he received an affirmative response. The first thing Detective Maloney searched was the backpack he had observed appellant carrying from the house. Inside was a plastic baggy containing what was later confirmed to be bindles of crack cocaine. While Detective Maloney was searching the car, appellant was speaking with Detective McHarg several feet away. After Detective Maloney had already found the crack cocaine in the backpack, appellant told Detective McHarg that he was no longer comfortable consenting to the search. Appellant was then arrested. After the arrest, a search warrant for appellant's house was obtained, based in part on the crack cocaine discovered during the stop; more crack cocaine was found inside appellant's home. Appellant was charged with fifth-degree possession of a controlled substance. His motions to suppress the

cocaine found during the traffic stop and at his home were denied, and he was convicted following a stipulated-facts trial. This appeal follows.

D E C I S I O N

I

Appellant does not challenge the constitutionality of the traffic stop itself; rather, he argues that the officers did not have a reasonable articulable suspicion to expand the stop by asking appellant for consent to search his vehicle. The state argues that the tips officers received from two confidential informants provided sufficient reasonable suspicion to expand the scope of the stop.

Both the Minnesota and United States Constitutions protect citizens against unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Generally, a warrant is required to conduct a search or seizure unless the state can show an exception to the warrant requirement. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). One such exception permits an officer to briefly detain an individual for investigation if the officer reasonably believes that the individual is involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968). In the context of a traffic stop, any "investigation must be limited to the justification for the stop." *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). Any further "intrusion not closely related to the initial justification for the search or seizure is invalid under article 1, section 10 [of the Minnesota Constitution] unless there is independent probable cause or reasonableness to justify that particular intrusion." *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005) (quotation omitted). Probable cause and reasonableness are evaluated

by looking at the totality of the circumstances. *Id*. On review, the district court's factual findings are reviewed for clear error and legal determinations are reviewed de novo. *State v. Jenkins*, 782 N.W.2d 211, 223 (Minn. 2010).

A tip from an informant can provide reasonable suspicion "if it has sufficient indicia of reliability." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). To determine whether a tip is reliable, courts consider the totality of the circumstances, including the informant's basis of knowledge and the credibility of the informant. *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000), *review denied* (Minn. Jul. 25, 2000). Neither factor alone is determinative of whether reasonable suspicion exists. *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002). Reasonable suspicion is "less demanding than probable cause or a preponderance of the evidence," but "requires at least a minimal level of objective justification." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted).

Credibility of the Informant

Appellant argues that the informants were not credible because they were "typical stool pigeons" who agreed to cooperate with law enforcement to help themselves after being indicted on federal drug and weapons charges. Appellant concedes that the informants had track records of providing reliable information, but he argues that because they are cooperating defendants, not first-time citizen informants, their past reliability is not definite proof of the reliability of the tips at issue.

This court has identified several guiding principles for determining the credibility of informants: (1) a first-time citizen informant is presumed reliable; (2) an informant who has previously given reliable information is likely currently reliable; (3) an informant's reliability can be established if the police can corroborate the informant's information; (4) an informant who voluntarily comes forward is presumed more reliable; (5) in drug cases, "controlled purchase" is a term of art indicating reliability; and (6) 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).

The fact that the informants here were not presumed reliable as first-time citizen informants does not prevent the district court from relying on their statements to support a finding of reasonable suspicion because "each informer is different and . . . all of the stated facts related to the informer should be considered in making a totality-of-the-circumstances analysis." *State v. McCloskey*, 453 N.W.2d 700, 703 (Minn. 1990). Both of these informants previously provided police with information that led to arrests and the recovery of controlled substances. One of the informants had participated in monitored telephone calls at the direction of law enforcement and conducted controlled purchases of crack cocaine. Both informants provided law enforcement with the same information—that appellant was a cocaine supplier for D.W. To corroborate the information provided, law enforcement checked appellant's criminal history, verified addresses provided by the informants, and observed appellant during investigatory surveillance. Although they never saw appellant making any deliveries or purchases of controlled substances, they did

observe him at addresses connected to D.W., corroborating the informants' tip that the two were involved with each other.

Informants' Basis of Knowledge

Appellant argues that the state did not establish a basis of knowledge for the informants' information.

> This basis of knowledge may be supplied directly, by first-hand information, such as when a CRI states that he purchased drugs from a suspect or saw a suspect selling drugs to another; a basis of knowledge may also 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. . . . Assessment of the CRI's basis of knowledge involves consideration of the quantity and quality of detail in the CRI's report and whether police independently verified important details of the informant's report.

Cook, 610 N.W.2d at 668.

The record indicates that the informants had personal knowledge of appellant's involvement in drug trafficking. One of the informants told officers that appellant was involved in trafficking "as recent[ly] as the week of February 27, 2012," which indicates that the informant had personal knowledge and was not simply passing along a "casual rumor." *See id*. In addition, a case agent testified that law enforcement knew appellant was distributing cocaine and crack cocaine that originated with the informants, a further indication that the informants had first hand knowledge of appellant's involvement.

Citing *Cook*, appellant claims that the officer's failure to confirm any of the incriminating aspects of the informants' tips rendered the expansion of the traffic stop

unlawful. But in *Cook*, this court considered whether officers had probable cause to support an arrest. 610 N.W.2d at 668. Reasonable suspicion is a lower standard. *Timberlake*, 744 N.W.2d at 393. Here, the informants were themselves participants in the drug trafficking operation and provided previously reliable information that was verified by officers. Based on the totality of the circumstances, we conclude that the officers' decision to expand the scope of the traffic stop was supported by reasonable suspicion based on the informants' tips.

Finally, appellant argues that the district court erred because it did not consider the pretextual nature of the stop when determining whether the officers had reasonable suspicion to expand the scope of the stop. Appellant cites *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998), where the supreme court stated that, for intrusions not based on probable cause, such as a frisk, pretext "is relevant to determining whether the intrusion is reasonable." *Varnado* is factually distinguishable from this case. In that case, a driver was stopped in a high-crime area for a cracked windshield and could not provide a valid driver's license. *Id.* at 888. She was frisked and placed in the back of a squad car. *Id.* The officer had suspicions that the woman was a drug dealer, but no other basis to search her. *Id.* There, the supreme court rejected the state's argument that anyone who is lawfully pulled over can be frisked and placed in a squad car. *Id.* at 890. Pretext was an important consideration in that case because "the state merely assert[ed] that the frisk . . . was valid as a part of . . . routine procedure." *Id.* at 892. Here, officers had reasonable suspicion to expand the scope of the traffic stop based on the informants' tips, a fact wholly independent of the pretextual nature of the stop. *See Whren v. United States*, 517

U.S. 806, 812, 116 S. Ct. 1769, 1774 (1996) (concluding that an "officer's motive" does not render "objectively justifiable behavior under the Fourth Amendment" invalid).

II

Appellant argues that, even if officers had legal authority to ask him for consent to search his car, his consent was not voluntary. A second exception to the warrant requirement is consent of the subject to be searched. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S. Ct. 2041, 2043–44 (1972). The state must show by a preponderance of the evidence that consent was "freely and voluntarily" given. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). To determine whether consent was voluntary, the totality of the circumstances must be evaluated, "including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *State v. Harris*, 590 N.W.2d 90, 102 (Minn. 1999) (quotation omitted). Whether consent to search was voluntary is a question of fact that this court reviews for clear error. *Diede*, 795 N.W.2d at 846. "Findings of fact are clearly erroneous if, on the entire evidence, [this court is] left with the definite and firm conviction that a mistake occurred." *Id*. at 846–47.

Appellant compares this case to *State v. George*, 557 N.W.2d 575 (Minn. 1997), where the supreme court concluded that a driver's consent was not voluntary. While some of the facts of *George* are similar to this situation, there are key differences. For example, the supreme court in *George* was concerned about a state patrol program targeting motorcycle riders as they made their way to a yearly motorcycle rally in Sturgis, South Dakota. *Id*. at 577. Thus, while the stop in *George* was also pretextual, the officer

was not targeting George himself, but motorcycle riders generally, giving rise to the court's concern that police "may take advantage of their right to stop motorists for routine traffic violations in order to target members of groups identified by factors that are totally impermissible as a basis for law enforcement activity." *George*, 557 N.W.2d at 579–80 (quotation omitted). Further, George was not asked directly for permission to search his vehicle; rather, he was asked if he had any objections to a search. *Id*. at 579. George's responses were equivocal and amounted to "acquiescence" or "submission," not consent. *Id*. at 581 (quotation omitted). Here, although appellant testified that he did not consent to a search, the district court found that testimony not credible, in part because appellant agreed that the officers testified truthfully about all of the other circumstances of the stop. The officer testified that appellant gave a "very clear" verbal, affirmative response—nothing in the testimony indicated that appellant's response was equivocal. And, unlike George, who was targeted because of the type of vehicle he was driving, appellant was asked to consent to a search because officers had specific information linking him to a crime.

Appellant also claims that consent was coerced because he was seized when he gave consent, and the officers "falsely informed" him that the stop was for failing to signal a turn and took his driver's license to do a "supposed warrant check." This court "infer[s] consent less readily after a seizure." *Diede*, 795 N.W.2d at 847. Here, although there were two police officers involved in the stop, the officers were in unmarked cars, plain clothes, and had no visible weapons. The officers were calm and conversational during their encounter with appellant, and he was communicative and cooperative.

Unlike George, appellant was not placed in a police car, nor was he ever put in handcuffs before his arrest, or even frisked by the officers. *See George*, 557 N.W.2d at 576–77. Appellant claims that Detective Maloney asked appellant "numerous questions," but the record shows that the detective asked him five questions before asking if he would consent to the search: (1) where he was going and where he was coming from; (2) if he had any other weapons in the car; (3) if he had any narcotics in the vehicle; (4) if he had any marijuana in the car; and (5) if he had any cocaine in the car. Nothing about the questions indicates coercion or undue pressure. Based on the totality of the circumstances, the district court did not commit clear error by finding that appellant's consent was voluntary.

III

The district court's decision to issue a search warrant is reviewed to determine whether there was a substantial basis for concluding that probable cause existed. *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005). A substantial basis for probable cause exists if the warrant affidavit establishes that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). When reviewing a probable cause determination, this court cannot look beyond the information presented in the warrant affidavit. *State v. Kahn*, 555 N.W.2d 15, 18 (Minn. App. 1996). There must be "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." *State v. Souto*, 578 N.W.2d 744, 747–48.

The warrant affidavit described the information that the two cooperating defendants provided about appellant, a summary of the investigation and surveillance of appellant, and finally the discovery of crack cocaine in the backpack during the traffic stop. The backpack provides a sufficient nexus linking criminal activity to appellant's house because appellant was pulled over with the backpack shortly after officers saw him leave the house with the same bag. That, in connection with the rest of the affidavit, provided a substantial basis for the district court to conclude that there was a "fair probability" that evidence of a crime would be found in appellant's home. *Zanter*, 535 N.W.2d at 633.

Affirmed.