STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2176

State of Minnesota,
Respondent,

vs.

Ronald Leonard Blazinski,
Appellant.

Filed February 26, 2008
Affirmed
Peterson, Judge

McLeod County District Court
File No. K0-06-506

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael Junge, McLeod County Attorney, 830 East 11th Street, Glencoe, MN 55336 (for respondent)

John M. Stuart, State Public Defender, Paul J. Maravigli, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

PETERSON, Judge

In this appeal from a conviction of fifth-degree controlled-substance crime, appellant argues that (1) the search-warrant application did not establish probable cause because statements by informants were uncorroborated and appellant's prior convictions were stale, and (2) the discovery of weapons at appellant's residence four years earlier and his prior drug-possession conviction did not support a no-knock entry. We affirm.

FACTS

During a six-month period, agents with the CVI Drug Task Force investigated narcotic activity in Renville County. An individual arrested during that investigation told agents that he/she had sold appellant Ronald Leonard Blazinski one and one-half ounces of methamphetamine during the previous couple of days and two and one-half to three pounds of methamphetamine during the previous six months. The individual reported that the sales took place inside appellant's residence and at other places, that one-half of the sales occurred in the master bedroom of appellant's residence, that appellant owed about $5,000 for previous methamphetamine purchases and was getting together $2,000 to $4,000 for an upcoming sale, and that appellant had talked about weapons in the past. A second individual arrested during the Renville County investigation also reported recently selling methamphetamine to appellant and that appellant lived in Silver Lake.

The information about appellant was provided to McLeod County Sheriff's Deputy Matt Rolf. Rolf ran a criminal-history check on appellant and learned that appellant had prior convictions of fifth-degree assault and second-degree controlled-

substance possession. Rolf also learned that during execution of a search warrant at appellant's residence in June 2002, officers seized 18.99 grams of methamphetamine, $6,860 in cash, surveillance equipment, and weapons. Rolf confirmed that appellant lived in Silver Lake.

Rolf prepared an affidavit supporting the search-warrant application. In support of the request for authorization for an unannounced entry, Rolf listed appellant's prior convictions of fifth-degree assault, disorderly conduct, and second-degree controlled-substance possession, and then stated:

> During the execution of the search warrant on June 28th, 2002 [appellant] had surveillance equipment that allows him to monitor exterior activity from inside his home. The surveillance equipment [appellant] had would not allow police to safely approach [appellant's] residence without detection.
>
> [Appellant] was able to view movement outside of his residence from monitors in his home. At the previous time that the search warrant was executed on June 28th, 2002 [appellant] had in his residence firearms.
>
> Your affiant knows from previous investigations that individuals dealing in controlled substances maintain methods to destroy evidence in a rapid and expedient manner and that they often times maintain weapons for their protection. Your affiant requests an unannounced entry to eliminate the possibility of any evidence being destroyed and to maintain an element of surprise and to preserve officer safety.

As a result of evidence discovered during the search, appellant was charged with one count of fifth-degree controlled-substance crime, possession of methamphetamine, in violation of Minn. Stat. § 152.025, subd. 2(1) (2004). Appellant moved to suppress evidence discovered during the search of his residence, arguing that the search warrant

was not supported by probable cause and that the no-knock provision was not supported by a reasonable suspicion. The parties submitted the case to the district court for decision on stipulated facts. The court found appellant guilty as charged, stayed imposition of sentence, and placed appellant on probation for three years. This appeal followed.

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). We accept the district court's underlying factual determinations bearing on a motion to suppress on Fourth Amendment grounds unless they are clearly erroneous. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

1. Probable cause

The United States and Minnesota Constitutions provide that a search warrant may not issue unless it is supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. In determining whether a warrant is supported by probable cause, this court does not review the district court's decision de novo. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). Rather, we give great deference to the issuing court's probable-cause determination. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001); *State v. McCloskey*, 453 N.W.2d 700, 703 (Minn. 1990). This court's review is limited to ensuring "that the issuing judge had a 'substantial basis' for concluding that probable cause existed." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332 (1983)). A "substantial basis" means

that there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332.

The court determines probable cause based on the totality of the circumstances:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Id. "[A] collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause." *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004). When examining the totality of the circumstances, the court only looks at the information presented in the affidavit supporting the application for the warrant. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). Appellate courts resolve marginal cases in favor of the issuance of the warrant. *McCloskey*, 453 N.W.2d at 704.

Appellant argues that the information provided by the informants should not be deemed reliable because they did not have a history of providing accurate information to police and because they were "typical stool pigeons" seeking to curry favor with police. The informants provided the information about appellant after two ounces, or 57 grams, of methamphetamine were discovered in their vehicle following a routine traffic stop. At the omnibus hearing, Rolf described the informants as "arrested cooperating individuals," which he defined as persons who have been arrested and provide statements leading to the execution of search warrants or arrests of other individuals but who do not necessarily have a history of providing information to police.

> [T]he fact that an informant makes a statement against his or her own penal interest is of some minimal relevance in a totality-of-the-circumstances analysis. But courts remain reluctant to believe the typical "stool pigeon" who is arrested and who, at the suggestion of the police, agrees to cooperate and name names in order to curry favor with the police. The rationale for the credit given to statements against interest is that people do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions.

State v. Ward, 580 N.W.2d 67, 72 (Minn. App. 1998) (quotations omitted).

Appellant argues that the first informant "at the apparent suggestion of the police, agreed to cooperate and 'name names.'" But Rolf testified that he did not know "whether or not any offers were made to [the informants] in exchange for information that they gave," and appellant cites no evidence in the record supporting the contention that police made any offers to the informants in exchange for information about others. As the district court found, in admitting the sales to appellant, the first informant admitted to committing two felonies. *See* Minn. Stat. § 152.021 (2004) (defining first-degree controlled-substance crimes). This admission against the informant's penal interest indicates some reliability.

Appellant correctly argues that corroboration of easily obtained facts is insufficient to establish probable cause. *State v. Albrecht*, 465 N.W.2d 107, 109 (Minn. App. 1991). But even such minimal corroboration lends credence to an informant's tip and is relevant to the probable-cause determination. *See McCloskey*, 453 N.W.2d at 704 (noting that corroboration of defendant's residence and make of vehicle was relevant to probable-cause determination). Thus, Rolf's corroboration of the information that

appellant resided in Silver Lake lent credence to the information provided by the informants.

The information provided by the informants was also corroborated by appellant's prior conviction of controlled-substance crime. *See id.* at 702 (concluding that defendant's prior arrests, both of which were more than ten years old had some probative value, albeit slight, in assessing whether probable cause existed for the issuance of the search warrant); *see also United States v. Conley*, 4 F.3d 1200, 1207 (3d Cir. 1993) ("The use of prior arrests . . . to aid in establishing probable cause is not only permissible, . . . but is often helpful."), *cited with approval in State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996).

Appellant's claim that Rolf misrepresented in the affidavit supporting the search-warrant application that he observed that appellant currently possessed surveillance equipment misconstrues the search-warrant application. Rolf did not state that he observed surveillance equipment during his current surveillance of appellant's residence. Rolf stated that appellant had surveillance equipment that allowed him to monitor exterior activity from inside his home when the search warrant was executed in 2002. The application makes it clear that Rolf was referring only to surveillance equipment discovered during the 2002 search.

The district court did not err in determining that the search warrant was supported by probable cause.

2. Unannounced entry

When the material facts are not in dispute, we review de novo whether an unannounced entry was justified. *State v. Botelho*, 638 N.W.2d 770, 777 (Minn. App. 2002). To justify a no-knock entry, "'police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.'" *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000) (quoting *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1421 (1997)). The quantum of proof necessary to establish reasonable suspicion does not require an airtight case that knocking and announcing would be dangerous or would inhibit effective investigation. *Id.* at 322. Rather, it requires something "more than an unarticulated hunch" but less than an "objectively reasonable belief" *Id.* at 320-21. To satisfy the reasonable-suspicion standard, police "must be able to point to something that objectively supports the suspicion at issue." *Id.* at 320.

Although the evidentiary burden to obtain a no-knock provision is not high, the bare assertion that a controlled-substance crime is under investigation is not enough. *Botelho*, 638 N.W.2d at 778; *Wasson*, 615 N.W.2d at 320. An officer's search-warrant application must identify those particularized circumstances that support a finding of reasonable suspicion justifying a no-knock entry; general or boilerplate language is insufficient. *See State v. Martinez*, 579 N.W.2d 144, 147-48 (Minn. App. 1998) (holding that general allegation that "persons who traffic in controlled substances are often armed

with firearms and other dangerous weapons and will use these weapons" was not particularized), *review denied* (Minn. July 16, 1998).

Appellant argues that Rolf's failure to expressly state that he had not seen surveillance equipment when he observed appellant's residence in 2006 should be deemed a critical omission. *See State v. Doyle*, 336 N.W.2d 247, 252 (Minn. 1983) (requiring district court to supply omissions and set aside misrepresentations and reconsider search-warrant application in that light). But, as already discussed, the search-warrant application makes it clear that Rolf was referring only to surveillance equipment discovered during the 2002 search. Possession of surveillance equipment in the past gives a reason to believe that appellant currently could be using such equipment, which would allow him to see approaching police and give him time to dispose of drugs.

The possible use of surveillance equipment, together with the presence of firearms in the past and discussion of firearms with the first informant, are particularized circumstances that satisfy the reasonable-suspicion standard required to support an unannounced entry. *See Wasson*, 615 N.W.2d at 320-21 (concluding that drug sales coupled with confiscation of weapons from the same premises three months before justified a reasonable fear for officer safety and stating that the evidence to support a no-knock entry may be of a less-persuasive character than otherwise required when the evidence is probative of a threat to officer safety).

Affirmed.