STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2310

State of Minnesota,
Respondent,

vs.

Joseph Lee Bailey,
Appellant.

Filed February 26, 2008
Affirmed
Willis, Judge

Hennepin County District Court
File No. 06040645

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

Mike Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Reid Goldetsky, 701 Fourth Avenue South, Suite 500, Minneapolis, MN 55415; Phillip S. Resnick, Phillip S. Resnick & Associates, 1925 Rand Tower, 527 Marquette Avenue South, Minneapolis, MN 55402 (for appellant)

Considered and decided by Willis, Presiding Judge; Toussaint, Chief Judge; and Peterson, Judge.

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

WILLIS, Judge

Appellant challenges his conviction of a controlled-substance offense, arguing that the district court should have suppressed marijuana discovered during the search of his

business because (1) the warrant authorizing the search was not supported by probable cause, and (2) the warrant's no-knock provision was not supported by a particularized showing of danger to officers. Because the district court properly denied appellant's motion to suppress, we affirm.

FACTS

On June 14, 2006, Minneapolis police applied for a warrant to search a retail store owned by appellant Joseph Lee Bailey at 3805 Chicago Avenue South in Minneapolis for marijuana and weapons. The affidavit that accompanied the search-warrant application contains information provided by a confidential reliable informant (CRI), who told the affiant officer that Bailey owned the store, was selling "pound quantities" of marijuana in the store, kept the marijuana in the store's basement, often carried a Glock handgun on his person, and owned and drove a Mercedes sport-utility vehicle.

The affidavit also states that (1) within the 72 hours before applying for the warrant, officers used the CRI to purchase marijuana from Bailey at his store; (2) officers gave the CRI a quantity of pre-recorded buy money and followed the CRI to 3805 Chicago Avenue South; (3) when the CRI left the store after a short time, the officers followed the CRI to another location; (4) the CRI stated that he or she[1] had purchased marijuana from Bailey in the store; and (5) the CRI then produced for officers an amount of marijuana consistent with the amount of buy money provided by the police. Finally, the affidavit indicates that Bailey was convicted of a felony controlled-substance offense in 1991.

[1] The record does not reveal the CRI's gender.

On the basis of the affidavit, a magistrate issued the warrant and granted the affiant officer's request for a no-knock provision, which allowed officers to enter without first announcing their presence. On June 15, 2006, the police executed the search warrant and seized 42.5 grams of marijuana and $1,961 in currency (including the $200 in buy money provided to the CRI). Bailey was charged with one count of fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(1) (2004).

At a pretrial hearing, Bailey moved to suppress the evidence obtained in the search, claiming that the affidavit did not establish probable cause for the search warrant and that the no-knock provision of the warrant was unjustified. After the district court denied his motion, Bailey waived his right to a jury trial, and the case was submitted to the district court on stipulated facts, as provided by *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found Bailey guilty, and he now appeals.

D E C I S I O N

I. The affidavit contains facts sufficient to establish probable cause.

Bailey argues first that the affidavit does not contain facts sufficient to establish probable cause that marijuana would be found at his place of business. Bailey argues specifically that the CRI's statements to the affiant are not sufficiently reliable for the magistrate to have issued the warrant.

We review a search-warrant affidavit to determine whether the issuing magistrate had a "'substantial basis'" to conclude that probable cause existed for issuance of the warrant. *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)). But we give great deference to the issuing magistrate's probable-cause determination. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). And the resolution of a doubtful or marginal case on review should be determined in favor of the decision to issue the search warrant. *State v. Albrecht*, 465 N.W.2d 107, 109 (Minn. App. 1991).

The United States and Minnesota Constitutions provide that no warrant shall issue without a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, a search is lawful only if it is executed with a valid search warrant issued by a neutral and detached magistrate after a finding of probable cause. *See* Minn. Stat. § 626.08 (2004); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). To determine if probable cause exists, the issuing magistrate must "'make a practical, common-sense decision'" whether there is a fair probability that contraband or evidence of a crime will be found in a particular place. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332). The magistrate should consider the totality of the circumstances described in the affidavit, including the "'veracity'" and "'basis of knowledge'" of persons supplying hearsay information. *Id.* (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332).

For a warrant issued on the basis of an informant's tip, the credibility of the informant "cannot be assumed and it is not enough that the affidavit states in a conclusory fashion that he is credible or reliable." *State v. Siegfried*, 274 N.W.2d 113, 114 (Minn. 1978). There are six factors for determining the reliability of informants who are confidential but not anonymous to police: (1) a first-time citizen informant is

presumptively reliable; (2) an informant who has given reliable information in the past is likely also to be 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 drug 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. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998).

Bailey's argument that the affidavit contains insufficient facts to establish probable cause is unpersuasive for several reasons. First, the affiant officer stated that the CRI "has been used several times in the past and has been foun[d] to be reliable, accurate, and consistent. His/Her information has resulted in several arrests, the recovery of contraband and money." This statement is sufficient for the magistrate to credit the CRI's reliability. *See State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004) (noting that this factor 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") (quotation omitted). This factor weighs in favor of crediting the CRI's tip and finding probable cause.

We also find Bailey's argument to be unpersuasive because the officer corroborated the CRI's tip before he applied for the search warrant, and the magistrate was aware of the corroboration. *See Ward*, 580 N.W.2d at 71 (stating that an informant's reliability is established when police can corroborate the informant's statement). The

CRI told the officer that Bailey (1) was selling pound quantities of marijuana from a cell-phone store that Bailey owned at 3805 Chicago Avenue South, (2) owned and drove a Mercedes sport-utility vehicle, (3) often carried a handgun on his person, and (4) kept the marijuana in the store's basement, which was entered through the rear of the building. The record shows that the officer corroborated this information in several ways: He drove past the store and saw that a Mercedes sport-utility vehicle was parked at the rear; he determined, by checking the Minneapolis police reporting system, that Bailey owned the store; and he ran the sport-utility vehicle's license plates through a database on the "DMV web site" and determined that Bailey owned the vehicle. The affidavit shows, therefore, that police had corroborated important aspects of the CRI's tip. *See Wiley*, 366 N.W.2d at 269 (noting that corroboration of even minor details of informant's tip can lend credence to informant's information).

Citing *State v. Albrecht*, Bailey argues that "corroboration of addresses and car ownership, without more, is not sufficient to support a finding of probable cause." In *Albrecht*, we held that a police officer's verification of the defendant's address and vehicle ownership did not sufficiently corroborate an anonymous informant's tip to support probable cause. 465 N.W.2d at 109. Although Bailey correctly describes the holding in *Albrecht*, the case is inapposite here because it is factually distinguishable from the case before us in several important respects. For example, the officer in *Albrecht* did not know the informant's identity. *Id.* Here, the officer's past interactions with the CRI show that the officer knew the CRI's identity. Also, the officer in *Albrecht* did not actually corroborate the informant's tip—the "sole verification . . . was the

address of the house and the ownership of [defendant's vehicle]." *Id.*; *see also State v. Papadakis*, 643 N.W.2d 349, 356 (Minn. App. 2002) (noting that the officer in *Albrecht* "did not independently corroborate the informant's credibility"). Here, on the other hand, the officer not only physically went to Bailey's store and saw Bailey's Mercedes sport-utility vehicle parked at the rear of the store, but he independently corroborated the tip. Unlike *Albrecht*, the affidavit here shows that officers used a controlled purchase of marijuana to corroborate the tip.

The controlled purchase of marijuana by the CRI is a third reason that we find unpersuasive Bailey's argument that the affidavit here did not establish probable cause for the warrant. *See State v. Aguilar*, 352 N.W.2d 395, 396 (Minn. 1984) (holding that an affidavit based primarily on police observation of a controlled purchase contained sufficient information to justify the issuance of a search warrant). In drug cases, a controlled purchase can help to verify an informant's reliability. *Ward*, 580 N.W.2d at 71. Here, the affiant officer stated in the affidavit that

> the CRI was given a quantity of pre-recorded buy money. Officers followed the CRI to the store located at 3805 Chicago Ave South. The CRI then left a short time later and officers followed [the CRI] away. The CRI told officers that [the CRI] had bought marijuana with the money provided. The CRI stated that the marijuana was bought in the store and from Bailey. The CRI gave me a quantity of marijuana consistent with the money provided.

Bailey argues that because the warrant affidavit did not include the words "controlled purchase," the informant's tip was not sufficiently reliable to support the magistrate's determination that the warrant affidavit showed probable cause. This court

has stated that when an affidavit does not use the words "controlled purchase" the "most logical assumption is that [the alleged purchase of drugs] was not a controlled purchase because an experienced drug enforcement officer would have identified it as such in the affidavit." *Ward*, 580 N.W.2d at 73. But the *Ward* court also emphasized the factual inadequacies of the warrant in that case, noting that the vague affidavit provided no explanation for how the informant actually obtained the drugs, no link between the drugs and the defendant, and no link between the location of the purchase and the defendant. *Id*. at 69-70, 73. Moreover, the *Ward* court noted that the affidavit provided "no other corroboration." *Id*. at 73.

Here, the affiant officer did not use the legal term of art "controlled purchase." But what the officer described in the affidavit was in fact a controlled purchase of drugs, and, therefore, the affidavit supports the magistrate's probable-cause determination. Unlike in *Ward*, the affiant here stated that (1) officers had given the CRI "pre-recorded buy money"; (2) the officers followed the CRI to Bailey's store at 3805 Chicago Avenue South; (3) the CRI bought drugs from Bailey in his store; and (4) after the buy, police followed the CRI to another location, where the CRI produced a quantity of marijuana consistent with the amount of buy money provided by police. Moreover, as noted above, the officer corroborated the CRI's tip. Because the facts of *Ward* are distinguishable from those here, we conclude that the officer's use of the CRI to make a controlled purchase of drugs both lends additional credibility to the CRI's tip and supports the magistrate's probable-cause determination.

Finally, the affiant officer determined that Bailey had a prior felony controlled-substance offense. This fact provides additional support for the magistrate's probable-cause determination. *See State v. Cavegn*, 356 N.W.2d 671, 673 n.1 (Minn. 1984) (stating that "a defendant's prior convictions, if relevant, may be considered on the issue of probable cause") (citing *Brinegar v. United States*, 338 U.S. 160, 169-70, 69 S. Ct. 1302, 1308 (1949)); *see also State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990) (stating that even a defendant's "relatively minor trouble with the law" is of "some" probative value in determining probable cause).

Based on the totality of the circumstances, we conclude that the magistrate had a substantial basis for issuing the search warrant because of (1) the officer's statement that he had used this CRI in the past and that the CRI had provided information that resulted in several arrests and the recovery of contraband and money; (2) the officer's corroboration of the CRI's tip, including identifying the make and model of Bailey's vehicle and the location and type of Bailey's store; (3) the CRI's controlled purchase of marijuana from Bailey; and (4) Bailey's prior felony controlled-substance offense.

II. The affidavit contains sufficient facts to justify a no-knock entry.

Bailey argues next that the search-warrant affidavit does not provide a sufficient basis to support the magistrate's authorization of a no-knock warrant. Bailey claims that "there was no showing that an unannounced entry was necessary" and that the affidavit contains merely "boiler plate" allegations of danger to officers. We disagree.

If the material facts are undisputed, this court independently reviews whether a no-knock entry was justified. *State v. Botelho*, 638 N.W.2d 770, 777 (Minn. App. 2002).

An examination of the need for an unannounced entry is part of the reasonableness inquiry under the Fourth Amendment to the United States Constitution. *Garza v. State*, 632 N.W.2d 633, 638 (Minn. 2001) (citing *Wilson v. Arkansas*, 514 U.S. 927, 934, 115 S. Ct. 1914, 1918 (1995)).

Generally, officers must knock and announce their presence before executing a search warrant. *See United States v. Banks*, 540 U.S. 31, 36, 124 S. Ct. 521, 525 (2003). In order to justify a "no-knock" entry, the 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." *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1421 (1997); *see also Botelho*, 638 N.W.2d at 778. Reasonable suspicion has been defined as "more than an unarticulated hunch, that the officer must be able to point to something that objectively supports the suspicion at issue." *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000). Compared with the showing required to establish probable cause, a reasonable suspicion showing is "not high." *Richards*, 520 U.S. at 394-95, 117 S. Ct. at 1422. But a reasonable suspicion must be supported by "a *particularized* showing of dangerousness, futility, or likelihood of destruction of evidence." *Botelho*, 638 N.W.2d at 778; *see also State v. Anhalt*, 630 N.W.2d 658, 661 (Minn. App. 2001) (stating that general observations regarding an officer's experiences with drug dealers, alone, are insufficient to justify an unannounced search); *State v. Martinez*, 579 N.W.2d 144, 147-48 (Minn. App. 1998) (concluding that language in warrant affidavit that drug traffickers "are often armed with firearms and other dangerous

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

Here, the record supports the magistrate's approval of an unannounced entry because the officers had a reasonable suspicion—based on objective evidence—that officer safety was at risk. The CRI stated to the affiant officer that Bailey "often had a Glock hand gun in a holster that he kept on his person." The CRI further stated that his request for anonymity was based, at least in part, on the CRI's "concern[] due to the hand gun that Bailey has been seen with." Armed with this specific information, the affiant officer concluded that "[a]n announced entry would give [Bailey] a chance to use the weapon to assault officers upon entry. An unannounced entry would give officers safety via surprise." Unlike cases such as *Martinez* or *Anhalt*, in which appellate courts determined that a no-knock entry was unjustified because the officer did not make a particularized showing of danger, the affidavit here contains specific information that Bailey carried a handgun on his person and that he could present a danger to officers.

Affirmed.