STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2160

State of Minnesota,
Respondent,

vs.

Robert James Beissel,
Appellant.

Filed March 25, 2008
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 04-048999

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Barry V. Voss, Barry V. Voss, P.A., 527 Marquette Avenue South, Suite 1050, Minneapolis, MN 55402 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and Poritsky, Judge. [*]

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

KALITOWSKI, Judge

Appellant James Beissel challenges the district court's denial of his motion to suppress evidence seized pursuant to the search of his residence, arguing that the informant-based search warrant contained reckless and material misstatements and omissions of fact that, once redacted, strip the search warrant of probable cause. We affirm.

D E C I S I O N

Appellant argues that the drug-enforcement Agent (Agent) recklessly or intentionally included material misstatements and omissions of fact in the search warrant's supporting affidavit, thereby undermining the district court's probable cause determination and rendering the search warrant void under *Franks v. Delaware*, 438 U.S.154, 98 S. Ct. 2674 (1978). We disagree.

When determining whether an affidavit establishes probable cause for a search warrant, we give great deference to the "determination of the issuing judge, but this deference is not boundless." *State v. Smith*, 448 N.W.2d 550, 555 (Minn. App. 1989) (citation omitted), *review denied* (Minn. Dec. 29, 1989). Our review is limited "to ensuring that the issuing judge had a substantial basis for concluding that probable cause existed." *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). A substantial basis exists if, "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." *State v. Gabbert*, 411 N.W.2d 209, 212 (Minn. App. 1987) (quotations omitted).

Here, appellant concedes that the search warrant's supporting affidavit is facially sufficient to establish that probable cause existed to issue the warrant. And although we normally presume the validity of an affidavit supporting an otherwise valid search warrant, "this presumption is overcome when the affidavit is shown to be the product of deliberate falsehood or reckless disregard for the truth." *McGrath*, 706 N.W.2d at 540 (citing *Franks*, 438 U.S. at 171, 98 S. Ct. at 2684). The defendant has the burden of showing by a preponderance of the evidence that the affiant knowingly or recklessly included a false statement in the affidavit. *Id*. Innocent or negligent misrepresentations do not invalidate a search warrant. *Id.* We review a challenged affidavit's components as a coherent whole rather than in isolation, and we will not engage in a hypertechnical examination of the affidavit. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985); *State v. Kahn*, 555 N.W.2d 15, 18 (Minn. App. 1996).

Appellant points to a number of alleged misstatements in the Agent's affidavit and argues that when the misstatements are eliminated, the warrant lacks probable cause. Claimed misrepresentations include the following statements: (1) that the confidential reliable informant (CRI) said that appellant sold large amounts of cocaine in the past and had served prison time for doing so; (2) that the CRI said that appellant transported cocaine in his SUV; (3) that the CRI reported observing cocaine in appellant's residence less than 72 hours before the warrant was obtained; (4) that the CRI provided other true and accurate drug-related information to the Agent in the two months prior to the warrant

being issued; (5) that the CRI participated in two controlled buys that resulted in the recovery of small amounts of cocaine; and (6) that the Agent deliberately falsified information regarding the CRI's identity, reliability, and the number of informants that he obtained the information from. Additionally, appellant contends that the Agent recklessly omitted from the affidavit material facts regarding the incentives to cooperate with the police that existed for both the CRI and the CRI's girlfriend.

With respect to the first four alleged misstatements, the district court found that the CRI did, in fact, report these facts to the Agent. After carefully listening to the conflicting testimony of the Agent and the CRI, the district court found the Agent to be credible and found that the CRI was not. This court defers to the district court's credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003) (stating that weight and believability of witness testimony is an issue within the province of the district court), *review denied* (Minn. July 15, 2003).

Moreover, an informant's credibility can be established by police corroboration of the information an informant provides. *State v. Ross*, 676 N.W.2d 301, 304-05 (Minn. App. 2004). Independent corroboration of even minor details will enhance the credibility of an informant's information, and may even support a finding of probable cause. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). Here, the district court's credibility determinations were buttressed by the fact that the Agent confirmed appellant's criminal background history and verified appellant's vehicle ownership. Because this information was confirmed as accurate, the district court had a sufficient basis for trusting the other unconfirmed information in the affidavit. *See United States v. Solomon*, 432 F.3d 824,

828 (8th Cir. 2005). Also, "[r]ecent personal observation[s] of incriminating conduct" are recognized as the preferred basis for confidential informants' knowledge. *Wiley*, 366 N.W.2d at 269. Accordingly, because the CRI's statement that appellant had cocaine in his residence was based on the CRI's personal observations less than 72 hours before the warrant was issued, the reliability of this observation is presumed.

Because the district court found the Agent's testimony was credible, the information provided by the CRI was corroborated, and the information provided by the CRI was based on his recent personal observations, we conclude that the district court did not err in finding that the first four challenged statements were not false.

In addressing alleged misstatement number five, the district court determined that this statement was neither false nor misleading. Although appellant contends that the CRI did not "participate" in the controlled buy, there is substantial evidence that the CRI assisted with, and was involved in, each of the transactions discussed in the affidavit. The record indicates that although the CRI's girlfriend was the primary participant in these transactions, the CRI (1) signed a Task Force Cooperating Agreement Form with respect to each of these drug-related transactions; (2) drove his girlfriend to and from the purchases; (3) exposed himself to danger inherent in such transactions; and (4) was fully aware of the missions underlying each transaction. Thus, the CRI's involvement in these controlled buys was sufficient to establish his credibility as an informant.

Moreover, appellant failed to prove that this alleged misstatement was knowingly or recklessly included in the search warrant's supporting affidavit. The Agent testified that the CRI had previously provided him with drug-related information regarding two

individuals in addition to, and independent of, his participation in the two controlled buys discussed in the affidavit. And although information not included in the affidavit cannot be used to establish probable cause, it can nonetheless be evidence of the affiant's intent. *See State v. Causey*, 257 N.W.2d 288, 294 (Minn. 1977) (remanding for further findings regarding the affiant's intent); *see also State v. Randa*, 342 N.W.2d 341, 343 (Minn. 1984) (noting the district court's duty to make findings on whether misrepresentations are intentional based on the evidence received at the omnibus hearing).

Appellant further argues that the Agent deliberately falsified information regarding the CRI's identity and reliability, and deliberately omitted the incentives that both the CRI and his girlfriend had to cooperate with the police. But as discussed above, the CRI's involvement in the controlled buys was sufficient to establish his credibility. Moreover, the district court was correct to find that the Agent's use of the term "CRI" to refer to the informant was appropriate here. By definition, a CRI is someone who has provided the police with reliable information in the past. *See, e.g., Munson*, 594 N.W.2d at 136. And having a proven track record is one of the primary indicia of an informant's veracity. *State v. Maldonado*, 322 N.W.2d 349, 351 (Minn. 1982). Although the record does not contain specific details of the CRI's track record as an informant, further elaboration concerning the specifics of the CRI's credibility is not typically required. *See Wiley*, 366 N.W.2d at 269 (upholding probable-cause determination where affidavit stated that the informant had "been used over several years successfully").

Given the Agent's use of the term "CRI" and the references made throughout the affidavit to the CRI's drug-related activities, it was reasonable for the district court to

infer that the issuing magistrate was well aware that the CRI was likely being compensated by the police for his cooperation, and not simply a "concerned citizen" informant. Therefore, omission of the CRI's incentives for cooperating was immaterial to the judge's probable-cause determination and neither deliberate nor reckless.

In sum, we conclude that the district court issued a detailed, well-reasoned opinion addressing appellant's claims of material misrepresentations in the search warrant's supporting affidavit. Because the district court's findings with respect to these alleged misrepresentations are not clearly erroneous, we conclude that the district court did not err in denying appellant's *Franks* motion to suppress the evidence seized from his residence.

Affirmed.