STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0771

State of Minnesota,
Respondent,

vs.

Darnell Lee Anderson,
Appellant.

Filed July 8, 2008
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. K3-06-3102

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

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

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

KALITOWSKI, Judge

Appellant Darnell Lee Anderson challenges his conviction of possession of a firearm by an ineligible person, arguing that the district court erred in refusing to

suppress the handgun seized following a search of his residence because (1) the warrant application did not establish probable cause; and (2) an initial warrantless entry tainted the officers' subsequent seizure of the handgun. We affirm.

D E C I S I O N

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. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999); *see also* Minn. Stat. § 626.08 (2006). When evaluating 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 . . . , 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) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)); *see also State v. Souto*, 578 N.W.2d 744, 747-48 (Minn. 1998) (stating that probable cause to search requires a "direct connection, or nexus, between the alleged crime and the

particular place to be searched"). Factors relevant to this analysis include the type of offense involved, the object of the search, the suspect's opportunity to conceal the object, and reasonable inferences about where the suspect would normally keep the object. *Harris*, 589 N.W.2d at 788.

When reviewing the sufficiency of a search-warrant affidavit under the totality-of-the-circumstances test, we "must be careful not to review each component of the affidavit in isolation." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). "[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). And "the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded warrants." *Wiley*, 366 N.W.2d at 268 (quotation omitted).

I.

Appellant argues that the district court erred in refusing to suppress the evidence seized from his residence because the warrant application did not establish probable cause for a search. We disagree.

Here, the warrant application provided the issuing judge with the following information: (1) on August 15, 2006, a woman reported being threatened by a man with a gun and gave the police a detailed description of the man and the Saturn car he was driving, including its license number; (2) appellant was the registered owner of the Saturn and he owned a second vehicle registered to an apartment on Duluth Street in St. Paul; (3) a short time after the woman's report, an officer in the area of the Duluth Street apartment saw the Saturn leave the apartment and began to follow it; (4) the Saturn was

eventually stopped after it was pursued through several neighborhoods, and the driver of the vehicle was identified as appellant and taken into custody; (5) appellant had prior convictions of first-degree aggravated robbery, possession of a controlled substance, possession of stolen property, and unlawful possession of a firearm; (6) during a post-arrest interview, appellant told the police that he did not have a permanent address; and (7) five days before the incident, appellant reported being the victim of an unrelated property crime and told the investigating officers that he was living at the Duluth Street address.

Based on this application, the district court had a substantial basis for concluding that probable cause existed. The woman's detailed report established that someone who matched appellant's physical description and was driving appellant's car used a handgun to threaten her earlier in the evening. Although appellant was taken into custody, the handgun had not been found. And appellant was connected to the Duluth Street apartment because (1) his August 10 statement to the police indicated that he was currently living at the Duluth Street address; (2) his motor-vehicle registration listed the Duluth Street address; and (3) a police officer saw appellant leave the apartment building's parking lot in his Saturn shortly after the reported incident. Moreover, appellant's subsequent behavior of failing to pull over for the police, leading police on a high-speed chase, and lying about not having a current home address during his post-arrest interview reasonably led the officers to infer, based on their training and experience, that appellant was attempting to hide something at his residence. *See State v. Skoog*, 351 N.W.2d 380, 381 (Minn. App. 1984); *see also United States v. Whitner*, 219

F.3d 289, 299 (3rd Cir. 2000) (recognizing that the defendant's deliberate attempts to conceal his home address from the police served as a basis for establishing probable cause).

In addition, because appellant was not pursued by police from the scene of the threatening incident, he had no reason to quickly discard the gun. And since it is normal to place items of personal value, such as a handgun, in one's residence, it was reasonable for the police to assume that appellant left his handgun in the Duluth Street apartment. *See State v. Flom*, 285 N.W.2d 476, 477 (Minn. 1979); *State v. Pierce*, 358 N.W.2d 672, 674 (Minn. App. 1984). And finally, the warrant application alerted the district court to appellant's prior arrests and convictions of various assault and firearm offenses. *See State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996) (noting that an individual's criminal history may be relevant to the determination of probable cause).

Appellant contends that the amount of time that passed between the reported incident and when the officer spotted the Saturn leaving the Duluth Street apartment negated the required nexus between the alleged crime and appellant's apartment. We disagree. There is conflicting evidence as to whether 50 minutes or nearly two hours elapsed between the two events. But this time differential fails to undermine the reasonableness of the district court's determination that, based on the factors discussed above, there was a fair probability that appellant returned the gun to his apartment in the interim. Moreover, appellant failed to raise this issue at the omnibus hearing. Therefore, appellant waived his right to challenge the district court's reliance on the 50-minute time

period listed in the warrant in making its probable-cause determination. *See Lieberg*, 553 N.W.2d at 56.

Likewise, we reject appellant's argument that the five-mile distance between the scene of the incident and his apartment destroys the nexus between the two. The fact that appellant could have discarded the gun elsewhere in the five miles between the two locations does not negate the factors supporting an inference that appellant intentionally drove to the apartment following the incident and left the gun there.

Based on the totality of these facts, we conclude that it was reasonable for the district court to conclude that there was a fair probability appellant returned the gun to his apartment following the reported incident.

II.

In his pro se supplemental brief, appellant argues that the officers' initial warrantless entry tainted their subsequent seizure of the handgun and that the warrant would not have been issued but for the information illegally obtained during the prior "protective sweep." We disagree.

Pursuant to the exclusionary rule, evidence recovered during an unlawful search may not be introduced at trial. *State v. Lozar*, 458 N.W.2d 434, 438 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). But the independent-source doctrine provides an exception to the exclusionary rule, permitting the admission of evidence obtained during an unlawful search if the police could have retrieved the evidence "on the basis of information obtained independent of their illegal activity." *State v. Richards*, 552 N.W.2d 197, 203-04 n.2 (Minn. 1996). When determining whether the independent-

source doctrine applies, the district court must consider "(1) whether the decision of the issuing magistrate was affected by the tainted information, and (2) whether that information prompted law enforcement officials to seek the warrant." *Lieberg*, 553 N.W.2d at 55 (citing *Murray v. United States*, 487 U.S. 533, 542, 108 S. Ct. 2529, 2536 (1988)) (quotation omitted).

The independent-source doctrine applies here. Assuming that the previous "protective sweep" was an illegal entry, the decision to issue a warrant was not "affected" by the warrantless entry because the warrant application did not include any mention of the initial entry. Moreover, we reject appellant's contention that the handgun was discovered by the police when they performed their initial "protective sweep" of the apartment. Appellant stipulated to having his suppression motion decided on the police reports, warrant application, and other evidence on record, and there is nothing in the evidence to support appellant's claim. Because both prongs of the independent-source doctrine are met here, we conclude that the district court did not err in determining that the seizure of the handgun during the execution of the warrant was independent of the officers' earlier warrantless entry. Accordingly, we need not address the legality of the initial warrantless entry.

Affirmed.