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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1760**

State of Minnesota,
Appellant,

vs.

Jared Lee Westbrook,
Respondent.

**Filed March 10, 2009
Reversed and remanded
Larkin, Judge**

Cass County District Court
File No. 11-CR-08-1123

Lori Swanson, Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101;
and

Christopher J. Strandlie, Cass County Attorney, P.O. Box 3000, Walker, MN 56484 (for
appellant)

Mark D. Nyvold, Special Assistant State Public Defender, 332 Minnesota Street, Suite
W-1610, St. Paul, MN 55101 (for respondent)

Considered and decided by Minge, Presiding Judge; Larkin, Judge; and Stauber,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant State of Minnesota challenges the district court's order suppressing evidence seized during the execution of a search warrant at respondent's residence. The district court concluded that information provided by a confidential reliable informant, together with law enforcement's corroboration of certain details of the informant's tip, was insufficient to support a finding of probable cause for the search warrant. Because the issuing magistrate had a substantial basis to conclude that probable cause existed, we reverse the district court's suppression order and remand for further proceedings.

DECISION

On May 9, 2008, a district court judge signed a search warrant authorizing the search of respondent Jared Lee Westbrook's Cass Lake residence for OxyContin. Law enforcement officers executed the search warrant and found suspected OxyContin and drug paraphernalia in Westbrook's residence. The state charged Westbrook with one count of third-degree sale of a controlled substance in violation of Minn. Stat. § 152.023, subd. 1(1), and Minn. Stat. § 152.01, subd. 15(a) (2006), and one count of third-degree possession of a controlled substance in violation of Minn. Stat. § 152.023, subd. 2(4) (2006).

Westbrook moved the district court to suppress all evidence obtained during the search of his residence arguing that the search warrant was not supported by probable cause. Westbrook claimed that information provided by a confidential reliable informant (CRI) in support of the warrant was neither reliable nor credible. The district court

granted Westbrook's motion to suppress, concluding that the information provided by the CRI, combined with law enforcement's corroboration of certain details of the CRI's tip, was insufficient to support a finding of probable cause for the search warrant. This appeal follows.

I.

"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). When the state appeals a pretrial suppression order, the state "must clearly and unequivocally show both that the [district] court's order will have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted).

The state argues that both counts of the state's complaint are based on evidence seized during the execution of the search warrant and that the state cannot prosecute the case without that evidence. Westbrook does not contest the state's assertion. We therefore conclude that the district court's suppression order has a critical impact on the state's ability to prosecute its case.

II.

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 pursuant to a valid search warrant

issued by a neutral and detached magistrate after a finding of probable cause. *See* Minn. Stat. § 626.08 (2006); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). “When determining whether a search warrant is supported by probable cause, we do not engage in a de novo review.” *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Instead, “great deference must be given to the issuing [magistrate’s] determination of probable cause.” *State v. Valento*, 405 N.W.2d 914, 918 (Minn. App. 1987). This court limits its “review to ensuring that the issuing [magistrate] had a substantial basis for concluding that probable cause existed.” *McGrath*, 706 N.W.2d at 539.

To determine whether the issuing magistrate had a substantial basis for finding probable cause, we look to 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.

State v. Wiley, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). In reviewing the sufficiency of a search-warrant affidavit under the totality-of-the-circumstances test, “courts must be careful not to review each component of the affidavit in isolation.” *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). Furthermore, “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).

When a search warrant application is based on an informant’s tip, we will not assume that the informant is credible. The supporting “affidavit must provide the magistrate with adequate information from which he can personally assess the informant’s credibility.” *State v. Siegfried*, 274 N.W.2d 113, 114 (Minn. 1978). The issuing judge must consider the informant’s basis of knowledge and veracity. *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1980) (citing *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332). The Supreme Court has stated that the basis of knowledge and veracity should not be viewed as “entirely separate and independent requirements.” *Gates*, 462 U.S. at 230, 103 S. Ct. at 2328. “[T]hey should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question [of] whether there is ‘probable cause’ to believe that contraband or evidence is located in a particular place.” *Id.* A court should consider all the facts relating to the informant when determining reliability. *Souto*, 578 N.W.2d at 750 (citing *State v. McCloskey*, 453 N.W.2d 700, 703 (Minn. 1990)).

We first examine the CRI’s basis of knowledge. “Recent personal observation of incriminating conduct has traditionally been the preferred basis for an informant’s knowledge.” *Wiley*, 366 N.W.2d at 269. First-hand knowledge lends credibility to an informant’s tip. “[E]ven if we entertain some doubt as to an informant’s motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the

event was observed first-hand, entitles his tip to greater weight than might otherwise be the case.” *Gates*, 462 U.S. at 234, 103 S. Ct. at 2330.

In this case, the supporting affidavit states both that “the CRI witnessed a hand to hand sale of OxyContin or other similar product” at Westbrook’s residence and that the CRI reported that “it was readily apparent that illegal sales of OxyContin were on going and not discreet due to open and frank discussion about the illegal sale of OxyContin.” The CRI reported that Westbrook and a female known to him as “Patty” made the illegal sale and that the CRI made these observations within the last 72 hours. Thus, the CRI’s knowledge was based on recent, first-hand information. This recent, personal observation of drug sales lends credibility to the CRI’s tip. *See State v. Holiday*, 749 N.W.2d 833, 840 (Minn. App. 2008) (concluding that the CRI’s knowledge was persuasive for purposes of a probable-cause determination when the informant “had seen [Holiday] inside the residence within the last 48 hours with a quantity of crack cocaine that he was selling to various people.”).

We next examine the CRI’s credibility. There are a number of ways to establish an informant’s credibility. Credibility may be established by showing that the informant has a track record of providing the police with accurate information. *Siegfried*, 274 N.W.2d at 114-15. Credibility may also be established by showing that the details of the informant’s tip “have been sufficiently corroborated so that it is clear the informant is telling the truth on this occasion.” *Id.* at 115. Both methods are relevant here.

The supporting affidavit here states that the CRI “has provided true and accurate information that has [led] to the seizure of illegal drugs on more than one occasion . . .

and led to felony charges against at least 3 individuals for controlled substance crimes as well as the seizure of controlled substances.” This information regarding the CRI’s track record is sufficient to bolster the CRI’s credibility. An informant who has given reliable information in the past is considered likely to be reliable with his current information. *See State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004) (listing past reliable information as one of six factors for determining the reliability of a confidential, but not anonymous, informant).

Westbrook argues that the search-warrant application does not establish that the CRI has a track record of providing accurate information because it fails to state whether the CRI’s past reports resulted in convictions. Westbrook contends that this failure actually casts doubt upon or weakens the CRI’s credibility. We disagree. The relevant case law does not require specific details regarding whether a CRI’s previous tips led to criminal charges or convictions. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (noting that specific details of the CRI’s record are unnecessary). “There is no need for law-enforcement officers to provide specifics of the informant’s past veracity.” *Ross*, 676 N.W.2d at 304 (citing *Munson*, 594 N.W.2d at 136).

In addition to providing information regarding the CRI’s track record, law enforcement officers corroborated certain details of the CRI’s tip. The affidavit states that the CRI met with the affiant and drove past Westbrook’s residence to confirm its location. The affiant notes that he has had personal contact with Westbrook at the residence and knows from past encounters that Westbrook’s girlfriend is Patricia Lynn Hurd. The affiant confirmed that Westbrook and Hurd live at the residence through calls

for service taken by the Leech Lake Tribal Police Department. The affiant also showed the CRI a picture of Westbrook and of Hurd. The CRI confirmed that they were present during the illegal sale of OxyContin.

The district court concluded that corroboration of these details, without more, was insufficient to support a finding of probable cause. Specifically, the district court noted that “[a]n informant’s reliability is not enhanced if the informant merely gives information that is easily obtained.” The district court determined that the location of Westbrook’s residence, his identity, and his girlfriend’s identity are easily obtainable pieces of information and that corroboration of this information did not bolster the CRI’s credibility.

The state argues that the district court erroneously minimized the information corroborating the CRI’s tip. We agree. “Even corroboration of minor details lends credence to an informant’s tip and is relevant to the probable-cause determination.” *Holiday*, 749 N.W.2d at 841 (citing *Wiley*, 366 N.W.2d at 269 (acknowledging that “corroboration of defendant’s name, residence, and make of vehicle lent credence to informant’s tip”))). Corroboration of “part of the informer’s tip as truthful may suggest that the entire tip is reliable.” *Siegfried*, 274 N.W.2d at 115. We have noted that when considering corroboration, there is no requirement that each and every fact or detail of the informant’s tip be corroborated. *Holiday*, 749 N.W.2d at 841. Corroboration of details regarding Westbrook’s residence, his identity, and his girlfriend’s identity, even though minor, help to bolster the CRI’s credibility.

The state also argues that Westbrook's criminal record and his prior conviction provided additional support for the issuing judge's probable-cause determination. *Id.* at 844 (citing *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")). We agree. "A person's criminal record is among the circumstances a judge may consider when determining whether probable cause exists for a search warrant." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005). The affidavit states that Westbrook has been charged with burglaries in the past and that he pleaded guilty to a 2004 felon-in-possession-of-a-firearm offense. While Westbrook's criminal history does not include controlled-substance offenses, his criminal history nonetheless has probative value on the issue of probable cause. *See McCloskey*, 453 N.W.2d at 704 (noting that even a defendant's "relatively minor trouble with the law" is of "some" probative value in determining probable cause).

The cases relied on by the district court in support of its conclusion that probable cause was lacking are distinguishable. The district court relied on *State v. Albrecht*, 465 N.W.2d 107, 109 (Minn. App. 1991), and *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000), for the proposition that corroboration of easily obtained information does not enhance an informant's reliability. In *Albrecht*, an anonymous caller reported that Albrecht was a marijuana dealer. 465 N.W.2d at 108. The informant reported having seen marijuana in Albrecht's home six to eight times in the previous year. *Id.* The informant did not know Albrecht's address but provided a description of the interior of the home, directions, and told police that if the defendant

was home, there would be a red and white pickup truck at the residence. *Id.* We held that police corroboration of Albrecht's address and ownership of the truck, without more, was insufficient to support probable cause. *Id.* at 109.

Albrecht is factually distinguishable. First and foremost, the CRI in this case is not anonymous. The CRI is known to law enforcement and has a track record of providing accurate information. Moreover, the CRI met with law enforcement officers face-to-face and traveled with them to Westbrook's residence in order to confirm its location. *See McCloskey*, 453 N.W.2d at 704 (concluding that a CRI was credible and that there was probable cause for the issuance of a search warrant based, in part, on the fact that the CRI met with the sheriff face-to-face and traveled with the sheriff to the defendant's house).

Cook is also factually distinguishable from this case. The search in *Cook* was based on a warrantless felony arrest. 610 N.W.2d at 666. There was, therefore, no need to defer to an issuing magistrate's probable cause determination. The arrest was based on a CRI's tip that Cook was dealing crack cocaine. *Id.* But the informant did not claim that his tip was based on first-hand knowledge. *Id.* We were provided no explanation for the basis of the CRI's claim that Cook was selling drugs. *Id.* at 668. The CRI never claimed that he had purchased drugs from Cook or that he had seen Cook selling drugs. *Id.* Conversely, the affidavit here expressly states that the CRI's tip is based on recent, first-hand knowledge.

We afford great deference to an issuing judge's determination that probable cause supported a search warrant. *Valento*, 405 N.W.2d at 918. "[T]he 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). “[C]ourts should not invalidate . . . warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner.” *Gates*, 462 U.S. at 236, 103 S. Ct. at 2331 (quotation omitted).

In view of the totality of circumstances and the great deference that must be afforded to the issuing judge’s probable cause determination, we hold that the issuing judge had a substantial basis to conclude that probable cause existed. The CRI’s identity was known; the CRI had provided accurate information in the past; and the CRI’s tip was based on recent, first-hand knowledge. The CRI met with law enforcement officers face-to-face and traveled with them to Westbrook’s residence in order to confirm its location. And the police corroborated certain details of the CRI’s tip. Finally, Westbrook’s criminal history has some probative value that supports a finding of probable cause. We therefore reverse the district court’s suppression order and remand for further proceedings.

Reversed and remanded.

Dated: _____

The Honorable Michelle A. Larkin
Minnesota Court of Appeals