STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1555

State of Minnesota,
Respondent,

vs.

Shea Landin Pedersen,
Appellant.

Filed July 7, 2009
Affirmed
Hudson, Judge

Wright County District Court
File No. 86-CR-08-1640

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

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Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and Hudson, Judge.

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

HUDSON, Judge

On appeal from his conviction of multiple counts of controlled-substance crimes involving methamphetamine, appellant argues that the district court improperly denied his motion to suppress evidence because the applications for the search warrants to search his business and his residence were not supported by probable cause. Because we conclude that the district court had a substantial basis for concluding that probable cause existed for searching both locations, we affirm.

FACTS

In February 2008, a Wright County sheriff's deputy applied for two search warrants: one for "In Range" gun range and gun shop, a business owned by appellant Shea Landin Pedersen, located at 210 Dundas Road, Suite 400, in Monticello, and another for Pedersen's residence at 8299 Acacia Avenue Northeast, in Monticello Township.

The two search-warrant applications relied, for the most part, on the same information, including a tip received in February 2007 from an individual labeled as a confidential reliable informant (CRI) and a tip received in January 2008 from an individual labeled as a confidential informant (CI). Both tips provided the deputy with information relating to Pedersen's use and sale of methamphetamine. Specifically, in February 2007, the CRI approached law-enforcement officers and told them that "a Shea Pedersen who lives in the Monticello area is involved in the use of methamphetamine," and that Pedersen is self-employed and sells firearms for a living. The deputy confirmed

the CRI's identity and noted that the CRI is an admitted user of controlled substances with a gross-misdemeanor-level criminal history.

Then, in January 2008, a CI told the deputy that "a Shea Pedersen who lives in the Monticello area is involved in the use and purchase of methamphetamine and sale of other controlled substances," and "that Shea Pedersen owns 'In Range' gun range and shop in the City of Monticello." The CI further informed the deputy that he or she had "witnessed several methamphetamine transactions at 'In Range' gun range and shop in Monticello," that "Shea Pedersen ma[d]e these transactions," that "some of these methamphetamine purchases were larger quantities than personal use," and that "Shea Pedersen often has other persons who are involved with methamphetamine sale and use hanging around at 'In Range' that are not employees of the business." The CI also said that Pederson "keeps methamphetamine at the business because he is trying to hide his methamphetamine use from his wife and children." The deputy confirmed the CI's identity, and noted that the CI is an admitted user of controlled substances and had pending felony-level controlled-substances charges.

The deputy confirmed the location of In Range, Pedersen's residence, and his sale of firearms. He reviewed county records, which identified Pedersen as the alarm-key holder for In Range and confirmed the business's address. The records also provided Pedersen's phone number, and, using a reverse phone directory, the deputy learned that this phone number was a residential line assigned to Pedersen at 8299 Acacia Avenue Northeast, Monticello, MN 55362. Using department of vehicle services and county tax records, the deputy confirmed that this address was Pedersen's residence.

According to the search-warrant application for In Range, federal law-enforcement agents informed the deputy that Pedersen holds a federal firearms license and lists a business at 8299 Acacia Avenue Northeast in Monticello with a co-location of 210 Dundas Road in Monticello.

The search-warrant applications next explain that the deputy conducted surveillance on In Range during February 2008. The affidavits do not identify the exact date, but they explain that at 3:15 a.m., the deputy saw two vehicles with their engines running parked directly in front of the rear overhead door of In Range and saw two men leave the business through the rear door and stand next to the running vehicles. The deputy considered this activity suspicious because it occurred in the early morning hours, and it was outside of In Range's posted business hours of 10:00 a.m. to 10:00 p.m. seven days a week. He observed that the two men had a disheveled appearance and that one of the vehicles was in disrepair; his applications explain that such characteristics are notable because, based on his training and experience, he knows that individuals involved in the use of methamphetamine have difficulty maintaining their physical appearance and hygiene due to their addiction and will "often times operate dilapidated vehicles due to their addiction consuming a large portion of their financial assets."

Then, on February 11, 2008, the deputy obtained garbage, which "had been set out for normal roadside service" from Pedersen's home address. A search of that garbage yielded the "remnants of two plastic baggies which had white powder residue in them," which tested positive for amphetamine, and "a mail item for Shea Pedersen."

Based on this information, the district court issued the search warrants, and they were executed on February 21, 2008. At In Range, officers recovered 33.92 grams of methamphetamine and a digital scale and smoking pipes covered with a white powder residue. The methamphetamine appeared to have been packaged for sale and was divided into 14 separate packages ranging from .02 grams up to 10.7 grams.

Officers then searched Pedersen's residence, where he lived with his wife and three minor children. There, officers found numerous items of drug paraphernalia, including glass smoking bongs holding a liquid, and smoking pipes (which subsequent testing revealed to be methamphetamine); numerous plastic bags with a white powder residue inside of them, and two scales.

Pedersen was charged with one count of first-degree controlled-substance crime, sale; one count of first-degree controlled-substance crime, possession; and one count of storing methamphetamine paraphernalia in the presence of children. At a pretrial hearing, Pedersen sought to suppress evidence obtained during the search of his residence and In Range, arguing that the search warrants were invalid for lack of probable cause. After the district court denied his suppression motion, Pedersen waived his right to a jury trial and the matter was submitted to the court pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The court found Pedersen guilty of all three counts.

This appeal follows.

D E C I S I O N

The United States and Minnesota constitutions require search warrants to be supported by 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. Minn. Stat. § 626.08 (2006); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). Probable cause to search exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted). If a warrant is void for lack of probable cause, the evidence seized in the search must be suppressed. *See State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989) (stating that if search warrant is void, fruits of search must be excluded); *see also State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007) (requiring that evidence seized in violation of the constitution generally be suppressed).

"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, we give "great deference" to the issuing magistrate's determination of probable cause. *State v. Valento*, 405 N.W.2d 914, 918 (Minn. App. 1987). Our review is limited 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." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). In evaluating the totality of the circumstances, the issuing magistrate makes "a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . , 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)). We are "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). And we will not invalidate the warrant "by interpreting affidavits in a hypertechnical, rather than a commonsense manner." *Gates*, 462 U.S. at 236, 103 S. Ct. at 2331 (quotation omitted). 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).

Here, both search-warrant applications rely heavily on the results of the garbage search and the information provided by the informants. Pedersen argues that neither the evidence from the garbage search nor the informants' tips were sufficient to establish probable cause.

I

We first address whether the garbage search at Pedersen's residence supports a probable-cause determination. "Contraband seized from garbage can provide an independent and substantial basis for a probable-cause determination." *McGrath*, 706 N.W.2d at 543. Although a person retains some expectation of privacy in garbage placed in cans on his private property, there is no expectation of privacy in garbage that has been set on the curb or in the street at the end of a residential driveway for collection. *See State v. Oquist*, 327 N.W.2d 587, 591 (Minn. 1992) ("[A] householder may ordinarily

have some expectation of privacy in the items he places in his garbage can."); *State v. Dreyer*, 345 N.W.2d 249, 250 (Minn. 1984) (finding that warrantless search of garbage can placed on curb for routine collection did not violate Fourth Amendment). Thus, "when a police officer searches trash set on the curb for routine pickup without trespassing on the premises, an unreasonable search has not occurred." *McGrath*, 706 N.W.2d at 545; *see also State v. Goebel*, 654 N.W.2d 700, 704 (Minn. App. 2002) (concluding that garbage searched which was set on street at end of driveway was not protected by Fourth Amendment).

The search-warrant applications clearly indicate that the garbage "had been set out for normal roadside service." Although Pedersen argues that this description is too vague to support a probable-cause determination, he did not separately challenge the constitutionality of the garbage search either before the district court or on appeal. Although the applications should have provided a more exact description of the location of the garbage can, the applications reasonably permit the inference that the garbage was located at the end of the driveway, or in a similar area not protected by the Fourth Amendment.

Pedersen next argues that the search of his garbage did not establish probable cause supporting the issuance of the search warrant because: (1) the affidavits do not establish a basis for concluding that he or someone else in the residence (as opposed to a random passerby) placed the plastic baggies in the garbage; (2) the affidavits only reference a single search; and (3) the presence of the contraband, namely baggies containing residue of amphetamine, could be explained by legitimate reasons, such as a

prescription. But his argument fails because a probable-cause determination does not require an "actual showing" of criminal activity, but only a "probability or substantial chance of criminal activity." *Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 555 (Minn. 1985) (quotation omitted); *see also Zanter*, 535 N.W.2d at 633 (requiring "a fair probability that contraband or evidence of a crime" would be found in the place to be searched). And Minnesota cases involving probable-cause determinations based on contraband seized from garbage do not turn on the number of searches. *See, e.g., State v. Papadakis*, 643 N.W.2d 349, 353 (Minn. App. 2002) (involving one search of garbage prior to execution of search warrant); *Goebel*, 654 N.W.2d at 702 (involving trash collection on one occasion prior to search warrant).

We conclude that the search of the garbage from Pedersen's residence, which yielded remnants of plastic baggies containing a white residue that tested positive for amphetamine and mail bearing Pedersen's name, provided an independent and substantial basis to establish probable cause to issue a search warrant for Pedersen's residence. Accordingly, the district court properly denied Pedersen's motion to suppress the evidence obtained during the search of his residence.

II

Pedersen next argues that the information from the CRI and CI was stale and therefore could not support a probable-cause determination. An affidavit must set forth "facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998) (quotation omitted). If information is stale, it cannot be used to establish probable cause

for a search. *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *review denied* (Minn. Jan. 14, 1985). The question of staleness is a factual determination that varies based on the circumstances of each case. *Id.* To determine if the information is stale, there are no rigid or arbitrary timelines; rather, it must be determined whether, based on practicality and common sense, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* (quotation omitted).

Here, officers received the CRI's tip in February 2007; the deputy sought the search warrants in February 2008. The information was approximately a year old—a fact which considerably undermines its credibility. Accordingly, we hold that the information provided by the CRI was stale.

We also harbor serious concerns about the CI's tip. Although the deputy's receipt of the information from the CI was more recent, the search-warrant application does not indicate when the CI observed the methamphetamine transactions. The supreme court has "expressed strong disapproval of the omission of time from an affidavit in support of a search warrant application." *Harris*, 589 N.W.2d at 789 (quotation omitted). But, under the totality-of-the-circumstances test, "such an omission is not per se fatal." *Id.* "When an activity is of an ongoing, protracted nature, the passage of time is less significant." *Souto*, 578 N.W.2d at 750.

Here, despite the lack of the time reference, the information from the CI was probative value in light of the other evidence tending to suggest ongoing and recent criminal activity. Importantly, the garbage search from Pedersen's residence revealed the presence of amphetamine residue on plastic baggies just two days before the search-

warrant applications. Additionally, the deputy's surveillance of In Range showed suspicious activity occurring well outside In Range's normal business hours and the presence of individuals possessing characteristics of methamphetamine users. We acknowledge that not everyone who exhibits poor hygiene and drives an old car is a methamphetamine user. But we also acknowledge that even if such circumstances might, in themselves, have appeared innocent to the untrained observer, law-enforcement officers are entitled to assess their observations in light of their experience and to evaluate probable cause accordingly. *State v. Anderson*, 439 N.W.2d 422, 426 (Minn. App. 1989) (quotation omitted), *review denied* (Minn. June 21, 1989).[1] These circumstances, when viewed with the CI's statements, support the conclusion that the criminal activity at issue here, namely the possession and sale of controlled substances, was both recent and ongoing.

Pedersen next challenges the CI's credibility. Whether an informant's tip establishes probable cause for a search "depends on the totality of the circumstances of the particular case, including the credibility and veracity of the informant." *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). Courts do not assume that an informant is credible; instead, the affidavit supporting the application for a search warrant must provide adequate information allowing the court to assess an informant's credibility. *State v. Siegfried*, 274 N.W.2d 113, 114 (Minn. 1978).

[1] The search-warrant applications also referenced evidence found during the search of the residence and person of N.T.F.—namely, methamphetamine paraphernalia and several of Pedersen's business cards. The deputy also noted that no firearms were discovered. This evidence has virtually no relevance to the probable-cause determination.

Here, the CI was confidential, but his or her identity was known to police. The CI is presumably more reliable because the language in the search-warrant applications suggests that the CI approached the officers. *See State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) ("Where an informant voluntarily comes forward . . . to identify a suspect, and in the absence of a motive to falsify information, the informant's credibility is enhanced because the informant is presumably aware that he or she would be arrested for making a false report.").

Additionally, the CI's credibility was established through corroboration. The CI advised the deputy that Pedersen owns In Range gun range and shop in Monticello, and the deputy confirmed In Range's location and Pedersen's association with In Range by reviewing county and state records. He also learned from federal agents that Pedersen held a federal firearms license for the address at which In Range was located. Likewise, the deputy confirmed the CI's claim that Pedersen lives in the Monticello area. The corroboration of these minor details bolsters the CI's credibility. *See State v. Holiday*, 749 N.W.2d 833, 841 (Minn. App. 2008) ("Even corroboration of minor details lends credence to an informant's tip and is relevant to the probable-cause determination."); *see also State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990) (finding that even "minimal corroboration," including defendant's telephone number and the fact that defendant's residence had a detached garage, is relevant in making the totality-of-the-circumstances assessment of probable cause); *Wiley*, 366 N.W.2d at 269 (acknowledging that corroboration of informant's tip giving defendant's name, residence, and make of vehicle lent credence to informant's tip).

Pedersen argues that the corroboration of these facts does not establish probable cause because the facts are easily obtained by anyone. In support of this argument, he cites *State v. Albrecht*, where we held that an officer's verification of the defendant's address and vehicle ownership did not sufficiently corroborate an anonymous informant's tip to support a determination of probable cause. 465 N.W.2d 107, 109 (Minn. App. 1991). But *Albrecht* is factually distinguishable. *Albrecht* involved a phone call by an anonymous informant. *Id.* at 107. Here, in contrast, the deputy knew the CI's identity. The officer in *Albrecht* did not actually corroborate significant details of the informant's tip. *Id.* at 109 (indicating that "sole verification . . . was the address of the house and the ownership of [defendant's vehicle]"). But the deputy here engaged in further investigation and confirmed both minor and substantive details of the CI's tip. He confirmed Pedersen's residential address, his ownership of In Range, and In Range's location. The garbage search corroborated the CI's claim that Pedersen was involved in the use of methamphetamine, and surveillance of In Range, which revealed activity far outside of normal business hours and the presence of individuals who possessed characteristics similar to those of methamphetamine users, corroborated the CI's claim that Pedersen allowed individuals associated with the use and sale of methamphetamine to hang around the business.

We also observe that the information from the CI relating to methamphetamine transactions was based on personal observation. *See Gates*, 462 U.S. at 234, 103 S. Ct. at 2330 (stating that informant's tip is entitled "to greater weight" when based on first-hand observation); *State v. Olson*, 436 N.W.2d 92, 95 (Minn. 1989) (recognizing that

informant's information is more reliable when obtained by personal observation). The CI provided specific details relating to Pedersen's criminal activity, including that he or she had witnessed several methamphetamine transactions by Pedersen at In Range, that some of these transactions involved larger quantities than quantities for personal use, that persons involved with the sale and use of methamphetamine hung around In Range, and that Pedersen kept the methamphetamine at In Range in an effort to hide it from his wife and children. *See State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (noting that amount of detail supplied by informant is relevant consideration), *review denied* (Minn. July 25, 2000).

Based on the garbage search and our conclusion that the CI's tip was credible and not stale, we conclude that, when viewed as a whole, the search-warrant application for In Range establishes a substantial basis to support a finding of probable cause. Based on the totality of these circumstances, there was a fair probability that illegal drugs were located at In Range. Thus, the district court had a substantial basis for concluding that probable cause existed for the search of In Range, and the court did not err by refusing to suppress the evidence obtained from the search of In Range.

Affirmed.