STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1736

State of Minnesota,
Respondent,

vs.

James Andrew Allen,
Appellant.

Filed August 25, 2009
Affirmed
Bjorkman, Judge

St. Louis County District Court
File No. 69HI-CR-07-1487

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

Melanie Ford, St. Louis County Attorney, Brian D. Simonson, Assistant County Attorney, 107D Courthouse, 1810 12th Avenue East, Hibbing, MN 55746 (for respondent)

Sten-Erik Hoidal, Timothy M. O'Shea, Special Assistant State Public Defenders, Fredrikson & Byron, P.A., 200 South 6th Street, Suite 4000, Minneapolis, MN 55402 (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Toussaint, Chief Judge; and Stauber, Judge.

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

BJORKMAN, Judge

Appellant challenges his conviction of ineligible possession of a firearm, arguing that the district court erred in refusing to suppress the rifle seized during the execution of a search warrant that was based partially on information obtained during a prior unlawful search of appellant's residence.[1] Because the district court did not err in denying appellant's motion to suppress, we affirm.

FACTS

On November 27, 2007, Hibbing resident Darlene Anderson called 911 to report that her neighbor's boyfriend, later identified as appellant James Allen, had been shot in the arm. Several police officers responded to the call. Once on the scene, the officers observed that appellant "appeared to be intoxicated, would not agree to have medical attention, . . . claimed that no one had shot him," and was generally uncooperative with the officers' efforts to find out what happened. Investigator Ryan Riley touched appellant's left arm, and appellant "immediately flinched in pain."

The officers helped appellant remove his outer clothing, and Riley observed a small amount of bleeding and an apparent bullet hole through the middle of appellant's left bicep. Appellant continued to give conflicting accounts of what happened, stating on several occasions that he had been shot by a gun and was in a lot of pain, but then later denying that he had been shot. Based on his lack of cooperation with the officers'

[1] Appellant was also convicted of a fifth-degree controlled-substance offense but does not challenge that conviction.

investigation, and because he was agitated and combative, appellant was eventually handcuffed and transported to the hospital.

Because they believed that the shooting likely occurred at appellant's home, three officers, including Deputy Chief Duane Gielen, went to investigate the residence as a potential crime scene. The officers entered appellant's home and observed spent shell casings "in the living room and the dining room area," holes in the living room wall, and a loaded .22 caliber rifle in a bedroom closet. During this investigation, Gielen received two or three phone calls from Riley, who was with appellant at the hospital. Riley informed Gielen that appellant had changed his story regarding the shooter's identity several times, and that it was possible appellant shot himself. At that point, Gielen halted the investigation of appellant's home because he "felt [they] should get a search warrant" before continuing. Riley subsequently applied for and received a search warrant, which was executed later that evening. The application included a reference to the rifle and spent shell casings. During the search pursuant to the warrant, the officers seized the rifle and casings that were observed earlier in the day.

Appellant was charged with four offenses, including possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713 (2006). At a contested omnibus hearing, appellant moved to suppress the evidence seized from his home, arguing that the officers' initial search was unlawful and that the evidence seized pursuant to the search warrant was tainted by the initial warrantless search. The district court agreed that the initial search was unlawful, finding that it was not justified as a protective sweep or by exigent circumstances. But the court denied appellant's suppression motion, concluding

that the evidence seized was not tainted by the initial warrantless search based on the independent-source doctrine.

Appellant 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 district court convicted appellant and sentenced him to 60 months' imprisonment for the ineligible possession charge. This appeal follows.

D E C I S I O N

This court reviews a pretrial order on a motion to suppress evidence by independently reviewing the facts to determine whether, "as a matter of law, the district court erred in suppressing or not suppressing the evidence." *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004).

The Fourth Amendment to the United States Constitution and article I of the Minnesota Constitution prohibit unreasonable searches of persons and their homes. 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. *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 search is conducted without a warrant and no warrant exceptions apply, the evidence obtained during the search may not be used against the defendant and must be suppressed. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961); *State v.*

Lozar, 458 N.W.2d 434, 438 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). "[T]he exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, . . . but also evidence later discovered and found to be derivative of an illegality or fruit of the poisonous tree." *Segura v. United States*, 468 U.S. 796, 804, 104 S. Ct. 3380, 3385 (1984) (citations and quotation marks omitted).

But if the police could have obtained the evidence "on the basis of information obtained independent of their illegal activity," it need not be suppressed. *State v. Richards*, 552 N.W.2d 197, 203-04 n.2 (Minn. 1996). This rule, known as the independent-source doctrine, applies to mixed warrants in which the warrant application is based on both legally and illegally obtained information. *State v. Hodges*, 287 N.W.2d 413, 416 (Minn. 1979). Before admitting evidence pursuant to the independent-source doctrine, "the [district] court must determine (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." *State v. Lieberg*, 553 N.W.2d 51, 55 (Minn. App. 1996) (quoting *Murray v. United States*, 487 U.S. 533, 542, 108 S. Ct. 2529, 2536 (1988)). The first prong of the test is satisfied if a "sanitized affidavit would establish probable cause." *Id.* The second prong requires the district court to determine, as a factual matter, whether the illegal search prompted the warrant request. *Id*.

Here, the district court found that the first prong of the independent-source doctrine was satisfied because "[t]here was sufficient information to obtain the search warrant without the fruits of the protective sweep." Appellant does not challenge this

determination. Rather, appellant alleges that application of the second prong compels suppression because the officers' observations of appellant's home during the warrantless search prompted them to seek a warrant.

Appellant challenges the district court's determination on three grounds. First, appellant contends that the state failed to provide the requisite "specific evidence" that the information the officers obtained during the initial search of his home was not a factor in prompting them to seek the search warrant. *See United States v. Leveringston*, 397 F.3d 1112, 1115 (8th Cir. 2005) (stating that "[w]hen the government seeks to rely on the independent source doctrine in a case involving a later-obtained warrant, it should present specific evidence that the officers were not prompted by allegedly unlawful activity to obtain the warrant, and should seek a finding on that point from the district court"). Because appellant's argument disregards relevant testimony in the record, we disagree.

During the omnibus hearing, defense counsel had the following exchange with Deputy Chief Gielen:

> DEFENSE COUNSEL: Okay. I mean you didn't, at the point that you first saw the gun in the closet say, hmm, I know [appellant is] a convicted felon, we're in the house where he lives, we better shut it down right now before I remove it, get serial numbers, take pictures of it, because in all this confusion we might have a problem here[?]"
> WITNESS: The truth is I didn't put that together—
> DEFENSE COUNSEL: Okay.
> WITNESS: —at that point.

On redirect, the prosecutor followed-up on defense counsel's question:

> PROSECUTOR: When you see a rifle . . . and you know there's been a shooting incident already, is the first thought that's going through your mind, oh well, we're going to have

> to maybe charge him with felony possession of a firearm so I better go get a search warrant?
> WITNESS: That didn't enter my mind at that point.

Gielen also stated that his first thought when he saw the gun was that "it might be involved in the shooting," and his second concern was "[t]he safety factor." Gielen agreed that it was "not [his] thought process" to "say oh, I better get a search warrant here because I think he might be a convicted felon and we might want to charge him later on." This testimony supports the district court's finding that discovery of the rifle is not what prompted the officers to seek a search warrant.

Second, appellant argues that because the warrant application specifically identifies and requests permission to seize the items observed during the first search, "it is evident the officers were prompted by discovery of those items to seek the search warrant." This argument is also unavailing.

The fact that the rifle and shell casings were listed on the warrant application does not necessarily mean that the officers were prompted to seek the warrant based on discovery of those items. Appellant concedes that it was not improper for Riley to include a reference to the rifle and shell casings in the warrant application. Moreover, as identified above, Gielen testified that it "didn't enter [his] mind" to get a warrant based solely on the discovery of the rifle and shell casings. He also testified that the officers entered the residence to "investigat[e] the premises as a crime scene" and make sure there were no other suspects or victims present, not specifically to search for a gun. *Cf. State v. Brady*, 569 N.W.2d 433, 435 (Minn. App. 1997) (suppressing evidence of illegal drug activity where officer testifying at omnibus hearing admitted that he entered the

appellant's home "to satisfy my own interest or curiosity that it *in fact* was a marijuana growing operation," and that he applied for the search warrant only after doing so).

Lastly, appellant contends that the district court misstated Gielen's testimony when it found that "Deputy Chief Gielen testified that the illegal search was halted and the search warrant was requested once [appellant] told law enforcement that he might have shot himself, not because a rifle had been found." We disagree.

While Gielen did not make this precise statement, the district court's finding does not misstate the substance of Gielen's testimony. Gielen testified that the "investigation change[d] where [he] thought that [appellant] had not actually been assaulted by someone." Gielen testified that Riley's phone calls indicating that appellant was providing inconsistent stories caused Gielen to doubt whether someone else shot appellant, and that the "other option if somebody didn't shoot him" was that "[h]e may have shot himself." Additionally, Riley noted in the warrant application that appellant became upset when asked whether he may have shot himself and continued to provide multiple, conflicting accounts of what happened.

On this record, we conclude that the district court did not err in applying the independent-source doctrine and denying appellant's suppression motion. As the district court cogently observed, appellant's home was the location of a shooting either by appellant or someone else, and by that fact alone it was going to be subject to a search. And the evidence supports the district court's conclusion that the prior unlawful search is not what prompted the officers to seek a warrant.

Affirmed.