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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1700**

State of Minnesota,
Respondent,

vs.

Timothy Allan Hansen,
Appellant.

**Filed June 29, 2010
Affirmed
Shumaker, Judge**

St. Louis County District Court
File No. 69HI-CR-08-639

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Melanie S. Ford, St. Louis County Attorney, Duluth, Minnesota, Jeffrey M. Vlatkovich,
Assistant County Attorney, Hibbing, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Larkin, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

The appellant challenges the district court's denial of his motion to suppress evidence obtained from his residence through the execution of an anticipatory search warrant, claiming that the warrant was void because the triggering condition was not met. Because the district court did not err in concluding that the warrant was supported by probable cause, we affirm.

FACTS

We are asked to decide whether an anticipatory search warrant became void—rendering a search illegal—when the probable-cause condition stated in the warrant was not fulfilled precisely. The district court held that the warrant remained valid despite less-than-perfect compliance with the condition.

On June 1, 2008, law-enforcement members of the Boundary Waters Drug Task Force executed a search warrant at 317 9th Street in Chisholm, the residence of appellant Timothy Allan Hansen, and found drugs, guns, and money allegedly obtained through sales of drugs.

The warrant was premised on a series of controlled drug buys, three of which followed an identical pattern. For all of the buys, the police used the same informant. Before each transaction, the police searched the informant and his vehicle to ensure that he had no drugs. They then outfitted the informant with a transmitter to record conversations and they gave him pre-recorded money for the purchase. The informant

then contacted Deann Buncich, determined that she could obtain methamphetamine for him, went to her residence, and gave the money to her.

After Buncich received the money, she drove to Hansen's home, obtained the drugs, and then delivered them to the informant. The police conducted a surveillance of the observable conduct of the informant and Buncich, and they followed and photographed Buncich as she drove to and from Hansen's residence. At the conclusion of each buy, the police tested the substance the informant purchased and it tested positive for methamphetamine. The three drug buys that fit this pattern occurred respectively on May 7, 8, and 12, 2008.

When the informant told the police on May 29 that he would soon make another buy through Buncich, the police decided to apply for a search warrant for Hansen's residence. The supporting affidavit detailed the pattern of the three previous buys and then stated:

The search warrant is being written in anticipation of the sale of methamphetamine to CRI #1 by BUNCICH at 4 4th Street S/W, Chisholm, MN. The search warrant will only be executed if BUNCICH is observed leaving her residence to go to the address of 317 9th Street S/W, Chisholm, MN, to pick up the methamphetamine as in previous controlled buys.

The fourth buy deviated from the pattern of the previous three buys. When the informant arrived at Buncich's residence to give her the money, she told him that she had "picked up the meth already." She also stated that her "supplier wants the money back right now." Buncich completed the sale and went to Hansen's residence. The police saw

her go into the house and leave within a few minutes. They then searched Hansen's residence.

In his motion to suppress the items found in the search, Hansen contended that the search warrant was void because the condition upon which it was issued was not satisfied, namely, that Buncich was not observed going first to Hansen's address to pick up drugs to sell to the informant as she had done in the three previous transactions.

The district court denied Hansen's motion, finding that the "probable cause statement in the search warrant application is based largely on allegations of three prior controlled drug buys" and that the police had "credibly verified that the anticipated controlled buy involving Deann Buncich did take place prior to execution of the warrant." Hansen contends on appeal that the district court erred in denying his motion to suppress evidence.

DECISION

When there is no dispute about the facts underlying a pretrial motion to suppress evidence, the district court's determination is purely a legal question which we review independently to ascertain whether the court has erred as a matter of law. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

The United States Supreme Court has held that anticipatory search warrants are not categorically unconstitutional under the Fourth Amendment's requirement that a warrant may issue only upon probable cause to believe that there is a fair probability that contraband or evidence of a crime will be found in the place sought to be searched. *United States v. Grubbs*, 547 U.S. 90, 126 S. Ct. 1494 (2006).

The most significant feature of an anticipatory search warrant is that, even though probable cause does not presently exist for a search, some “triggering condition” will occur and its occurrence will provide the requisite probable cause for the search. *Id.* at 94, 126 S. Ct. at 1498. Because probable cause for a search will necessarily be based on the likelihood that contraband or evidence of a crime will be found, the triggering condition of an anticipatory search warrant will be some circumstance or event yet to occur, such as a delivery of drugs, that will create a fair probability that contraband or evidence of a crime will come to be present at the place to be searched. As the Supreme Court noted in *Grubbs*, when the anticipatory warrant is signed by a magistrate, “by definition, the triggering condition which establishes probable cause has not yet been satisfied.” *Id.*, 126 S. Ct. at 1499.

In *Grubbs*, the Supreme Court held that “two prerequisites of probability” must be satisfied before an anticipatory search warrant may be issued:

In other words, for a conditioned anticipatory warrant to comply with the Fourth Amendment’s requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not only that *if* the triggering condition occurs “there is a fair probability that contraband or evidence of a crime will be found in a particular place,” but also that there is probable cause to believe the triggering condition *will occur*.

Id. at 96-97, 126 S. Ct. at 1500 (citation omitted).

It is clear that the search warrant at issue satisfied both prerequisites of probability. Based on the affidavit detailing the three previous sales of drugs, the issuing magistrate had sufficient information upon which to determine that the triggering condition would

occur and that, when it occurred, contraband or evidence of a crime would be found at Hansen's residence. Furthermore, based upon the previous drug sales, the applicant for the search warrant was able to describe with particularity the items at the residence that would properly be subject to seizure. Those items included contraband, methamphetamine, and "United States currency, which may be proceeds of sales of controlled substances."

Hansen argues that if the triggering event does not occur, the search warrant is void. The Supreme Court in *Grubbs* noted that "[i]f the government were to execute an anticipatory warrant before the triggering condition occurred, there would be no reason to believe the item described in the warrant could be found at the searched location." *Id.* at 94, 126 S. Ct. 1499. And in *United States v. Garcia*, 882 F.2d 699, 702 (2d Cir. 1989), the court explained that "[a]n anticipatory warrant, by definition, is a warrant that has been issued before the necessary events have occurred which will allow a constitutional search of the premises; if those events do not transpire, the warrant is void."

Because it is the occurrence of the triggering event that provides probable cause to believe contraband as evidence of a crime will be found, if that event does not occur, such probable cause will not exist. We have no quarrel with that proposition. But Hansen's analysis is faulty because he loses sight of the key inquiry, namely, whether, despite less-than-perfect satisfaction of the triggering condition, probable cause existed to believe contraband or evidence of a crime would be found at the place to be searched. Here, it was not that the triggering event did not occur but rather that it did not occur precisely as stated in the warrant.

With an anticipatory search warrant there are at least three possible outcomes. If the warrant is executed after the triggering condition is precisely satisfied, the warrant is valid, presuming that the triggering event establishes probable cause. If the warrant is executed before any aspect of the triggering condition is satisfied, the warrant is void. But if the warrant is executed after some aspect of the triggering condition is satisfied, we are left with the question of whether enough of the condition has been met to permit the belief that contraband or evidence of a crime will be found. If that question can be answered in the affirmative, then probable cause to support the warrant and the search exists.

Applying this approach here, we ask: When Deann Buncich broke the pattern established in the prior transactions by not going first to Hansen's residence before making the sale, was there nevertheless probable cause to believe that contraband or evidence of a crime would be found at Hansen's home? It could be argued that, because Buncich had already picked up the drugs before the informant came to her residence, no drugs would be found at Hansen's home. But even if we accept that argument, there remained probable cause to search for the drug-buy money. The prior transactions detailed in the warrant affidavit provided a strong basis for concluding that Buncich's supplier was at 317 9th Street, and that was the location from which Buncich obtained the drugs and to which she delivered the pre-recorded money supplied by law enforcement for the drug purchases. That money was evidence of a crime and was the proper subject of a search and seizure. Thus, when Buncich made the fourth sale, stated that her supplier wanted the money immediately, and then went into Hansen's residence, there

was probable cause to believe that she delivered some of the pre-recorded money to Hansen.

We have no doubt that, had the law-enforcement agents waited until after the fourth transaction to apply for the warrant, a magistrate would have found probable cause to believe at the very least that drug-buy money would be present at Hansen's residence. The anticipatory warrant also ultimately satisfied the probable-cause requirement. The district court did not err in holding the warrant and the search to be valid and in denying Hansen's motion to suppress evidence found at his residence.

Affirmed.