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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1436

State of Minnesota,
Respondent,

vs.

Andre Delon Garland,
Appellant.

Filed July 5, 2011
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CR-09-838

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

COLLINS, Judge

Appellant challenges his conviction of fifth-degree controlled-substance possession, arguing that the district court erred by failing to suppress evidence obtained as a result of a warranted search because (1) the search warrant was not supported by probable cause and (2) the evidence was the fruit of an illegal search stemming from appellant's unlawful arrest and illegally obtained statements. Holding that the search warrant was supported by probable cause and that the evidence inevitably would have been discovered by lawful means, we affirm.

FACTS

In August 2008, police officers of the Northwest Area Drug Task Force executed a search warrant at appellant Andre Garland's apartment. The officer's affidavit supporting the warrant specified that: (1) within the previous week, a concerned citizen had informed police of observation of continuous, short-term traffic at Garland's apartment, which the officer believed to be consistent with drug activity; (2) the apartment-complex management had advised the officer of reports that Garland had engaged in suspected drug transactions near the complex, including an occasion when Garland was seen handing a plastic baggie to a person in a vehicle that left very quickly; and (3) within the previous 72 hours, during a K-9 drugs search at the second-floor common-area hallway, the dog had passed by several other apartment doors before giving a positive indication for drugs at Garland's apartment door.

When officers executing the search warrant entered the apartment, they encountered Garland's girlfriend and her children; Garland was not present. The officers began their search by securing the apartment, but initially found no drugs. When Garland was seen outside the complex, he was detained, handcuffed, and placed in the back of a squad car.

At an evidentiary hearing on Garland's motion to suppress evidence, the lead officer testified that Garland was detained because he was the target of the drug-activity investigation. When told that police were there with a search warrant, Garland responded that there were only three or four ounces of marijuana present and that it was in a coat. After going back to the apartment and not finding the coat, the officer returned to the squad car and spoke again with Garland. Garland was then brought into the apartment, and he led the officers to the clothes closet in his bedroom where the coat containing the marijuana in a sleeve was located. The officer initially testified that he gave Garland a *Miranda* warning before being told of the marijuana in a coat, but later testified that he did not Mirandize Garland until speaking with him in the squad car the second time.

Another officer involved in the search testified that he "[did] not believe that [the police] were finished searching" the apartment before Garland told of the location of the marijuana. Garland's girlfriend testified that the officers brought him into the apartment only about 15 minutes after they had begun the search, which took about an hour.

Garland testified that after he was detained and placed in the squad car, an officer told him that police were in his apartment and asked where the drugs were, and he replied that he did not sell drugs, but only smoked them. And when the officer returned and

stated that they had not found the marijuana, the officer took Garland's taped statement and then led him into the apartment.

Garland moved to suppress his statements to police and the marijuana. The district court granted the motion as to the statements, concluding that the affidavit supporting the search warrant established probable cause to search the apartment, but that Garland's arrest was illegal, whether or not he was properly Mirandized, because his status as the search-warrant target did not give police probable cause for arrest, and probable cause was otherwise lacking to support the arrest.[1] But the district court denied Garland's motion to suppress the marijuana, basing the ruling on either the independent-source doctrine or inevitable-discovery doctrine.

Following a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd 4, the district court found Garland guilty. This appeal followed.

D E C I S I O N

When reviewing pretrial orders on motions to suppress evidence, appellate courts normally review the facts and determine whether the district court erred, as a matter of law, by failing to suppress evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's findings of fact for clear error, but apply a de novo standard to determinations of law. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn.2006).

[1] The state does not challenge the district court's suppression of Garland's statements based on this conclusion.

I

The United States and Minnesota Constitutions require that a search warrant be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. In determining whether a warrant is supported by probable cause, this court gives great deference to the issuing court's findings of fact. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). Our review is limited to ensuring "that the issuing judge had a 'substantial basis' for concluding that probable cause existed." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

A substantial basis means a fair probability, given the totality of the circumstances set forth in the affidavit before the issuing judge, including the veracity and basis of knowledge of persons supplying hearsay information, that contraband or evidence of a crime will be found in a particular place. *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332. Elements that bear on this probability include information that links the crime to the place to be searched, the freshness of that information, and the reliability of its source. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). In reviewing the sufficiency of a search-warrant affidavit under the totality-of-the-circumstances test, we do not "review each component of the affidavit in isolation." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). Therefore, "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).

Garland argues that the factual allegations set forth in the search warrant affidavit were insufficient to support the district court's determination of probable cause. According to the affidavit, (1) within the previous week, a concerned citizen had observed continuous, short-term traffic to and from Garland's apartment at all hours, which the affiant officer believed was consistent with drug activity, (2) the apartment management passed along reports of Garland being engaged in suspected drug transactions with people in vehicles near the apartment complex, based in part on Garland having been seen handing a plastic bag to a person in a vehicle, which arrived and left very quickly, and (3) within the previous 72 hours, during a K-9 drugs search at the common-area hallway outside Garland's apartment, the dog gave a positive indication for drugs at Garland's apartment door after passing by several other doors.

Garland argues that no single bit of information provides probable cause to support a search of his apartment. However, under the totality-of-the-circumstances test, all of the supporting facts must be analyzed together. *Id.* The magistrate issuing the warrant "is entitled to draw common-sense and reasonable inferences from the facts and circumstances given." *State v. Eggler*, 372 N.W.2d 12, 15 (Minn. App. 1985), *review denied* (Minn. Sept. 19, 1985). Here, the information detailed in the affidavit, in the aggregate, amply supports the issuing court's probable-cause determination, and the district court did not err by denying the motion to suppress the marijuana on that ground.

II

Garland also challenges the district court's denial of his motion to suppress the marijuana, arguing that it was the fruit of an illegal search stemming from his unlawful

arrest and illegally obtained statements. Faced with such a challenge, the state must establish that the evidence was obtained "'by means sufficiently distinguishable to be purged of the primary taint'" of an illegality. *State v. Doughty*, 472 N.W.2d 299, 305 (Minn. 1991) (quoting *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963)).

The district court concluded that, although Garland's arrest was not supported by probable cause, the marijuana was nonetheless admissible under either the independent-source doctrine or the inevitable-discovery doctrine. "The independent source doctrine permits 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. Martinez*, 579 N.W.2d 144, 148 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. July 16, 1998). The independent source doctrine does not apply here because, assuming that Garland's arrest was illegal, police did not find the marijuana on the basis of information that was obtained independent of the illegality.

We agree, however, that the district court correctly applied the inevitable-discovery doctrine in denying the motion to suppress the marijuana. "The inevitable discovery doctrine permits the inclusion of evidence otherwise excluded under the exclusionary rule if the police would have inevitably discovered the evidence, absent their illegal search." *Id.* (quotation omitted). The doctrine applies when police have a lawful means of discovery and are pursuing that means before they engage in illegal conduct. *State v. Hatton*, 389 N.W.2d 229, 233 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). "If the state can establish by a preponderance of the evidence that the

fruits of [the] search 'ultimately or inevitably would have been discovered by lawful means,'" the evidence resulting from the challenged search is admissible. *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (quoting *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509 (1984)). Inevitable discovery "'involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." *Id*. (quoting *Nix*, 467 U.S. at 444-45 n.5, 104 S. Ct. at 2509 n.5).

Here, the record shows that police seized the marijuana while they were lawfully in Garland's apartment executing a valid search warrant, that specifically authorized a search for drugs. Garland's girlfriend testified that police were only a few minutes into the search when Garland arrived with the officers, and an officer conducting the search testified that he did not believe the search had been completed by that time. Additionally, we note that the marijuana was in a coat in a bedroom clothes closet, not secreted in some location unlikely to be discovered. Under these circumstances, the district court did not clearly err by determining that the state established, by a preponderance of the evidence, that the marijuana would ultimately have been discovered in the course of the lawful search; thus the district court did not err by denying Garland's motion to suppress the marijuana.

Affirmed.