STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1487

State of Minnesota,
Respondent,

vs.

Timothy George Clark,
Appellant

Filed June 16, 2014
Affirmed
Worke, Judge

Morrison County District Court
File No. 49-CR-11-252

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Mark D. Kelly, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Cleary, Chief Judge; and Larkin, Judge.

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

WORKE, Judge

Appellant challenges his conviction of fifth-degree controlled substance crime, arguing that the district court erred by determining that the search-warrant application

included sufficient facts to establish probable cause, and that his statement to investigators was voluntary and did not violate his right to remain silent. We affirm.

FACTS

On December 2, 2010, Sergeant Charles Strack monitored E.S. and M.W., individuals active in the use of controlled substances, during their stay at a hotel. Strack observed E.S. meet with other individuals active in the sale of controlled substances and witnessed E.S. in a cash exchange. Strack's certified K9 performed an open-air sniff and alerted to E.S. and M.W.'s room. Officers executed a search warrant and found a baggie of methamphetamine in the room. E.S. and M.W. were arrested and transported to jail.

M.W. stated that on December 1, she and E.S. went to appellant Timothy George Clark's residence where they purchased methamphetamine. She stated that she had gone to the home five times within the prior 30 days to use or purchase methamphetamine from Clark. Sergeant Strack also learned that on November 5, 2010, R.N. was arrested and told officers that he had just purchased methamphetamine at Clark's residence and could go back and purchase more. Sergeant Strack conducted a criminal-history check and learned that Clark was charged with first-degree controlled substance crime in 2004 and 2005. On December 4, 2010, Sergeant Strack applied for, and was granted, a search warrant. In his supporting affidavit, Strack included the information leading to E.S. and M.W.'s arrests, M.W.'s statement, R.N.'s statement, and Clark's criminal history.

On December 8, 2010, officers executed the search warrant. Officers seized numerous items found in Clark's bedroom, including a baggie containing 1.4 grams of methamphetamine. Clark was advised that he was under arrest for fifth-degree controlled

substance crime. Deputy Doug Rekstad talked to Clark about possibly working out a deal if he chose to work with law enforcement. At that time, Clark did not want to talk and was transported to jail, but he eventually agreed to talk to officers. After he was read his *Miranda* rights, Clark admitted that the methamphetamine was his.

Nearly a year-and-a-half later, on March 8, 2012, the district court held an omnibus hearing, in which Clark challenged the search-warrant application and his statement to officers. Sergeant Strack testified that after Clark had been transported to jail, he learned from Rekstad that Clark wanted to talk.[1] Strack recorded the interview. After Clark admitted that the methamphetamine belonged to him, Strack turned off the recording because Clark agreed to work with law enforcement and did not want the information he provided recorded. Strack testified that he did not do or say anything to Clark to convince him to talk.

Clark testified that he was held in jail for more than two hours when he was told that investigators wanted to talk to him. He stated that he was told that if he admitted the drugs were his, he could walk out the door. Clark stated that he was told that if he did not admit that the drugs belonged to him, officers were "going to throw [him] in jail and put a million dollars bail on [him] and [he] was not going to get out." Clark testified that he agreed to talk because he needed to get home to his cattle. Clark admitted that he was

[1] Sergeant Strack testified that he learned from Deputy Rekstad that Clark wanted to talk. Rekstad testified that he learned from Strack that Clark wanted to talk. Both officers testified to the best of their recollections, noting that it had been more than a year since the incident.

read the *Miranda* warning and that he did not ask to call an attorney. He was released after he gave his statement.

The district court concluded that the information in the search-warrant application provided probable cause for issuance of the warrant. The district court also rejected Clark's testimony that officers threatened the million-dollar bail because Clark knew at the time of his arrest that he would be charged with fifth-degree possession and, based on his experience, knew that the "assertion of a 'million-dollar bail' would be unrealistic, even if it had been made."

The district court found that Deputy Rekstad called Sergeant Strack and told him that Clark wanted to talk, but also found that regardless of how the conversation was initiated, Clark admitted that the methamphetamine belonged to him. Considering the totality of the circumstances, the district court concluded that the officers did not violate Clark's right to remain silent and that his statement was voluntary. This appeal followed.

D E C I S I O N

Clark argues that the district court erred by denying his motion to suppress the evidence found during the search and his statement to law enforcement. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted).

Search warrant

Generally, a search is lawful only when it is executed pursuant to a valid warrant issued by a neutral and detached judge based on a finding of probable cause. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10; Minn. Stat. § 626.08 (2010); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). We afford great deference to the district court's probable-cause determination. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). "[O]ur only consideration is whether the judge issuing the warrant had a substantial basis for concluding that probable cause existed." *State v. Jenkins*, 782 N.W.2d 211, 222-23 (Minn. 2010) (quotation omitted). We look to the totality of the circumstances to determine whether there was a substantial basis for finding probable cause. *State v. Holiday*, 749 N.W.2d 833, 839 (Minn. App. 2008).

Clark claims that M.W. was not reliable and officers failed to corroborate her information. When a search-warrant application is based on statements from an informant, the supporting affidavit must include sufficient information related to the informant's "basis of knowledge" and "veracity" to allow the judge to assess the informant's credibility. *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998); *State v. Siegfried*, 274 N.W.2d 113, 114 (Minn. 1978). "Recent personal observation of incriminating conduct has traditionally been the preferred basis for an informant's knowledge." *Wiley*, 366 N.W.2d at 269. Several circumstances support an informant's reliability: (1) a first-time informant not involved in criminal activity; (2) an informant who has previously provided correct information; (3) police corroboration of the information; (4) voluntary information unprovoked by motive; (5) references to

"controlled purchase[s]"; and (6) statements against penal interest. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998).

Here, M.W. stated that she had gone to Clark's residence several times, including on December 1, to use and/or purchase methamphetamine. M.W.'s statement that she purchased methamphetamine at Clark's residence was corroborated by R.N.'s statement that he also recently purchased methamphetamine at Clark's residence. *See Holiday*, 749 N.W.2d at 841 ("Even corroboration of minor details lends credence to an informant's tip and is relevant to the probable-cause determination."); *State v. Hochstein*, 623 N.W.2d 617, 623 (Minn. App. 2001) (stating that informants' statements were corroborated by statements of other informants).

M.W.'s statement that Clark was involved with controlled substances was also corroborated by a criminal-history check and the discovery of Clark's two first-degree controlled substance crimes. *See Holiday*, 749 N.W.2d at 844 ("A person's criminal record is among the circumstances a judge may consider when determining whether probable cause exists for a search warrant."). Additionally, M.W.'s admission to purchasing methamphetamine is against her penal interest. The search-warrant application included facts sufficient to establish probable cause based on the circumstances leading to M.W.'s arrest, M.W.'s statement, R.N.'s statement, and Clark's criminal history.

Statement

Clark argues that his statement to officers was involuntary and that officers violated his constitutional right to remain silent. Only a voluntary confession is

admissible against a criminal defendant. *State v. Gard*, 358 N.W.2d 463, 467 (Minn. App. 1984). A district court should make specific factual findings regarding the voluntariness of a defendant's custodial statement. *State v. Buchanan*, 431 N.W.2d 542, 551 (Minn. 1988). We will not reverse those factual findings unless they are clearly erroneous, but we independently review whether a statement was voluntarily. *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010).

In determining whether a statement was involuntary or coerced, we consider all relevant factors including age, maturity, intelligence, education, experience, ability to comprehend, lack or adequacy of warnings, length and legality of detention, nature of interrogation, physical deprivations, and limits on access to counsel, family, and friends. *State v. Blom*, 682 N.W.2d 578, 614 (Minn. 2004). Additionally, "a [statement] is not involuntary unless there is evidence that the suspect's will was overborne by coercive police conduct." *State v. Edwards*, 589 N.W.2d 807, 813 (Minn. App. 1999), *review denied* (Minn. May 18, 1999).

Clark argues that his statement was involuntary because officers "promised the leniency of release without charges if he confessed, and further incarceration and extraordinarily high bail if he continued to remain silent." In *State v. Anderson*, the supreme court stated that law enforcement should avoid making promises of release in exchange for confessions, but determined that courts must still "look to the totality of the circumstances, considering all the factors bearing on voluntariness." 298 N.W.2d 63, 65 (Minn. 1980) (citations omitted). In *Anderson*, although the defendant claimed that his statement was involuntary because officers promised to release his friend if he gave a

statement, the supreme court concluded that his statement was voluntary because he had several prior felony convictions, was advised of his right to remain silent, was not threatened or subjected to prolonged interrogation, and raised the issue of making a statement if his friend was released. *Id.*

The district court found that Deputy Rekstad told Clark that he would be released if he cooperated in other investigations. Thus, Clark's assertion that officers "promised the leniency of release without charges if he confessed," is inaccurate—the "promise" was release in exchange for cooperation, not for a confession. The district court also rejected Clark's claim that officers threatened million-dollar bail, noting that even if that threat was made, Clark had sufficient experience in the criminal system to understand that any such threat was unrealistic for a fifth-degree offense.

Clark suggests that his immediate release after his statement renders it involuntary. The record indicates that Clark made his recorded statement, the recording device was turned off so that Clark's allegations about other individuals would not be recorded, and then he was released. But his prompt release does not indicate that his statement was involuntary. Clark could better assist law enforcement outside of jail. Further, others involved in criminal activity could learn of his incarceration if it were prolonged and could grow suspicious of his cooperation with law enforcement.

Additionally, in considering the totality of the circumstances, the district court determined that Clark's statement was voluntary because he was 39 years old, there is no reason to believe that he is of below-average maturity or intelligence, he has a fairly extensive criminal history, he is familiar with the criminal justice system and a

defendant's rights, he was in custody for six hours and suffered no deprivations during that time, he was informed of his *Miranda* rights and claimed to understand them, and his statement was only four minutes long. The record supports the district court's findings and the conclusion that Clark's statement was voluntary. *See id.* (concluding that the defendant's statement was voluntary because he had several felony convictions, was advised of his right to remain silent, and was not subjected to prolonged interrogation).

Clark claims that the district court erred by relying on the officers' testimony because they provided contradictory evidence regarding who approached whom regarding Clark's desire to speak with them. The district court found this irrelevant because Clark agreed to speak with the officers after being read the *Miranda* warning. The record before us is underdeveloped regarding what transpired between the time that Clark was transported to the jail and when he gave his statement. The record before us supports the district court's findings, and the findings support the conclusion that Clark's statement was voluntary.

Affirmed.