

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A10-1894

A10-1895

State of Minnesota,
Respondent,

vs.

Mark Tracy Seaborn,
Appellant.

Filed October 11, 2011

Affirmed

Ross, Judge

Hennepin County District Court
File Nos. 27-CR-10-1668, 27-CR-10-5538

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

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

Melissa V. Sheridan, Assistant State Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Mark Seaborn was free on bail following a burglary charge when detectives applied for and were granted an order from the district court authorizing them to install a mobile tracking device on his wife's car. The state charged Seaborn with three additional burglaries after detectives tracked the car electronically to the area where the burglaries occurred. He unsuccessfully moved the district court to suppress the tracking evidence. Seaborn appeals, arguing that the district court lacked the statutory authority to issue the order authorizing police to install the device. Because the district court acted within its statutory authority, we affirm.

FACTS

Eden Prairie Police arrested Mark Seaborn on November 25, 2009, after an Eden Prairie homeowner returned home to find Seaborn committing a burglary. Police obtained a district court order to attach a GPS tracking device to Seaborn's wife's car.

The application for the court order identified Seaborn as the suspect under investigation for two other Eden Prairie burglaries, listed the types of property stolen, and described recorded telephone calls from jail between Seaborn and his wife in which they discussed disposing of evidence. The application also stated that Seaborn's wife had recently made several visits to a pawn shop. It indicated that police wanted to track Seaborn to find additional evidence and identify additional suspects in Seaborn's crimes.

The district court found reason in the application to believe that the tracking device would lead to evidence aiding the ongoing criminal investigation into "[b]urglary

and related offenses, and the possible involvement in criminal activities by others yet unknown.” It authorized the tracking device. One month later, police received reports of three burglaries in Edina. The device indicated that Seaborn’s wife’s car was parked near the burglarized residences during the burglaries, and police followed the burglar’s footprints from the crimes to the lot where it had been parked.

The next day, Edina police obtained and executed a warrant to search Seaborn’s home. Officers found a pair of boots that matched the Edina burglar’s tracks and a television that was stolen during one of the Eden Prairie burglaries. Investigators were also looking for a screwdriver-like tool used in the break ins. They searched the car that had the tracking device and found a screwdriver with a bent head.

The state charged Seaborn for the Edina burglaries, and he moved to suppress the evidence obtained because of the tracking device. The district court denied the motion. Seaborn pleaded guilty to the November 25 Eden Prairie burglary. He agreed to submission of the other charges to the court for a stipulated-facts trial. The district court found Seaborn guilty. He appeals his convictions that resulted from the evidence police obtained using the tracking device.

D E C I S I O N

Seaborn challenges the district court’s refusal to suppress the evidence that police obtained using the mobile tracking device. This court’s review of a stipulated-facts conviction is limited to whether the district court properly denied an appellant’s suppression motion. *See* Minn. R. Crim. P. 26.01, subd. 4(f). We review de novo whether

the district court erred in its pretrial order refusing to suppress evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Seaborn argues only that the police application for the mobile tracking device lacked sufficient information to satisfy the requirements of Minnesota Statutes section 626A.36 (2008). A law enforcement officer conducting a criminal investigation may apply to a district court for an order to install a mobile tracking device. Minn. Stat. § 626A.36, subd. 1. The applying officer must submit a sworn writing that identifies the officers applying and “a statement of the facts and circumstances relied upon by the applicant to justify the applicant’s belief that an order should be issued.” *Id.*, subd. 1, 2. After the officer applies, the district court decides if installation of a tracking device is warranted:

Upon an application made under section 626A.36, the court may enter an ex parte order authorizing the installation and use of a . . . mobile tracking device within the jurisdiction of the court if the court finds on the basis of the information submitted by the applicant that there is reason to believe that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

Minn. Stat. § 626A.37, subd. 1 (2008). In sum, the application must establish for the ordering court “(a) that there is reason to believe (b) that the information likely to be obtained (c) is relevant to an ongoing investigation.” *State v. Fakler*, 503 N.W.2d 783, 787 (Minn. 1993) (quotation omitted).

Seaborn contends that the application did not concern an “ongoing investigation” and that officers intended the device instead to monitor his actions to implicate him in

some future crime. He claims that the affidavit makes this clear by asserting, “[I]t appears likely that Seaborn is continuing with criminal activity involving Burglaries.”

It is true that the affidavit mentions Seaborn’s continuing criminal activity. But the application also emphasizes the ongoing nature of the extant investigation. The supporting affidavit of two Eden Prairie detectives indicates that the tracking device was intended to help gather evidence of the Eden Prairie crimes. The officers refer specifically to recorded jail conversations between Seaborn and his wife in which they “clearly speak” of “the need to get rid of evidence from their home and safe.” It also references Seaborn’s wife’s visits to a pawn shop near their home. It is no substantial leap from discovering the plot to dispose of evidence and the recent trips to a pawn shop to believing that the targeted car would lead to more evidence in the prior burglaries. And police could of course continue investigating even after charges were filed against Seaborn in one of them. We recognize that the statute does not invite police to obtain a tracking device for use as a bobber while they sit back inactive hoping for a new bite on the line. But the application demonstrates that police were hunting, not merely fishing. That Seaborn happened to use the car to commit additional burglaries while the car was being tracked in an ongoing investigation of the prior burglaries is simply fortunate, or unfortunate, depending on one’s perspective. But it does not establish that police lacked the statutory basis to obtain the order.

We hold that the district court properly refused to suppress the evidence obtained by using the tracking device.

Affirmed.