STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1530

State of Minnesota,
Respondent,

vs.

Leonard D. Seamon,
Appellant.

Filed September 10, 2012
Affirmed
Toussaint, Judge[*]

Anoka County District Court
File No. 02-CR-09-8717

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

Anthony C. Palumbo, Anoka County Attorney, Lisa B. Jones, Special Assistant County Attorney, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Toussaint, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving 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

TOUSSAINT, Judge

On appeal from his conviction of second-degree controlled-substance crime (possession), in violation of Minn. Stat. § 152.022, subd. 2(1) (2008), appellant argues that (1) the district court erred by refusing to suppress the evidence found by the officer on appellant's person where the search-warrant application contained an omission material to a finding of probable cause to support the warrant for the search of his person, and the totality of the circumstances presented in the warrant application otherwise did not support a finding of probable cause, and (2) the state failed to prove beyond a reasonable doubt the nature and weight of the substance necessary for a second-degree controlled-substance crime conviction. Because the omission was not material, there was otherwise probable cause supporting the search-warrant application, and the record contains sufficient evidence to support the conviction, we affirm.

D E C I S I O N

I.

Appellant argues that the search-warrant application did not contain probable cause for the search of his person and, therefore, evidence found on his person during the search should have been suppressed. Appellant additionally argues that the search of his person made pursuant to the warrant was unconstitutional because the officer omitted exculpatory information in the warrant application that misrepresented facts material to the finding of probable cause.

"Probable cause exists where the facts and circumstances within [an officer's] knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S. Ct. 1302, 1310-11 (1949) (quotation omitted). "[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232, 103 S. Ct. 2317, 2329 (1983).

"A search warrant is void, and the fruits of the search must be excluded, if the application includes intentional or reckless misrepresentations of fact material to the findings of probable cause." *State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989) (citing *Franks v. Delaware*, 438 U.S. 154, 171-172, 98 S. Ct. 2674, 2684 (1978)). "[T]he two-prong *Franks* test requires a defendant to show that (1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination." *State v. Anderson*, 784 N.W.2d 320, 327 (Minn. 2010) (quotations omitted).

An omission is material if, when supplied, probable cause to issue the search warrant no longer exists. *Id.* An appellate court reviews de novo whether the omission was material to the district court's finding of probable cause. *Id.*

Police received a report from a concerned citizen stating several concerns at appellant's residence in Blaine (the residence), including short-term vehicle traffic with observed exchanges through the vehicles' windows. About six months later, police

received a report from an anonymous source identifying appellant by name and stating that appellant "deals lots of heroin and crack from his home." The anonymous source indicated that appellant lived in Brooklyn Park. In applying for the search warrant of the residence and appellant's person, the officer omitted information from the second report that the anonymous source said that appellant lived in Brooklyn Park, and represented that report as follows: "The anonymous source said that [appellant] is selling crack cocaine and heroin."

Before applying for the warrant, police performed surveillance at the residence. Police stopped two vehicles observed leaving the residence, both of which revealed narcotics, and the results of a garbage search revealed drug paraphernalia that field-tested positive for cocaine. A search of Department of Motor Vehicles' (DMV) records indicated that appellant's address was the residence, and a search of police records indicated that appellant "uses [the residence] as his home address," and had been arrested at the residence approximately one month before execution of the search warrant. The police record also indicated that appellant had a prior conviction for a controlled-substance crime.

The DMV and police records linking appellant with the residence, taken together with the evidence gathered about the residence, and the police record regarding appellant's prior conviction for a controlled-substance crime are sufficient to support the issuance of the search warrant with regard to appellant's person. *See State v. Holiday*, 749 N.W.2d 833, 844 (Minn. App. 2008) (stating criminal record can be considered in determining probable cause). Because there is otherwise probable cause to support the

search warrant, the omission of the fact that the anonymous source said that appellant lived in Brooklyn Park was not material.[1]

II.

Appellant, relying on *State v. Robinson*, argues that the evidence is insufficient to support his conviction of second-degree controlled-substance crime because the substance tested was in multiple pieces, and the state failed to produce evidence that a sufficient amount of the substance was tested. 517 N.W.2d 336, 338, 340 (Minn. 1994) (holding evidence insufficient to support weight necessary for controlled-substance conviction when only six or seven of 13 separate packages of alleged controlled substance were tested to infer a total weight of all of the packages).

"Where there is a challenge to the sufficiency of the evidence, our review on appeal is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court "will not disturb the verdict if the jury, while acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged

[1]Appellant argues that the district court should have held a hearing to determine whether the omission was made with deliberate disregard for the truth. However, "no hearing is required," if "there remains sufficient content in the warrant affidavit to support a finding of probable cause." *Franks*, 438 U.S. at 171, 98 S. Ct. at 2684; *see also Moore*, 438 N.W.2d at 105 (court need not determine whether police deliberately or recklessly misrepresented facts if there exists probable cause absent the alleged misrepresentation). Because the omission here was not material, the district court did not err by failing to hold a hearing.

offense, given the facts in evidence and the legitimate inferences that could be drawn therefrom." *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007). "We have not prescribed minimum evidentiary requirements in identification cases, preferring to examine the sufficiency of the evidence on a case-by-case basis." *State v. Vail*, 274 N.W.2d 127, 134 (Minn. 1979).

The criminalist's report describes the substance as being inside "one plastic bag." The police officer who searched appellant described the substance as a "yellow rock substance." The criminalist employed three different tests: a preliminary spot test, a GC-MS test, and a FTIR test. In performing the GC-MS test, the criminalist utilized a pinhead size sample of the substance, which she testified is a typical sample size. The results of all three tests indicated the presence of cocaine. The substance, without the packaging, weighed 12.6 grams.

Random sampling of a substance may be adequate to establish the weight of a substance when the substance is homogenously packaged. *Robinson*, 517 N.W.2d at 340; *see also State v. Traxler*, 583 N.W.2d 556, 561 (Minn. 1998) (noting that "*Robinson* does not . . . preclude the state from establishing the weight of a mixture through extrapolation from random samples in every controlled substance case). Because the evidence established that 12.6 grams of the substance was packaged in one bag, scientific testing indicated the substance in the package contained cocaine, and the police officer and criminalist similarly described the substance, the jury could reasonably conclude the entire contents of the package contained a cocaine mixture sufficient to establish appellant's guilt for second-degree controlled-substance crime. *See* Minn. Stat.

§ 152.022, subd. 2(1) (defining second-degree controlled-substance crime as possession of six grams or more of mixture containing cocaine).

III.

Appellant, in a pro se supplemental brief, also argues that (1) the district court erred by determining the search of the residence was supported by probable cause; (2) appellant was entitled to acquittal because the state breached the chain of custody and the district court otherwise improperly admitted the cocaine into evidence; (3) his conviction must be reversed because he was denied his right to a speedy trial; and (4) there was insufficient evidence to support the conviction. The record does not support appellant's contentions.

The results of the police surveillance, as discussed above, supported probable cause for the search of the residence. Testimony from two police officers and a criminalist adequately described the chain of custody and supported identification and authentication of the substance found on appellant's person. *See State v. Hager*, 325 N.W.2d 43, 44 (Minn. 1982) (stating that evidence is authenticated if the evidence is sufficient to support a finding by a reasonable juror that the evidence in question is what the proponent claims). Appellant did not assert his right to a speedy trial and three times requested that trial be continued. *See State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993) (stating when delay "is the result of the defendant's actions, there is no speedy trial violation").

Additionally, the evidence was sufficient to support appellant's conviction of second-degree controlled-substance crime. Appellant argues that the evidence was

insufficient to prove he knew the substance contained cocaine. But testimony established that the substance was found on appellant's person, weighed 12.6 grams, and tested positive for the presence of cocaine. *See State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975) (stating knowledge of the nature of a controlled substance may be easily inferred from the defendant's conscious possession of the substance in conjunction with its actual nature).

Affirmed.