STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1840

State of Minnesota,
Respondent,

vs.

Santrel Montieth Smith,
Appellant.

Filed September 17, 2012
Affirmed
Muehlberg, Judge[*]

Ramsey County District Court
File No. 62-CR-10-4869

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, Chang Lau, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Muehlberg, 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

MUEHLBERG, Judge

Santrel Smith was arrested and charged with fifth-degree possession of a controlled substance after a search of his home uncovered illegal drugs. The district court found that the probable cause necessary to execute the search warrant was supported by a deputy sheriff's affidavit that Smith had participated in a controlled drug purchase with a confidential police informant. Prior to trial, Smith moved to suppress the incriminating evidence. The district court denied his motion and found him guilty based on stipulated facts. Smith appeals, arguing that the search warrant authorizing the search of his residence was not supported by probable cause and that he is entitled to either disclosure of the confidential informant's identity or to an in-camera interview or review of the informant by the district court. Because the search warrant was supported by probable cause and because Smith fails in his burden of demonstrating the need for disclosure of the informant's identity or for an in-camera interview or review, we affirm.

FACTS

In January 2010 a confidential informant told Deputy Ramsey County Sheriff Greg Lackner that an individual was selling large amounts of cocaine in St. Paul. The informant described the drug dealer as a 5'8" black male weighing about 230 pounds. The informant also explained that the dealer lived in a red or burgundy colored house near the area of Maryland Avenue and Earl Street in St. Paul and drove a blue minivan. Deputy Lackner investigated the informant's claims. He drove to the area and found a burgundy house with an address on Maryland Avenue. He also saw a blue minivan

parked in the driveway with Minnesota license plate number 326 CBA. Deputy Lackner discovered that the minivan was registered to Santrel Smith and that Smith received mail at the address. The deputy also found that Smith is a convicted felon with a criminal history of: fleeing police in a motor vehicle, assault, multiple instances of controlled-substance possession, unlawful possession of a pistol, receiving stolen property and dangerous weapons, and giving a false name to a police officer. When the deputy showed the informant a picture of Smith, the informant told him, "that's the guy I buy the drugs from."

Deputy Lackner met with the confidential informant to coordinate a controlled buy of cocaine from Smith. He first searched the informant to make sure that the informant had no undisclosed drugs or money. The deputy then gave the informant an amount of pre-recorded money to purchase the drugs. Police maintained surveillance on the informant at a pre-arranged location. Officers also observed the blue minivan leave the Maryland Avenue residence and arrive at the same location. The informant got into the blue minivan and then exited. The police maintained surveillance on the confidential informant to another location, where the informant turned over the purchased drugs to Deputy Lackner. The deputy then conducted a field test on the suspected drugs and they tested positive for cocaine.

Deputy Lackner applied for a nighttime, unannounced-entry search warrant to search the Maryland Avenue residence, the blue minivan, and Smith's person. The warrant application included the facts just described and noted that the controlled cocaine purchase had occurred within the last three days. The warrant application also requested

that the identity of the informant remain confidential because the deputy believed that the informant would be in danger of great bodily harm if the informant's true identity were made known. The district court issued the warrant.

Even though the search warrant authorized a nighttime, unannounced search, the police instead decided to execute the warrant at 12:30 p.m. on January 27, 2010. Because of Smith's violent criminal history, the officers waited to execute the warrant until after Smith had left the residence. Smith left the house and drove away at approximately 2:30 p.m. Officers conducted a stop of his vehicle and took him into custody. Police searched Smith's person and found $695 in cash. The officers then entered the Maryland Avenue residence after announcing their presence several times. Police found Smith's girlfriend inside, and she said that she did not live at the residence and that everything in the house belonged to Smith. A search of the house resulted in the seizure of multiple items, including crack cocaine that officers found in a kitchen cabinet.

The state charged Smith with fifth-degree possession of a controlled substance in violation of Minnesota Statutes section 152.025, subdivision 2(a) (Supp. 2009). Before trial, Smith moved for disclosure of the confidential informant's identity and suppression of the evidence resulting from the search of the Maryland Avenue residence because the warrant application failed to establish probable cause. The district court denied Smith's motions. Smith waived his right to a jury trial and submitted the matter for a stipulated-facts trial because the pretrial suppression issue is dispositive of the case. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Smith guilty and sentenced him to fifteen months in prison, stayed, and to probation for five years.

Smith appeals.

D E C I S I O N

I.

Smith argues that the search warrant was not supported by probable cause and that the district court erred by denying his pretrial suppression motion. The argument fails. The state and federal constitutions protect against unreasonable searches and seizures and require warrants to be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. We give great deference to the district court's probable-cause determination and our review is limited to whether the district court "had a 'substantial basis' for concluding that probable cause existed." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995). A substantial basis for probable cause exists if the evidence described in the warrant affidavit establishes a "fair probability that contraband or evidence of a crime will be found in a particular place." *Id*. (quotation omitted). Minnesota uses a totality-of-the-circumstances approach under which the reviewing court examines each component of the warrant affidavit, and a finding of probable cause may be made based on several factors that, standing alone, may not substantially support a search warrant. *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005). When the facts of the case are undisputed we independently apply the caselaw to determine if probable cause existed. *State v. Ward*, 580 N.W.2d 67, 70 (Minn. App. 1998).

Smith contends that the warrant application failed to establish a sufficient connection between the location of the controlled buy and the Maryland Avenue residence. Minnesota law requires "a direct connection, or nexus, between the alleged

crime and the particular place to be searched, particularly in cases involving the search of a residence for evidence of drug activity." *State v. Souto*, 578 N.W.2d 744, 747-48 (Minn. 1998). "[I]nformation linking the crime to the place to be searched and the freshness of the information" are relevant factors in determining whether a nexus exists. *Id*. at 747.

Smith cites to *State v. Kahn*, 555 N.W.2d 15, 18-19 (Minn. App. 1996) to argue that evidence that contraband exists in a person's car does not establish a direct nexus to the person's home. But *Kahn* is easily distinguishable from the facts here; this court held in *Kahn* that probable cause did not exist to link possible contraband or evidence in the defendant's home with his arrest over 75 miles away for possession of one ounce of cocaine. *Id.* at 18. Smith does not argue that a similarly impressive distance separated his Maryland Avenue residence from the location of the controlled buy.

Smith also cites to *State v. Cavegn*, 356 N.W.2d 671, 674 (Minn. 1984) and *State v. Braasch*, 316 N.W.2d 577, 578-79 (Minn. 1982) for the proposition that a direct connection between the alleged crime and residence to be searched exists when the drug sale actually occurs at the residence or when the police observe the defendant entering a residence after picking up a package authorities know to contain drugs. Smith contends that probable cause did not exist here because the warrant affidavit did not allege that drug activity was observed at the Maryland Avenue residence or that he was observed entering the home immediately after conducting a drug transaction. Although both *Cavegn* and *Braasch* provide examples of a direct connection between the alleged crime and a defendant's residence, their holdings do not invalidate the district court's probable-

cause finding in this case because they are not the *exclusive* examples of a legally sufficient direct connection between the alleged crime and the residence to be searched.

This case is instead most similar to *State v. Yaritz*, 287 N.W.2d 13, 15 (Minn. 1979), where the supreme court held that probable cause supported the search of a defendant's residence after he was observed by police leaving his home and going straight to the location of the controlled drug purchase. In *Yaritz* the investigating police officer averred in his warrant application that an informant told him that the defendant was selling drugs and would meet customers at prearranged locations for drug deals. *Id.* at 14 n.1. The informant also gave police the address of the defendant's St. Paul home. *Id.* The officer arranged for the informant to make two controlled purchases from the defendant. *Id.* A police surveillance team observed the defendant leave his St. Paul residence and go directly to the controlled-buy location. *Id.* The informant met with the defendant, purchased the drugs, and then met with police and turned over the drugs. *Id.* The supreme court held that these facts supported a finding of probable cause for the search warrant issued for the defendant's home, because they "support[ed] an inference that the seller stores the contraband on his premises." *Id.* at 15.

Smith argues that neither the prosecutor nor the district court relied on *Yaritz* or the fact that the officers observed Smith's minivan leave the Maryland Avenue residence and drive directly to the location of the controlled buy. It is true that the district court found that a direct connection existed because "a sale was made in a van that was registered to the Defendant, the van was found at the residence, and the Defendant receives mail at that address." But this conclusion is not inconsistent with the holding in

Yaritz, and because the facts are undisputed here we may independently apply relevant case law to determine if probable cause existed. *See Ward*, 580 N.W.2d at 70. Under Minnesota law, Deputy Lackner's warrant application only needed to state specific facts to establish a direct connection between Smith's alleged criminal activity and the Maryland Avenue residence. *See Souto*, 578 N.W.2d at 747-48. The warrant application here satisfied this requirement. It established a direct connection between Smith's criminal activity (the controlled buy of cocaine) and his home (the location from which he left and went directly to the controlled buy, and which was also identified by the informant and confirmed by police to be his residence where he kept his minivan vehicle used for drug deals). We conclude that the fact that police observed Smith leave his home and drive to the location of the controlled buy, taken together with the other facts alleged in the affidavit as a whole, established a sufficient nexus between the controlled buy and the Maryland Avenue residence to provide probable cause to support the search warrant.

Smith also argues that the time-nexus between the events leading to the issuance of the warrant and the execution of the warrant was insufficient to establish probable cause to believe that drugs would be found at his home. "'Probable cause to search exists if it is established that certain identifiable objects . . . may probably be found at the present time.'" *Ward*, 580 N.W.2d at 72 (quoting *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984)). Relevant factors for whether the information supporting probable cause has become stale include "whether there is any indication of ongoing criminal activity, whether the articles sought are innocuous or incriminating, whether the property

sought is easily disposable or transferable, and whether the items sought are of enduring utility." *Souto*, 578 N.W.2d at 750.

Smith argues that probable cause no longer existed at the time the warrant was executed because there was an insufficient time-nexus between his criminal activity and the warrant's execution. In *Yaritz*, the supreme court held that a six-day delay in executing a search warrant was not unreasonable or prejudicial under circumstances similar to this case. *See* 287 N.W.2d at 14. And we "cannot ignore the fact that in cases involving controlled purchases by informants, police often must wait a number of days before obtaining and executing a warrant if they are to avoid compromising the informant." *Cavegn*, 356 N.W.2d at 674.

Deputy Lackner signed the warrant application and affidavit on January 21, 2010, and the search warrant was issued that same day. The deputy indicated in the affidavit that the controlled buy had occurred within the last three days. The police executed the search warrant on January 27, six days after it was issued. We hold that because the search warrant was executed within six days of the day it was issued, in part because the police wanted to protect the confidential informant from harm, under *Yaritz* and *Cavegn* probable cause still existed to support the search.

Smith argues that there was no evidence of ongoing criminal activity from the day of the controlled buy until the day the warrant was executed. But the affidavit contained the confidential informant's claim that Smith had been "selling large amounts of cocaine in the St. Paul, Minnesota area," and after seeing a photograph of Smith the informant remarked "that's him, that's the guy I buy the drugs from." Both of these statements

support a conclusion that Smith's crimes were ongoing and not limited to the single controlled purchase observed by police. And the evidence that the police sought while searching the Maryland Avenue house, namely drugs and drug paraphernalia, is a type of contraband that is incriminating and easily distinguishable from other innocuous items, which further decreases the need for immediate execution of the warrant in order to sustain probable cause. Probable cause that existed at the time the warrant was issued continued to exist at the time of its execution, and Smith's argument to the contrary fails to overcome the great deference we give to the district court's probable-cause determination.

II.

Smith next argues that the district court abused its discretion by denying his motion for either disclosure of the identity of the confidential informant or for an in-camera interview with the informant to determine if disclosure was necessary. This argument also fails. The district court's order regarding disclosure of the identity of a confidential informant is reviewed for an abuse of discretion. *State v. Rambahal*, 751 N.W.2d 84, 90 (Minn. 2008).

"In rare cases a criminal defendant's interest in learning the identity of a police informant outweighs the state's privilege not to disclose the identity." *State v. Moore*, 438 N.W.2d 101, 106 (Minn. 1989). The United States Supreme Court has held that a defendant does have the right to challenge the truthfulness of factual statements made in an affidavit supporting a search warrant, although there is a presumption of validity with respect to the affidavit. *Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 2684

(1978). A defendant must present sufficient evidence to challenge the truthfulness of a warrant affidavit, and he is entitled to a hearing if he can make "an initial showing of either (1) any misrepresentation by the [police officer] of a material fact or (2) an intentional misrepresentation by the [police officer], whether or not material." *State v. Luciow*, 308 Minn. 6, 13 n.3, 240 N.W.2d 833, 838 n.3 (1976). The district court must consider four non-exclusive factors in determining whether to order disclosure of a confidential informant's identity: "(1) whether the informant was a material witness; (2) whether the informant's testimony will be material to the issue of guilt; (3) whether testimony of officers is suspect; and (4) whether the informant's testimony might disclose entrapment." *Rambahal*, 751 N.W.2d at 90 (quotations omitted).

Smith first argues that disclosure of the confidential informant's identity is crucial to his evidentiary attack on the warrant affidavit. The district court concluded that the informant was not a material witness to the crime charged, that the information that the informant provided was sufficiently corroborated by the police to make the informant trustworthy, that there was no reason to believe that the information given in the warrant affidavit was suspect, and that Deputy Lackner's assertion that the informant would be in danger if his identity were to be disclosed was credible and sufficient.

The district court correctly concluded that the informant was not a material witness. It is "well settled that when a trustworthy informant is a mere transmitter of information and not a competent witness to the crime itself, and the name of the informant is not essential to the defense, the informant's name need not be disclosed when the information was used as a basis for probable cause to search or arrest." *State v.*

Purdy, 278 Minn. 133, 145, 153 N.W.2d 254, 262 (1967); *see also State v. Marshall*, 411 N.W.2d 276, 280 (Minn. App. 1987) (holding that the charges against the defendant were based primarily on his possession of narcotics, bookkeeping records, and currency, and the information given by the informants was only used to obtain the search warrant), *review denied* (Minn. Oct. 26, 1987). In this case, Smith was charged with controlled-substance possession. He was not charged with selling controlled substances. The confidential informant may have been more involved in obtaining information for the police in this case than either of the informants in *Purdy* or *Marshall*, but the informant was still not a material witness to the crime for which Smith was charged. The informant provided police with information about Smith and participated in a controlled purchase of cocaine from Smith, but the informant was not present when the search warrant was executed on Smith's house. Because the confidential informant was not a material witness, Smith's need for disclosure of the witness's identity is not compelling.

Smith argues that Deputy Lackner made "material misrepresentations in his warrant affidavit." Smith provides the following examples of material omissions by Deputy Lackner: (1) the warrant affidavit did not specify the particular time the controlled buy took place; (2) there were no incident reports or video/audio recordings evidencing the controlled buy and the procedures implemented; (3) no physical evidence, including the alleged cocaine, was maintained from the controlled buy; and (4) there was no indication that the confidential informant was under any threat of harm from Smith or anyone else if the informant's identity was disclosed.

An affidavit that contains material omissions is not void if, after supplying the omissions, the affidavit still establishes probable cause. *State v. Doyle*, 336 N.W.2d 247, 247, 252 (Minn. 1983); *see also State v. Smith*, 448 N.W.2d 550, 555 (Minn. App. 1989) (applying test from *Doyle* to challenged search warrant), *review denied* (Minn. Dec. 29, 1989). As discussed above, probable cause existed to support the search warrant. Deputy Lackner's warrant affidavit explained in detail how the controlled buy took place, how the police maintained observation of both Smith and the confidential informant, and how the controlled buy occurred within the 72 hours before he signed the warrant affidavit. The particular details sought by Smith of the actual time at which the controlled buy took place, of reports or recordings of the controlled buy, or of physical evidence from the controlled buy would only further support probable cause for the search warrant. And in cases involving controlled purchases of drugs, the police must often wait a few days before obtaining a warrant to avoid compromising the identity of the confidential informant. *Cavegn*, 356 N.W.2d at 674. The search warrant affidavit would still establish probable cause even if the omissions sought by Smith were included, and Smith fails to show that Deputy Lackner's testimony in his affidavit was suspect or that the deputy made any misrepresentations, material or otherwise.

Smith's claim that the state does not have an interest in protecting the identity of the confidential informant is also without merit. "[T]he state has a strong interest in protecting the identity of informants in the drug world." *Smith*, 448 N.W.2d at 556. The warrant affidavit in this case detailed Smith's criminal history of assault, drug, and dangerous-weapon crimes, and the district court credited the deputy's claim that the

confidential informant would be in danger of great bodily harm if identified. This conclusion is supported by the record. It also correctly considered the relevant factors from *Rambahal*. *See Rambahal*, 751 N.W.2d at 90. Because the disclosure of the confidential informant's identity was not necessary for a fair determination of Smith's guilt, the district court did not abuse its discretion by denying his request for disclosure. *See id.* at 90-91.

Smith's argument still fails even under the lower burden of proof required to establish a basis for an in-camera review of the confidential informant by the district court. It is the defendant's burden to establish the need for disclosure, and while a lesser showing is needed to justify an in-camera inquiry, the defendant must show "something more than mere speculation" that the "examination of the informant might be helpful." *Moore*, 438 N.W.2d at 106. A defendant can establish a basis for an in-camera inquiry "by making a prima facie showing challenging the veracity of a search warrant, or by making a prima facie showing that the informant may be a material witness at trial." *State v. Wessels*, 424 N.W.2d 572, 575 (Minn. App. 1988), *review denied* (Minn. July 6, 1988). "The defendant's showing must be supported by the defendant's testimony or other evidence." *Id*.

The district court correctly concluded that the confidential informant would not be a material witness at trial, and Smith does not provide sufficient testimony or other evidence that would challenge the veracity of the search warrant. Smith only argues that Deputy Lackner provided obscure details surrounding the date, time, and location of the controlled buy. He does not provide any evidence that would show that he could not have

been involved in a controlled buy during the 72 hour period noted by the deputy. Instead, using only speculation, Smith attempts to call into question the credibility of Deputy Lackner's averments. The supreme court has held that it is inappropriate to disclose the identity of a confidential informant or to hold an in-camera inquiry only "to allow defense counsel to conduct a fishing expedition in the hope of discovering other possible misrepresentations on which to attack probable cause for the warrant." *Moore*, 438 N.W.2d at 106. "[C]ourts should not require in camera disclosure solely on the basis of speculation by the defendant that the informant's testimony might be helpful. The defendant must explain precisely what testimony he thinks the informant will give and how this testimony will be relevant to a material issue of guilt or innocence." *Syrovatka v. State*, 278 N.W.2d 558, 562 (Minn. 1979). Smith fails in his burden of showing the need for an in-camera interview or review of the confidential informant, and the district court therefore did not abuse its discretion by denying his disclosure motions.

Affirmed.