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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1898**

State of Minnesota,
Respondent,

vs.

Jodi Lee Horbach,
Appellant.

**Filed September 15, 2009
Affirmed
Shumaker, Judge**

Dakota County District Court
File No. 19-K2-07-1686

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

James C. Backstrom, Dakota County Attorney, Vance B. Grannis, III, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

On appeal from her conviction of a controlled-substance violation, appellant argues that the district court erred in determining that probable cause existed to issue a warrant for the search of her residence. We affirm.

FACTS

While executing a search warrant at appellant Jodi Lee Horbach's home, police discovered a baggie that tested positive for methamphetamine residue and a syringe. The state charged Horbach with a fifth-degree controlled-substance violation and possession of drug paraphernalia. Horbach moved to suppress the baggie and syringe, arguing that no probable cause existed for the issuance of the search warrant, and also that the complaint was not supported by probable cause.

On February 22, 2008, the district court held a hearing on both issues. Officer Matos of the Apple Valley Police Department and the Dakota County Drug Task Force testified regarding his surveillance of Horbach, the facts underlying the basis for the warrant application, and the discovery of the baggie in Horbach's home. Horbach's husband testified that the drugs and paraphernalia were his. The district court concluded that probable cause existed to support the search and the charges against Horbach.

After a trial to the court, Horbach was found guilty as charged. The court dismissed the paraphernalia charge as a lesser-included offense.

Horbach appealed, alleging the district court erred in finding probable cause to issue the search warrant for her home.

DECISION

The United States and Minnesota constitutions require search warrants to be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art I, § 10. Generally, a search is lawful only if it is executed in conjunction with a valid search warrant issued by a neutral and detached magistrate who finds that probable cause exists to support the search. Minn. Stat. § 626.08 (2006); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). Probable cause to search exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted). If a warrant is void for lack of probable cause, the evidence seized in the search must be suppressed. *See State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007) (requiring that evidence seized in violation of the constitution generally be suppressed); *see also State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989) (stating that if a search warrant is void, fruits of the search must be excluded).

Horbach argues that no probable cause existed to support the issuance of a search warrant for her home because the information contained in the supporting affidavit is vague and uncertain. Respondent State of Minnesota contends that Officer Matos’s surveillance of Horbach engaging in suspected drug transactions, a past arrest at Horbach’s home for narcotics-related activity, citizen complaints of drug activity near her home, and evidence of drug use found in two trash pulls from Horbach’s residence “clearly provided probabl[e] cause for the issuance of the search warrant.”

“When determining whether a search warrant is supported by probable cause, we do not engage in a de novo review.” *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Instead, we give “great deference” to the judicial determination of probable cause. *State v. Valento*, 405 N.W.2d 914, 918 (Minn. App. 1987). Our review is limited to ensuring that the issuing magistrate “had a substantial basis for concluding that probable cause existed.” *McGrath*, 706 N.W.2d at 539.

To determine whether the issuing magistrate had a substantial basis for finding probable cause, we look to the “totality of the circumstances.” *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). In evaluating the totality of the circumstances, the issuing magistrate makes “a practical, common-sense decision whether, given all the circumstances set forth in the [supporting] affidavit [for the search warrant] . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

The district court found that probable cause existed to search Horbach’s residence on several bases: (1) two trash pulls taken from the front of Horbach’s home—one of which occurred within 72 hours of when the search warrant was being sought—had revealed syringes and glass bulbs with methamphetamine residue on them; (2) police had received citizen complaints of drug activity at Horbach’s address; (3) Officer Matos had observed Horbach engaging in suspected drug activity outside her home; and (4) at least one person had recently been arrested outside of Horbach’s home for drug possession.

The record supports these findings, and, taken as a whole, these facts provided probable cause for the issuing judge to conclude that narcotics could be located in Horbach's residence.

Horbach argues that "a single instance of methamphetamine use does not necessarily permit the assumption that methamphetamine would likely be present in defendant's home when the warrant is executed." But Horbach mischaracterizes the facts in Officer Matos's search warrant affidavit, which states that paraphernalia and drug residue were discovered on at least two separate occasions from two different trash pulls in front of Horbach's residence. It was reasonable for the issuing judge to conclude that drugs could be located in Horbach's home after methamphetamine residue and paraphernalia had been found in front of her house on two different occasions.

Furthermore, "[c]ontraband seized from a garbage search can provide an independent and substantial basis for a probable-cause determination." *McGrath*, 706 N.W.2d at 543. There is no expectation of privacy in garbage that has been set on the curb or in the street at the end of a residential driveway for collection. *State v. Dreyer*, 345 N.W.2d 249, 250 (Minn. 1984) (finding that warrantless search of garbage can placed on curb for routine collection did not violate Fourth Amendment). "[W]hen a police officer searches trash set on the curb for routine pickup without trespassing on the premises, an unreasonable search has not occurred." *McGrath*, 706 N.W.2d at 545.

Officer Matos's supporting affidavit clearly stated that he contacted the "contracted garbage hauler for this address and coordinated a pickup of the trash from" Horbach's residence, observed the driver pick up the trash from in front of Horbach's

residence, and thereafter discovered glass bulb pieces “with residue on them consistent with methamphetamine users who smoke meth from glass bulbs.” Officer Matos also stated that he found “syringes with liquid residue inside them which . . . tested positive for the presence of methamphetamine.” The evidence obtained from this trash pull, alone, provided probable cause for the issuing judge’s conclusion that drugs could be found within Horbach’s home. *Dreyer*, 345 N.W.2d at 250 (finding a search warrant valid when based solely on marijuana residue retrieved during a residential garbage search).

Horbach argues that the rest of the facts contained in the search warrant affidavit are not specific enough to support a probable cause determination. “A search warrant cannot be based on vague and uncertain information.” *State v. Richardson*, 514 N.W.2d 573, 580 (Minn. App. 1994). In his affidavit, Officer Matos stated that he personally observed Horbach engaging in drug transactions, but he did not state the locations or times of his observations. The warrant application must establish “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). Evidence of casual drug use or a drug sale away from a defendant’s home, without more, does not establish the required nexus with the home. *Id.* at 749. But evidence of a pattern of drug trafficking or wholesaling can justify inferring a nexus because a drug dealer can reasonably be expected to keep incriminating evidence at home. *State v. Ruoho*, 685 N.W.2d 451, 457 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). Here, we do not know the extent of Officer Matos’s

observations of Horbach's alleged drug activity, where these observations took place, or whether the observations formed any kind of "pattern."

Furthermore, Officer Matos did not identify the alleged complainants, and only stated that the complaints of drug activity came from "various different sources." When a probable-cause determination is based on an informant's tip, the informant's veracity and the basis of his or her knowledge are considerations under the totality-of-the-circumstances test. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). There was no information in Officer Matos's affidavit that could assist the issuing judge in determining the validity of the "complaints" or credibility of the complainants. On the other hand, Officer Matos had first-hand knowledge that complaints *had been made*, and this could potentially bolster the officer's suspicions about drug activity in the home.

Even if these two components of the affidavit would not suffice independently to establish probable cause for issuing a search warrant, the totality of the circumstances described in the affidavit shows probable cause to believe that Horbach was engaging in drug activity in her home and that drugs would be found there. We are "careful not to review each component of the affidavit in isolation." *Wiley*, 366 N.W.2d at 268. "[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). Furthermore, "the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded warrants." *Wiley*, 366 N.W.2d at 268 (quotation omitted). The drug residue and paraphernalia found in Horbach's garbage, the citizen complaints, officer observations of Horbach engaging in drug transactions, and relatively

recent arrests for illegal possession of narcotics of individuals who had been in Horbach's home provided the issuing judge with a sufficient basis to conclude that probable cause existed to issue the search warrant.

Affirmed.