STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1731

State of Minnesota,
Respondent,

vs.

Jonathan Mora Flores,
Appellant.

Filed September 5, 2017
Affirmed
Schellhas, Judge

Ramsey County District Court
File No. 62-CR-15-4328

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

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

SCHELLHAS, Judge

Appellant challenges his conviction for first-degree possession of a controlled substance, arguing that a search warrant lacked probable cause and that the district court

therefore committed reversible error by admitting evidence discovered during execution of the search warrant. We affirm.

FACTS

The Ramsey County Violent Crime Enforcement Team executed a search warrant on June 10, 2015, at the residence of appellant Jonathan Flores. During the search, officers found Flores inside the residence, suspected methamphetamine, and $17,000 in United States currency in a bedroom closet. The Ramsey County Sherriff's Department Crime Lab analyzed the suspected drugs, which weighed 196.64 grams and tested positive for methamphetamine. Respondent State of Minnesota charged Flores with one count of first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021 (2014). Flores moved the district court to suppress all evidence that police obtained in the execution of the search warrant at his residence. The court denied the motion.

Flores entered a guilty plea, waived his right to a jury trial, and stipulated to the prosecution's evidence in a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4. The district court found Flores guilty of first-degree possession of a controlled substance, and sentenced him to a downward dispositional departure of 74 months' imprisonment, stayed for 10 years, with an interim sanction of 180 days of local confinement.

This appeal follows.

D E C I S I O N

Flores contends that the district court erred by denying his suppression motion, arguing that the search warrant was not supported by probable cause because the evidence supporting it was from "a marginally credible informant who provided less than fresh

evidence." The federal and state constitutions protect citizens from unreasonable searches and seizures. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Before searching a residence, police usually must obtain a valid warrant issued by a neutral and detached magistrate." *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). Probable cause is required before a search warrant is issued. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10; Minn. Stat. § 626.08 (2014). Probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found." *Yarbrough*, 841 N.W.2d at 622 (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). "The issuing judge's task is to make a practical, common-sense decision." *Id.*

"When reviewing a judge's decision to issue a search warrant, [an appellate court's] only consideration is whether the issuing judge had a substantial basis for concluding that probable cause existed." *State v. Fawcett*, 884 N.W.2d 380, 384 (Minn. 2016) (quotation omitted). A substantial basis in this context means a "fair probability," given the totality of the circumstances, "that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). "A sufficient 'nexus' must be established between the evidence sought and the place to be searched." *Yarbrough*, 841 N.W.2d at 622.

This court's review "is limited to the information presented in the warrant application and supporting affidavit." *Fawcett*, 884 N.W.2d at 384–85. "[Appellate courts] must consider the totality of the circumstances alleged in the supporting affidavit and must be careful not to review each component of the affidavit in isolation." *Id.* at 385 (quotation omitted). "[T]he critical question is whether the totality of facts and circumstances

described in the affidavit would justify a person of reasonable caution in believing that the items sought were located at the place to be searched." *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). We consider the warrant application using common sense rather than applying a hypertechnical construction. *Id.* "[Appellate courts] defer to the issuing magistrate, recognizing that doubtful or marginal cases should be largely determined by the preference to be accorded to warrants." *Fawcett*, 884 N.W.2d at 385 (quotation omitted).

Reliability of confidential informant

Flores first argues that the warrant was not supported by probable cause because the confidential informant (CI) was not reliable. We disagree. Minnesota courts look at six factors to determine whether the CI is reliable: (1) whether the CI is a "first-time citizen informant"; (2) whether the informant has provided reliable information in the past; (3) whether police can corroborate the information provided by the CI; (4) whether the CI came forward voluntarily; (5) "in narcotics cases, 'controlled purchase' is a term of art that indicates reliability"; and (6) whether the informant makes a statement against their penal interest. *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004). "The less rigid approach of *Gates* recognizes that each informer is different and that all of the stated facts relating to the informer should be considered in making a totality-of-the-circumstances analysis." *State v. McCloskey*, 453 N.W.2d 700, 703 (Minn. 1990).

We conclude that, based on the totality of the information contained therein, the affidavit provides sufficient information for the district court to conclude that the CI was reliable. We acknowledge that the affidavit does not provide evidence about (1) whether

the CI has been involved in the criminal underworld; (2) whether the CI has provided reliable information in the past; or (3) whether the CI came forward voluntarily to police. But, even without that information, the affidavit provides a substantial basis for the district court to conclude that the CI was reliable based on police corroboration of the information the CI provided, the controlled purchase, and the CI's statement against penal interest.

The investigator averred in the affidavit that he corroborated the CI's reports by conducting an independent investigation "into the facts and circumstances" reported by the CI and "believe[d] them to be true." *Cf. State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (stating that, "[t]he independent corroboration of even innocent details of an informant's tip may support a finding of probable cause"). He obtained photographs of both the persons and the property that the CI identified and showed them to the CI who confirmed the identity of Flores, his wife, and their home as the people and property he had previously described to the investigator. The investigator also did independent research to confirm that Flores and his wife currently resided at the property the CI described.

The investigator also provided detailed information in the affidavit about a controlled purchase of methamphetamine involving the CI, Flores, and his wife at their residence "within the last 72 hours." Affidavits based on police observation of a controlled purchase, like the affidavit in this case, are generally sufficient on their own to support probable cause in Minnesota. *See State v. Cavegn*, 356 N.W.2d 671, 673 (Minn. 1984) (stating that "[i]n a long line of cases," the Minnesota Supreme Court has upheld affidavits when the affidavit was based on "the independent police observation of a so-called 'controlled purchase'"). The affidavit stated that the CI arranged the controlled purchase

by making contact with Flores on his cell phone, and setting up a meeting at Flores's house. Police searched the CI and maintained surveillance on both the CI and the Flores residence prior to the controlled purchase, saw the CI greet Flores and his wife in the yard, saw the CI enter Flores's residence to purchase methamphetamine, and heard "via surveillance monitor the CI and [Flores's wife] speaking in English talking about this meth transaction as well as conversation pertaining to future drug sales."

Moreover, the affidavit contains a statement made by the CI against his penal interest—that "he/she has purchased large quantities of methamphetamine, on multiple occasions over an extended period of time, directly from [Flores]." Flores's argument that the warrant was not supported by probable cause because "the informant was of questionable reliability" therefore fails because the totality of the evidence in the affidavit provides substantial evidence that the CI was reliable.

And, even if the CI's statements alone were not enough to support probable cause, courts must look at the totality of the affidavit to determine whether probable cause exists. In addition to the CI's evidence, the affidavit also provides that the investigator spoke to a different confidential reliable informant (CRI) who had "provided your affiant in the past with reliable information." The CRI confirmed that "within the past 30 days" the CRI had "direct [personal] knowledge of [Flores] selling large quantities of methamphetamine" from his residence. The investigator also had independent knowledge about Flores's residence being a place where narcotics were kept from a late 2013 investigation about "a large scale drug selling enterprise" involving a "Hispanic individual" who used the property described by the CI as a "stash house."

Freshness of information

Flores also argues that the search warrant was not supported by probable cause because "the information was not sufficiently fresh." "Elements bearing on [probable cause] include information linking the crime to the place to be searched and the freshness of the information." *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). A search warrant must be executed within ten days of issuance or the warrant is void. Minn. Stat. § 626.15(a) (2014).

Here, both a CI and a CRI had personal knowledge that Flores had sold drugs from his residence within the last 30 and 90 days, and the controlled purchase occurred at Flores's residence within 72 hours of the warrant application. In denying Flores's suppression motion, the district court found that the warrant was not stale either in its issuance or execution, explaining that because of the "number of sales that occurred at [the Flores residence] over a 30 day period, 90 day period, and the controlled sale, it was clear that [Flores] was in the course of storing methamphetamine in his house." For that reason, the court found that, "At the time of issuance of the warrant and execution of the warrant, the probability that the methamphetamine sought would be at the address was extremely high." We agree with the district court that the search warrant was not based on stale information and was not stale when it was executed.

None of the cases Flores cites supports his argument. In *Souto*, in which the supreme court concluded that the information contained in the search-warrant application was stale, the court noted that "the time lapse between the events related in the affidavit and the search warrant application [wa]s substantial." 578 N.W.2d at 750. At the time of the search, more

than six months had passed "since Souto's reported purchase of less than an ounce of methamphetamine and since the last reported drug party." *Id.* And approximately ten months had passed since an attempted delivery of drugs to a different location. *Id.* The time lapse in *Souto* is easily distinguished from the facts in this case. In *State v. Yaritz*, on similar facts to this case, the supreme court held that probable cause existed six days after the warrant was issued because "the affidavit here indicates that defendant was in the business of selling drugs and that he had been doing it on a continuing basis." 287 N.W.2d 13, 17 (Minn. 1979). And in *Cavegn*, the supreme court held that information about drug sales within the past month and a controlled purchase within the past week was not stale. The court held that the information was sufficient to establish probable cause where the affidavit indicated that the defendant "was in the business of selling drugs and that he had been doing it on a continuing basis." 356 N.W.2d at 674 (quotation omitted).

We conclude that the search-warrant affidavit contains sufficient information to establish probable cause that drugs would be found in a search of the Flores residence based upon the totality of the evidence when the warrant was issued, and that the information was not stale when the warrant was executed. The district court therefore did not err in denying Flores's suppression motion.

Affirmed.