STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1833

State of Minnesota,
Appellant,

vs.

Cain Buster Waltermann,
Respondent.

Filed May 6, 2019
Reversed and remanded
Florey, Judge

Blue Earth County District Court
File No. 07-CR-18-2970

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for appellant)

Mark D. Kelly, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Florey, Judge.

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

FLOREY, Judge

In this pretrial appeal from the district court's order suppressing evidence obtained from two related searches of respondent's residence, the state argues that the district court erred by concluding that the warrant applications failed to establish a nexus between

respondent's residence and the controlled-substance evidence sought. Because the applications established a sufficient nexus and the judges issuing the search warrants had a substantial basis from which to find probable cause, we reverse and remand.

FACTS

This case concerns two related search warrants executed at respondent Cain Buster Waltermann's residence in Amboy, Minnesota. Both searches resulted in the discovery of suspected methamphetamine.

On July 11, 2018, Officer Kevin Waterstreet applied for the first warrant. His application stated that, on July 10, 2018, he spoke with Lieutenant Jeremy Brennan about a "traffic stop" north of Amboy. Brennan stopped a truck driven by J.R., who Brennan knew from previous methamphetamine-related arrests. Brennan ran the license plate and discovered that the truck belonged to respondent. J.R. told Brennan that he was in the process of buying the truck and had left respondent's residence prior to the stop.

While talking with J.R., Brennan saw two glass pipes containing crystalline residue. He had J.R. exit the vehicle, and he performed a pat search. During this time, respondent arrived to provide proof of insurance. Respondent asked if he could take the truck, Brennan said no, and respondent left. Brennan searched the truck and located a backpack containing: 37.4 grams of a leafy substance, presumably marijuana; 42.9 grams (packaged weight) of brown powder, which field-tested positive as methamphetamine; two vials of white powder containing 22 grams (packaged weight) of field-tested methamphetamine; various paraphernalia; a digital scale; and approximately 33.6 grams of field-tested

methamphetamine in a plastic bag, an amount that Waterstreet believed was indicative of narcotics sales.

Waterstreet stated in the warrant application that he believed J.R. got the 33.6 grams "from [respondent's] residence" because J.R. told Brennan "that's where he had come from." Waterstreet noted in the application that respondent's "criminal history includes numerous controlled substance possession and sales violations including [fifth-]degree possession, [third-]degree sales, and [second-]degree sales." Waterstreet also noted that the Minnesota River Valley Drug Task Force had "received numerous anonymous tips from concerned citizens about [respondent] being involved in controlled substance sales and use." Waterstreet therefore believed that drug use and sales were occurring at respondent's residence.

On July 11, 2018, a judge issued the first search warrant, but it was not executed until six days later. During that search, officers discovered suspected methamphetamine. After the first search was completed, Officer Jeff Wersal applied, that day, for a second search warrant to search respondent's residence. The second application noted that execution of the first warrant was delayed because law enforcement was informed that respondent "had sold his last amount of meth and was obtaining more over the weekend of July 14-15." The second application stated the following:

> During execution of the [first] warrant agents located 28.9 grams of a crystal substance field tested positive for methamphetamine. The purported meth was found in three separate plastic bags which were hidden in unusual places. Your [a]ffiant and Agent [C.R.] are also familiar with [respondent] and know him to hide drugs in unusual places.

> Your [a]ffiant also observed that the bedrooms upstairs in the home were currently being remodeled.
>
> After the search warrant was complete and agents had left the home your [a]ffaint rec[ei]ved a call from Tri City Police Chief Ryan Jordan. Chief Jordan advised your [a]ffiant that [S.R.M.], contacted Chief Jordan with information. [S.R.M.] stated to Chief Jordan that she has a child in common with [respondent]. [S.R.M.] stated that [respondent] was remodeling the upstairs bedrooms and had recently showed [S.R.M.] and their daughter a hidden compartment [he] had built in the floor of an upstairs [bedroom closet].
>
> Your [a]ffiant believes that [respondent] built the aforementioned compartment in order to conceal contraband such as controlled substances and seeks the courts permission to re-enter [respondent's residence] in Amboy to look for the hidden compartment . . . .

A different judge issued the second search warrant. During the second search, more suspected methamphetamine was discovered in a secret compartment. The state charged respondent with 12 drug-related counts. He moved to suppress the evidence obtained via the search warrants.

In November 2018, the district court granted respondent's motion and dismissed all of the charges. Regarding the first search warrant, the district court concluded that there was insufficient information in the application "to find a nexus between criminal activity and [respondent's] residence." The court noted that there was no indication that J.R. went inside of respondent's residence, the veracity and timeliness of the anonymous tips could not be determined, and the "temporal nexus" of respondent's prior convictions could not be assessed "as no information was provided about said violations." The district court examined the second warrant in light of the tainted evidence from the first and concluded

that there was "scant information upon which to determine probable cause." The court acknowledged the information from S.R.M. about the hidden compartment, but concluded that there was no "information that [respondent] was keeping narcotics in any such compartment." This appeal followed.

D E C I S I O N

In a pretrial appeal, the state must establish that the alleged error of the district court, unless reversed, will have a critical impact on the outcome of a trial. Minn. R. Crim. P. 28.04, subd. 2. An error critically impacts a trial's outcome if it significantly reduces the likelihood of a conviction. *State v. Aubid*, 591 N.W.2d 472, 477 (Minn. 1999). "Dismissal of a charge has a critical impact on the outcome of the trial." *State v. Myers*, 711 N.W.2d 113, 115 (Minn. App. 2006), *aff'd*, *State v. Melde*, 725 N.W.2d 99 (Minn. 2006). The district court's order, which dismissed all of the charges against respondent, had a critical impact. We therefore move to the crux of the matter, the sufficiency of the warrant applications.

The United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures, providing that no warrant shall be issued without a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found." *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014) (quotation omitted).

"Probable cause not only requires that the evidence sought likely exists, but also that there is a fair probability that the evidence will be found at the specific site to be searched." *Id.* That is, "[a] sufficient 'nexus' must be established between the evidence

sought and the place to be searched," but this nexus "may be inferred from the totality of the circumstances." *Id.* In determining whether a sufficient nexus exists, "information linking the crime to the place to be searched and the freshness of the information" are relevant factors, as well as "[t]he reliability of the source of the information." *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). In drug cases, the supreme court has "drawn a distinction between a drug wholesaler and a casual user," and noted that "[i]t may be reasonable to infer that drug wholesalers keep drugs at their residences, but such an inference, without more, is unwarranted for casual users." *Yarbrough*, 841 N.W.2d at 623 (quotation omitted).

In reviewing the issuance of a search warrant, we must determine whether the issuing judge had a substantial basis for concluding that probable cause existed. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001); *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995). Our review is limited to the totality of the circumstances presented in the warrant application and supporting affidavit. *State v. Fawcett*, 884 N.W.2d 380, 384-85 (Minn. 2016). We afford great deference to an issuing judge's assessment of probable cause in connection with the issuance of a search warrant. *Rochefort*, 631 N.W.2d at 804; *Zanter*, 535 N.W.2d at 633.

We begin with the first search warrant. The relevant circumstances set forth in the warrant application included the large quantity of drugs in the truck, respondent's ownership of the truck, the plainly observable paraphernalia in the truck, J.R.'s statement that he was coming from respondent's residence, respondent's arrival during the stop and request to take the truck, respondent's prior convictions, and the anonymous tips indicating

that respondent was involved in controlled-substance sales. While each circumstance, viewed in isolation, might be deficient, "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). Considering the totality of the circumstances, in light of the deferential standard of review, we conclude that the grounds asserted in the first application create a substantial basis for the issuing judge to find a fair probability that controlled substances would be located at respondent's residence.

The district court concluded that there was no nexus between the controlled substances sought and respondent's residence. On appeal, respondent echoes this conclusion. Although we acknowledge that this is a close case, and the warrant application could have been more precisely drafted, we disagree. "[D]irect observation of evidence of a crime at the place to be searched is not required," and "[a] nexus may be inferred from the totality of the circumstances." *Yarbrough*, 841 N.W.2d at 622. Here, the circumstances created a sufficient connection between the narcotics sought and respondent's residence. It is reasonable to infer that the drugs located in the truck were J.R.'s, and respondent sold some or all of them to J.R., or the drugs were actually respondent's, considering that respondent requested to take possession of his truck containing the controlled substances prior to the discovery by law enforcement. Either way, these circumstances, combined with respondent's criminal history[1] and the anonymous tips, indicated that respondent was

[1] "A person's criminal record is among the circumstances a judge may consider when determining whether probable cause exists for a search warrant," however, a criminal record is best used "as corroborative information and not as the sole basis for probable cause." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted).

a drug wholesaler. It may be reasonable to infer that a drug wholesaler keeps drugs at his residence, and beyond that, J.R. admitted to leaving respondent's residence prior to the stop. *Id.* at 623. The totality of the circumstances establish a sufficient nexus.

Having determined that the first search warrant was valid, we conclude that the second search warrant was valid as well. According to the second application, nearly 30 grams of field-tested methamphetamine was discovered during the first search, hidden in unusual places, and subsequent information indicated the existence of a hidden compartment in an upstairs bedroom. Given these circumstances, the issuing judge had a substantial basis from which to conclude that there was a fair probability that controlled substances would be found in the hidden compartment.

Reversed and remanded.