STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1923

State of Minnesota,
Respondent,

vs.

Donald Eugene Degroat, Jr.,
Appellant.

Filed December 2, 2019
Reversed and remanded
Cochran, Judge

Wadena County District Court
File No. 80-CR-17-617

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

Kyra L. Ladd, Wadena County Attorney, Wadena, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Johnson, Judge.

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

COCHRAN, Judge

Appellant Donald Eugene DeGroat[1] Jr. challenges his conviction of first-degree controlled-substance possession, arguing (1) that the district court erred by not suppressing evidence obtained as a result of an invalid search warrant, (2) that he was denied his right to a speedy trial, (3) the evidence introduced at trial was insufficient to support his conviction, and (4) the district court erred by admitting certain testimony at trial. DeGroat also raises additional arguments in a pro se supplemental brief. Because we conclude that the district court erred by failing to suppress evidence obtained as a result of an invalid search warrant, we address only that issue and reverse and remand for further proceedings.

FACTS

In June 2017, a Mahnomen County judge issued a warrant (the tracking warrant) that authorized law enforcement to place a tracking device on a vehicle that the warrant applicant claimed to be associated with appellant Donald Eugene DeGroat Jr. The affidavit supporting the warrant application included information about the applicant, a Becker County Sheriff's Office investigator, and the following information specific to DeGroat:

> Your Affiant and assisting law enforcement officers have been informed by three cooperating individuals that, DONALD EUGENE DEGROAT, date of birth 7-26-1983 is selling large quantities of Methamphetamine in the Becker, Mahnomen, and Ottertail County Area. Your Affiant and assisting law enforcement officers have been in contact with cooperating individuals that DEGROAT travels to

[1] While the caption of this case uses the spelling "Degroat" to mirror the district court caption, we use the spelling "DeGroat," consistent with DeGroat's own spelling of his name in his pro se supplemental brief.

> Minneapolis, Minnesota Area to purchase five pounds of Methamphetamine and then travels back to the Becker, Mahnomen, and Ottertail County Areas and distributes the methamphetamine.
>
> The cooperating individuals informed your Affiant and assisting Law Enforcement Officers that DEGROAT travels to the Minneapolis, Minnesota Area every 3-4 weeks to purchase the five pound quantities of Methamphetamine.

The affiant averred that law enforcement had seen the vehicle outside DeGroat's residence and his mother's residence. The vehicle was registered to a third party but the affiant asserted that it was driven and operated by DeGroat and his fiancée. According to the affiant, DeGroat's fiancée had been stopped in the vehicle about a month before the applicant sought the warrant. The warrant application and affidavit were the only information provided by the applicant to the issuing judge.

After obtaining the warrant, law enforcement placed the tracking device on the vehicle and monitored its movements. While monitoring the location of the tracker in July 2017, law enforcement observed the vehicle travel to the Minneapolis-Saint Paul area. The vehicle returned to the city of Wadena, where law enforcement intercepted the vehicle at a gas station. DeGroat was sitting in the rear driver side of the vehicle when law enforcement arrived at the gas station. There were three other passengers in the vehicle—a driver, a front-seat passenger, and a rear-seat passenger. The front-seat passenger and the rear-seat passenger were in actual possession of methamphetamine. Based on the circumstances, law enforcement conducted a dog sniff of the vehicle. The dog alerted to the rear cargo area of the vehicle. Law enforcement towed the vehicle to an impound building and applied for a warrant to search the vehicle.

A judge in Wadena County issued a search warrant for the vehicle (the Wadena County warrant). The supporting affidavit described that law enforcement were previously granted the tracking warrant and set forth the basis for the tracking warrant. It also described how police monitored DeGroat with the vehicle tracker and recounted the interaction at the gas station. The applicant also stated that agents with a drug task force had conducted a controlled purchase of methamphetamine from DeGroat using a confidential reliable informant. But the applicant did not include any information about the controlled purchase, such as when or where it occurred.

After receiving the Wadena County warrant, law enforcement searched the vehicle and found a large amount of methamphetamine concealed in an opaque bag located in the rear cargo area. The state charged DeGroat with first-degree controlled-substance crime for possessing the methamphetamine. A Wadena County jury ultimately found DeGroat guilty of possessing the methamphetamine, and the district court sentenced DeGroat to 115 months in prison.

DeGroat appeals.

D E C I S I O N

DeGroat maintains that the district court erred by failing to suppress evidence of the methamphetamine discovered in the rear cargo area of the vehicle, by denying his right to a speedy trial, and by allowing the state to present certain testimony at trial. He also contends that the evidence introduced at trial was insufficient to support his conviction.

Because we conclude that the district court erred by failing to suppress evidence of the methamphetamine, we address only that argument.[2]

DeGroat argues that the tracking warrant was invalid because it was not supported by probable cause. He maintains that there was no information in the tracking-warrant affidavit from which the issuing judge could have made a determination that the three "cooperating individuals'" were credible, reliable, or had a basis of knowledge of the facts that they asserted. He further contends that, because the discovery of the methamphetamine was based on information obtained using the tracking device, the district court erred by failing to suppress that evidence under the exclusionary rule. *See Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417 (1963); *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001) ("[E]vidence discovered by exploiting previous illegal conduct is inadmissible."). The state argues that the district court did not err in upholding the issuing judge's probable cause determination and that even if the tracking warrant was invalid, the search was reasonable under several exceptions to the constitutional warrant requirement.

The United States Constitution and the Minnesota Constitution both guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Law enforcement generally must obtain a valid search warrant before conducting a search. *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). To be valid, a search warrant

[2] DeGroat's appellate attorney noted at oral argument that if we reverse the district court based on failure to suppress evidence, we need not reach his other arguments.

must be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Probable cause has been defined variously as the objective facts that under the circumstances would cause a person of ordinary care and prudence to entertain an honest and strong suspicion that a crime has been committed." *State v. Ward*, 580 N.W.2d 67, 70 (Minn. App. 1998) (quotations omitted). Probable cause exists where an affidavit filed with the court demonstrates that "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)); *see also State v. Holiday*, 749 N.W.2d 833, 839 (Minn. App. 2008). "The law of probable cause prevents the issuance of a search warrant on the basis of vague and uncertain information." *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *review denied* (Minn. Jan. 14, 1985).

In reviewing the issuance of a warrant, appellate courts afford great deference to an issuing judge's probable-cause determination. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). We review an issuing judge's decision to issue a warrant "only to consider whether the issuing judge had a substantial basis for concluding that probable cause existed." *Id.* Whether probable cause exists to issue a search warrant is determined by examining the "totality of the circumstances." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). "In reviewing the sufficiency of an affidavit under the totality of the circumstances test, courts must be careful not to review each component of the affidavit in isolation." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). "Where 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 test." *Ward*, 580 N.W.2d at 71.

I. The tracking warrant was invalid.

The tracking warrant was based solely on the affidavit filed by law enforcement. And the only information included in the affidavit to support the warrant was information provided by three informants described in the affidavit as "cooperating individuals." An informant's information may provide sufficient probable cause to support a warrant, but the supporting affidavit "must provide the [judge] with adequate information from which he can personally assess the informant's credibility." *State v. Siegfried*, 274 N.W.2d 113, 114 (Minn. 1978). "The issuing judge is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Zanter*, 535 N.W.2d at 633 (quotation omitted). DeGroat argues that the affidavit filed with the tracking-warrant application failed to provide any information from which the issuing judge could assess either the veracity or the basis of knowledge of the cooperating individuals.

A. Veracity of the Informants

This court has articulated six factors that are relevant when assessing the veracity of an informant:

> (1) a first-time citizen informant is presumably reliable; (2) an informant who has given reliable information in the past is likely also currently reliable; (3) an informant's reliability can

> be established if the police can corroborate the information; (4) the informant is presumably more reliable if the informant voluntarily comes forward; (5) in narcotics cases, "controlled purchase" is a term of art that indicates reliability; and (6) an informant is minimally more reliable if the informant makes a statement against the informant's interests.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004), *review denied* (Minn. June 15, 2004). There is no information in the tracking-warrant affidavit that supports the first, second, fifth, and sixth *Ross* factors. The parties dispute whether there is sufficient information to support the informants' veracity under the third and fourth factors.

1. There is no information in the warrant affidavit to support that law enforcement corroborated the "cooperating individuals'" tips.

In denying DeGroat's suppression motion, the district court concluded that the judge who issued the tracking warrant could infer from the tracking-warrant affidavit that law enforcement had corroborated information provided by the three "cooperating individuals." The district court focused on the language in the tracking-warrant affidavit stating that the "[a]ffiant and assisting law enforcement officers have been informed by three cooperating individuals" that DeGroat "is selling . . . [m]ethamphetamine in the Becker, Mahnomen, and Ottertail County [a]rea" and that he drives to the Minneapolis area to purchase the drugs every 3 to 4 weeks. The district court concluded that this language suggested that "other officers had also received and corroborated the same information [that the affiant] was given." On appeal, the state maintains that the district court properly concluded that the tracking-warrant affidavit established that law enforcement had corroborated the information provided by the informants based on the fact that multiple

informants provided the same information. We disagree that the tracking-warrant affidavit demonstrated that the information provided by the cooperating individuals was corroborated.

If a second informant provides the same information as a primary informant, the second tip may help to corroborate the first. *See Siegfried*, 274 N.W.2d at 115-16 (noting that the issuing judge was permitted to rely on tips from other informants in determining whether the primary informant was telling the truth); s*ee also State v. Hochstein*, 623 N.W.2d 617, 623 (Minn. App. 2001) (indicating that an informant's tip corroborated, and was corroborated by, the statements of two other informants). "[T]he fact that police can corroborate part of the informer's tip as truthful may suggest that the entire tip is reliable." *Siegfried*, 274 N.W.2d at 115.

While a second informant's tip may corroborate the first, we conclude that the tracking-warrant affidavit did not provide sufficient information to conclude that any of the tips from the cooperating individuals were in fact corroborated by police. The affidavit only states that "[y]our [a]ffiant and assisting law enforcement officers have been informed by three cooperating individuals" that DeGroat was allegedly engaged in drug trafficking activity and that law enforcement officers "have been in contact with" the individuals. The affidavit does not provide any information regarding which cooperating individual provided what information, or when they provided it. While it is possible that the cooperating individuals provided three separate tips that each alleged the same criminal activity, it is equally possible that the three cooperating individuals provided the information in a single conversation with multiple law enforcement officials. It is also

equally likely that one cooperating individual provided the substantive information and the others merely agreed. Based on the information contained in the tracking-warrant affidavit, we conclude that there was no information from which the issuing judge could conclude that law enforcement had corroborated any of the tips and, consequently, the tracking-warrant affidavit failed to establish the informants' reliability under the third *Ross* factor.

2. There is no information in the tracking-warrant affidavit to support that the "cooperating individuals'" voluntarily came forward with information concerning DeGroat.

The district court also concluded that the term "cooperating individuals" suggested that the informants "assisted officers voluntarily," and that the issuing judge could reasonably conclude that the informants were reliable considering the fourth *Ross* factor. Again, we disagree. The fourth *Ross* factor provides that an informant is more reliable if the informant "voluntarily comes forward." 676 N.W.2d at 304. But a person who "assists officers voluntarily" or "cooperates" does not necessarily "voluntarily come forward" as contemplated by the fourth *Ross* factor. An individual who cooperates may do so at the suggestion of police. And, "courts remain reluctant to believe the typical 'stool pigeon' who is arrested and who, at the suggestion of the police, agrees to cooperate and name names in order to curry favor with the police." *Ward*, 580 N.W.2d at 71-72 (quotation omitted). Thus, the use of the term "cooperating individuals" in the affidavit does not support an inference that the informants in this case came forward voluntarily and arguably provides a stronger inference that the informants did *not* come forward voluntarily. We conclude that there is no information in the tracking-warrant affidavit that bolsters the

informants' credibility under the fourth *Ross* factor because there is no information in the affidavit to suggest that the informants in this case came forward voluntarily.

Considered in its totality, we conclude that the tracking-warrant affidavit did not contain sufficient information to establish the cooperating individuals' reliability under the *Ross* factors.

B. There is no information in the tracking-warrant affidavit regarding the informants' basis of knowledge.

Next, we turn to DeGroat's argument that the warrant affidavit provided no information about the "cooperating individuals'" basis of knowledge. The state maintains that the warrant affidavit supplied the informants' basis of knowledge through the level of detail in the informants' tip.

The information obtained from an informant must show a basis of knowledge. *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). "This basis of knowledge may be supplied directly, by first-hand information, such as when [an informant] states that he purchased drugs from a suspect or saw a suspect selling drugs to another; a basis of knowledge may also be supplied indirectly through self-verifying details that allow an inference that the information was gained in a reliable way and is not merely based on a suspect's general reputation or on a casual rumor circulating in the criminal underworld." *Id.* "Assessment of the [informant's] basis of knowledge involves consideration of the quantity and quality of detail in the [informant's] report and whether police independently verified important details of the informant's report." *Id.* (citing *Alabama v. White*, 496 U.S. 325, 331-32, 110 S. Ct. 2412, 2417 (1990)).

The state argues that the warrant affidavit supplied the informants' basis of knowledge through self-verifying details—including specific locations to which DeGroat would travel, the frequency of his activity, and specific quantities of methamphetamine that DeGroat would purchase. We agree that the information provided by the informants contains some detail. But law enforcement did not corroborate any of the information provided by the informants *before* seeking the tracking warrant. Because law enforcement failed to corroborate the information, this case is distinguishable from the U.S. Supreme Court's decision in *White*, relied on by the state. In *White*, the Supreme Court held that "[w]hen significant aspects of the caller's predictions *were verified* [by police], there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop." 496 U.S. at 331-32, 110 S. Ct. at 2417 (emphasis added). The *White* case is also distinguishable because *White* addressed whether an anonymous tip, as corroborated by police, provided a reasonable suspicion for an investigatory stop, not whether the tip met the higher probable cause standard necessary for issuance of a search warrant. *Id.* at 329-30, 110 S. Ct. at 2416. Because law enforcement in this case did not corroborate any information provided by the informants, there was no way that the issuing judge could reasonably determine that the information was gained in a reliable manner and was not "merely based on a suspect's general reputation or on a casual rumor circulating in the criminal underworld." *Cook*, 610 N.W.2d at 668. Consequently, we conclude that the warrant affidavit did not provide information showing the informants' basis of knowledge.

C. The warrant affidavit did not contain a substantial basis to support the issuing judge's probable cause finding.

Considering the totality of the circumstances, we conclude that the warrant affidavit did not provide a substantial basis from which the issuing judge could determine probable cause. *See Zanter*, 535 N.W.2d at 633 (indicating that the issuing judge must consider the totality of the circumstances when determining whether a search warrant is supported by probable cause). The warrant affidavit was based solely on the information from the cooperating individuals and there is no information in the warrant affidavit that establishes either the informants' reliability or basis of knowledge. Consequently, even affording the issuing judge great deference, we conclude that this is one of those rare cases in which there is insufficient information in the warrant affidavit to establish a substantial basis to find probable cause.

Having concluded that the tracking warrant was invalid for lack of probable cause, we turn to the state's argument that the district court did not err in failing to suppress the evidence because the search of DeGroat's vehicle was reasonable under one of the exceptions to the constitutional warrant requirement.

II. The district court erred by failing to suppress evidence of the methamphetamine discovered in the vehicle because it was obtained as a result of the execution of an invalid warrant.

The state argues that, even if the tracking warrant was invalid, the search that actually revealed the methamphetamine was valid for a number of reasons. The state maintains that the Wadena County search warrant that authorized the search of the vehicle after law enforcement intercepted and arrested DeGroat was valid even if information

regarding the tracking device was omitted. The state also asserts that several exceptions to the warrant requirement allowed law enforcement to search the vehicle without a warrant—namely, the automobile exception, the search-incident-to-arrest exception, and the good-faith exception. The state's arguments rely on the independent-source or inevitable-discovery doctrines, suggesting that there was another source of information that provided a legal basis to search the vehicle. DeGroat argues that the discovery of the methamphetamine cannot be severed from the execution of the invalid warrant because law enforcement was only aware of the vehicle's whereabouts based on their use of the tracking device. We agree with DeGroat's analysis.

Generally, "[e]vidence discovered by exploiting previous illegal conduct is inadmissible." *Olson*, 634 N.W.2d at 229 (citing *Wong Sun*, 371 U.S. at 488, 83 S. Ct. at 417). But evidence discovered as a result of an unconstitutional search or seizure is still admissible at trial if there is an "independent source" of the evidence's discovery that is "untainted by the illegal evidence-gathering activity." *Murray v. United States*, 487 U.S. 533, 537-38, 108 S. Ct. 2529, 2533 (1988); *see also State v. Hodges*, 287 N.W.2d 413, 415-16 (Minn. 1979). The purpose of the independent-source doctrine, and the derivative inevitable-discovery doctrine, is that:

> [T]he interest in society in determining unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a *worse*, position that they would have been in if no police error or misconduct had occurred.

Murray, 487 U.S. at 537, 108 S. Ct. at 2533 (quoting *Nix v. Williams*, 467 U.S. 431, 443, 104 S. Ct. 2501, 2509 (1984)).

"The inevitable-discovery doctrine applies when officers possess lawful means of discovery and are, in fact, pursuing those lawful means prior to their illegal conduct." *State v. Barajas*, 817 N.W.2d 204, 219 (Minn. App. 2012), *review denied* (Minn. Oct. 16, 2012) (quotation omitted). "The independent-source doctrine does not apply absent a separate investigation that inevitably would have led police to discover the evidence." *Id.* Whether law enforcement would have discovered evidence absent an illegal search is a factual determination "which must receive initial consideration by the trial court." *State v. Lieberg*, 553 N.W.2d 51, 58 (Minn. 1996).

The state's argument that the search was reasonable and lawful despite the execution of the invalid tracking warrant overlooks the fact that there is no evidence in the record to support a finding that law enforcement would have known where the vehicle was at the time it was intercepted absent the use of the tracking device. In fact, the Wadena County warrant affidavit and the trial testimony of the involved law enforcement officials make it clear that the only reason that law enforcement knew of the vehicle's location was their use of the tracking device. Thus, all of the information in the Wadena County warrant that was learned by law enforcement after the vehicle was stopped—including that several occupants were in possession of methamphetamine and that law enforcement conducted a dog sniff that resulted in a positive alert—is not independent of the invalid tracking warrant.

Moreover, because there is no basis to conclude that law enforcement would have inevitably intercepted the vehicle and searched the vehicle *at the time it was searched* without the tracking warrant, there is no basis to conclude that law enforcement would have

inevitably discovered the methamphetamine if the vehicle was searched at another time. There is no information in the record to support a conclusion that the methamphetamine would have remained in the vehicle indefinitely until law enforcement inevitably searched it.

Had law enforcement not observed the vehicle's location using the tracking device, they would not have obtained probable cause for the motor vehicle search or sought the Wadena County warrant. They also would not have developed independent probable cause based on the circumstances developed after they intercepted the vehicle, and would not have arrested DeGroat because they would not have known his whereabouts. It is for these reasons that we conclude that there is no merit to the state's argument that the Wadena County warrant was valid without the information gleaned from the tracking device and that there is no merit to the state's argument that the search was valid under the automobile exception or search-incident-to-arrest exception.

Finally, the state argues that we should determine that the district court did not err in admitting the methamphetamine because the good-faith exception to the exclusionary rule applies. In *United States v. Leon*, 468 U.S. 897, 926, 104 S. Ct. 3405, 3422 (1984), the Supreme Court adopted an exception to the exclusionary rule in instances where law enforcement, in good faith, execute a facially valid warrant that is later found to be lacking in probable cause. The Minnesota Supreme Court has adopted only a *narrow* good-faith exception to the exclusionary rule applied when "law enforcement acts in objectively reasonable reliance on binding appellant precedent." *State v. Lindquist*, 869 N.W.2d 863,

876 (Minn. 2015). Consequently, we conclude that the state's argument does not have merit under current Minnesota precedent.

The methamphetamine discovered in the vehicle was discovered only as a result of the execution of an invalid warrant. Nothing in the record supports a conclusion that an independent source, untainted by the execution of the invalid warrant, supported the search that resulted in law enforcement discovering the methamphetamine. And, nothing in the record supports a conclusion that law enforcement would have inevitably discovered the methamphetamine through lawful means. No exception to the warrant requirement applies without consideration of the location information learned through the execution of the invalid tracking warrant. Under these circumstances, we conclude that the district court erred by admitting the methamphetamine discovered as a result of the execution of the invalid tracking warrant. We reverse and remand for further proceedings.[3]

Reversed and remanded.

[3] At oral argument, DeGroat's counsel expressly stated that this court need not consider the other arguments he raised if we reverse and remand on this first issue. Consequently, we do not address any other issues raised in this appeal.