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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2144**

State of Minnesota,
Respondent,

vs.

John Edward Yort,
Appellant.

**Filed December 2, 2019
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-18-9940

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant John Edward Yort challenges the district court's denial of his pretrial motion to suppress evidence obtained pursuant to a search warrant. Yort argues that (1) the search warrant affidavit failed to establish a sufficient nexus between the evidence sought

and his home, and (2) the information was stale when the warrant was executed. Because officers followed Yort—who was known to be dealing in controlled substances—to his home immediately after the controlled buy, there was a sufficient nexus to support the search warrant. Also, the circumstances of this case show that the six-to-nine-day period from the controlled buy to the execution of the search warrant does not render the probable cause stale. Therefore, we affirm.

FACTS

In January 2018, Officer Smith with the Burnsville Police Department started investigating Yort “regarding the sale of large amounts of methamphetamine.” Yort has a 2015 conviction for first-degree possession of a controlled substance and a 2015 conviction for fifth-degree possession of a controlled substance. During the investigation, law enforcement learned that Yort often drove a white Chevy Tahoe when dealing methamphetamine.

Sometime during the 72 hours before February 2, 2018, Officer Smith used a confidential informant (CI) to conduct a controlled buy from Yort in Minneapolis.¹ Officers observed Yort and an unidentified male enter the CI’s vehicle. Yort then sold the CI a first-degree amount of methamphetamine. After the controlled buy, officers followed Yort and the unidentified male to a Wentworth Avenue address in Minneapolis. Officers observed “one of the males” open a white Chevy Tahoe parked in front of the Wentworth

¹ The affidavit provides: “During this investigation and within the past 72hrs, your Affiant arranged for a confidential informant . . . to contact [Yort] and arrange to purchase a 1st Degree amount of methamphetamine.”

Avenue address and “dig” through the vehicle. Officers then observed Yort and the other male walk to the south side of the Wentworth Avenue address. Officers were “briefly not able to see” Yort but noted that the south side of the Wentworth Avenue residence is “fenced off from the neighboring residence,” and concluded that, because there was nowhere else to go, Yort entered the residence. Bureau of Criminal Apprehension records show the Wentworth Avenue address as Yort’s home address.

On February 2, 2018, Officer Smith applied for, and received, a search warrant to search Yort’s house. Officers executed the warrant on February 8, 2018; officers seized over 300 grams of methamphetamine and \$76,000 in cash during the search of the residence.

The state charged Yort with first-degree sale of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 1(1) (2016), and second-degree possession of a controlled substance, in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2016). Yort moved to suppress the evidence seized in the search of his house. The district court denied the motion.

The parties stipulated to the state’s facts pursuant to Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court’s suppression ruling. The state dismissed the charge of first-degree sale of a controlled substance. The district court found Yort guilty of second-degree possession of a controlled substance and sentenced him to a 90-month executed prison sentence. The sole issue on appeal is the validity of the search warrant.

DECISION

A search, generally, is lawful if it is executed pursuant to a valid search warrant issued by a neutral and detached magistrate after a finding of probable cause. *See* Minn. Stat. § 626.08 (2016); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). “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); *State v. Velishek*, 410 N.W.2d 893, 896 (Minn. App. 1987) (holding that the trial court erred by conducting a *de novo* review of a search warrant affidavit). Instead, an appellate court limits its review to whether the issuing magistrate “had a substantial basis for concluding that probable cause existed.” *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014) (quotation omitted). “[G]reat deference must be given to the issuing [magistrate’s] determination of probable cause.” *State v. Valento*, 405 N.W.2d 914, 918 (Minn. App. 1987).

I. A sufficient nexus existed between the controlled buy and the search of Yort’s home.

“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.” *Yarbrough*, 841 N.W.2d at 622. “A sufficient ‘nexus’ must be established between the evidence sought and the place to be searched.” *Id.* “[T]here must be specific facts to establish a direct connection between the alleged criminal activity and the site to be searched.” *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998). But “direct observation of evidence of a crime at the place to be searched is not required.” *Yarbrough*, 841 N.W.2d

at 622. The requisite “nexus may be inferred from the totality of the circumstances.” *Id.* (footnote omitted). In determining whether probable cause exists to conclude that the evidence sought will be found in the place to be searched, the issuing magistrate considers, among other things: “the type of crime, the nature of the items sought, the extent of the defendant’s opportunity for concealment, and the normal inferences as to where the defendant would usually keep the items.” *Id.*

Yort argues there is an insufficient nexus between the controlled buy and the search of his home because he is not a drug wholesaler. The entire record shows that a sufficient nexus existed.

The officers had more information connecting the search warrant to Yort’s home than simply Yort’s status as a drug dealer. Officers observed Yort return to his Minneapolis home immediately following the controlled buy, which also occurred in Minneapolis. It is reasonable for the issuing magistrate to infer that Yort would have more controlled substances in his home. These facts contrast with a situation in which a defendant sells controlled substances miles away from his or her home and officers never observe the defendant near the defendant’s home. *See, e.g., State v. Kahn*, 555 N.W.2d 15, 19 (Minn. App. 1996) (concluding that possession of one ounce of cocaine 75 to 85 miles from the defendant’s home did not establish a nexus to the defendant’s home sufficient for issuance of a warrant).

The affidavit also indicated Yort brought the proceeds from the controlled buy to his house after the sale—officers observed Yort drive directly home after the controlled buy. Because the money from the controlled buy was evidence of the crime and Yort

returned home immediately after the buy, it was reasonable for the issuing magistrate to infer that evidence of the crime would be found in Yort's home.

II. The probable cause was not stale when the warrant was executed.

Yort contends that the information in the warrant was stale when the warrant was executed—approximately six to nine days after the controlled buy.

Whether a delay in executing a search warrant is unconstitutional depends on whether the probable cause recited in the affidavit still exists at the time of execution of the warrant—that is, whether it is still likely that the items sought will be found in the place to be searched.

State v. Yaritz, 287 N.W.2d 13, 16 (Minn. 1979). “In general, a single incident of criminal activity, such as a sale of contraband, ‘will support a finding of probable cause only for a few days at best.’” *State v. Ward*, 580 N.W.2d 67, 72 (Minn. App. 1998) (quoting *State v. Cavegn*, 356 N.W.2d 671, 673 (Minn. 1984) (citation omitted)). But there is no “arbitrary time limit or . . . a rigid formula” for determining “whether the probable cause underlying a search warrant has grown stale.” *State v. King*, 690 N.W.2d 397, 401 (Minn. App. 2005), *review denied* (Minn. Mar. 29, 2005). Rather, we examine the circumstances of each case. *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *review denied* (Minn. Jan. 14, 1985). Relevant circumstances “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.

The time between the controlled buy and the search is unclear. The affidavit states that “within the past 72 [hours]”—meaning the 72 hours prior to the February 2 warrant

application—Officer Smith conducted the control buy with the informant. The search warrant was executed on February 8. Thus, the search warrant was executed between six to nine days after the controlled buy. This difference between six and nine days is irrelevant to the outcome. Even assuming there was a nine-day gap between the controlled buy and the execution of the search warrant, other circumstances show that the probable cause was not stale.

Yort first argues that because officers observed only one controlled buy before the warrant was issued, there is no evidence that Yort was involved in ongoing criminal activity, making the probable cause stale at nine days. The controlled buy, however, was not the only evidence recited by the affiant. The affiant also stated that the officer was investigating Yort for selling large quantities of methamphetamine and that Yort has two convictions in 2015 for controlled-substance crimes. This implies that Yort was involved in an ongoing criminal operation.

Yort contends that the affiant’s statement that Yort was selling large amounts of controlled substances is conclusory because it offers no source for the information. The supreme court has declined to consider vague or conclusory statements in search-warrant affidavits. *See, e.g., Souto*, 578 N.W.2d at 749 (holding that “the officer’s statement that ‘he [knew]’ that Souto was involved in the possession and/or distribution of drugs on a wide scale was too vague and conclusory to bolster the state’s position that Souto was a drug dealer”) (alteration in original); *State v. Doyle*, 336 N.W.2d 247, 251 (Minn. 1983) (holding that the value of an affiant’s statement that “he knew” that the defendant had been

dealing drugs for several years was diminished because of its conclusory nature and its failure to indicate the source of the information).

The statements here are not conclusory. Although the affiant's statement that he was investigating Yort for selling large amounts of methamphetamine does not indicate the source of the information, this statement was corroborated by Yort's conduct during the controlled buy in which Yort sold a first-degree amount of methamphetamine. Because the statement is corroborated, it bolsters the inference that Yort was involved in an ongoing criminal operation.

The affiant's statement that Yort used a white Chevy Tahoe in his drug operation is also partly corroborated. When officers followed Yort to his home, they observed either Yort or his accomplice "dig[] through" a white Chevy Tahoe. This statement also bolsters the inference that Yort was involved in an ongoing criminal operation.

Further, "[a] person's criminal record is among the circumstances a judge may consider when determining whether probable cause exists for a search warrant." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005). The affidavit notes Yort's two 2015 controlled-substance convictions. This also strengthens the inference that Yort was involved in an ongoing criminal operation.

In sum, there was a sufficient nexus between the sale and Yort's home, and the probable cause underlying the search warrant was not stale when the warrant was executed. Therefore, we affirm.

Affirmed.