STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0318

State of Minnesota,
Respondent,

vs.

Archie Leon Price,
Appellant.

Filed September 16, 2019
Affirmed
Kirk, Judge[*]

Hennepin County District Court
File No. 27-CR-18-16080

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Lee R. Johnson, Johnson & Greenberg, P.L.L.P., St. Louis Park, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Rodenberg, Judge; and Kirk, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KIRK, Judge

Appellant challenges his conviction of third-degree controlled-substance sale, arguing that the warrant to search the barbershop where he worked was not supported by probable cause, that his statements and the evidence obtained in subsequent searches should have been suppressed as fruit of the poisonous tree, and that the property and funds seized during the search of the barbershop should be returned to him under Minn. Stat. § 626.21 (2016). We affirm.

FACTS

Respondent State of Minnesota charged appellant Archie Leon Price with third-degree controlled-substance sale and fifth-degree controlled-substance possession. The complaint alleged that on May 23, 2018, officers executed a search warrant at the barbershop in Minneapolis and located a backpack in the basement containing appellant's wallet, approximately 27 oxycodone pills, 16 suspected ecstasy pills, $4,138 in cash, and a loaded 9mm semi-automatic pistol. Appellant did not have a valid prescription for the oxycodone pills. Inside a closet in the basement, officers discovered approximately 741.2 grams of marijuana.

Appellant moved to suppress the evidence found in the barbershop, arguing that the warrant to search the barbershop was not supported by probable cause. Appellant also moved to suppress evidence obtained from the searches of a 2007 Cadillac Escalade and the Minnesota Prescription Monitoring Program pursuant to two additional search warrants, arguing that evidence obtained during those searches constituted the fruit of the

illegal search of the barbershop. Appellant moved that all property and funds seized during the searches of the barbershop and the vehicle be returned to him under Minn. Stat. § 626.21.

Following the submission of written arguments by the parties, the district court denied appellant's motion.[1] Appellant stipulated to the prosecution's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court's suppression ruling, and the district court found him guilty as charged. The district court entered judgments of conviction on both counts and sentenced appellant to a 36-month prison term on the third-degree sale count. This appeal follows.

D E C I S I O N

I.

The United States and Minnesota Constitutions 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. Police generally must obtain a valid search warrant issued by a neutral and detached magistrate before conducting a search. *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). To be valid, a search warrant must be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Probable cause exists if the judge issuing a warrant determines 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)).

[1] The district court amended its order on October 15, 2018, to correct typographical errors.

Appellate courts afford an issuing magistrate's probable-cause determination great deference. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). An appellate court reviews an issuing magistrate'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). The components of the affidavit "viewed together may reveal . . . an internal coherence that gives weight to the whole." *Id.* (quotation omitted). "Furthermore, the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded warrants." *Id.* at 268 (quotation omitted).

In this case, the circumstances set forth in the search-warrant affidavit regarding the search of the barbershop are as follows. An officer of the Minneapolis Police Department received information from a confidential reliable informant (CRI-1), that a person known to the informant as "TRUE" was involved in the distribution of controlled substances, including marijuana, from inside a barbershop located on West Lake Street in Minneapolis where "TRUE" worked as a barber. CRI-1 provided a physical description of "TRUE" and a cell-phone number for the phone "TRUE" used to facilitate sales of controlled substances. CRI-1 had "provided ongoing assistance to law enforcement leading to the recovery of

evidence and prosecution of the defendants involved," and the officer believed the information CRI-1 provided was reliable.

The officer conducted surveillance at the barbershop identified by CRI-1 over a 30-day period prior to applying for the search warrant. The officer observed a gold Toyota Camry displaying a Minnesota license plate. The vehicle's registration indicated it was registered to E.G. The officer showed CRI-1 a photograph of E.G., and CRI-1 positively identified E.G. as "TRUE."

During surveillance of the barbershop, the officer observed E.G. exit the rear door to the barbershop and meet with a man who arrived on foot in an alley outside the barbershop. E.G. accessed the passenger compartment and trunk of the Camry and made a hand exchange with the man. The man left on foot in the alley. E.G. returned to the barbershop through the rear door. The meeting between E.G. and the man was for a "short period of time" and the search-warrant affidavit stated that the officer believed, based on his experience and training, that the meeting was "consistent with a narcotics deal."

On another occasion during the officer's surveillance of the barbershop, the officer observed E.G. sitting in the driver's seat of a silver Camaro that displayed a Minnesota license plate. A person walked up to E.G. and they met for a short period of time, during which they made a hand exchange. The search-warrant affidavit stated that the officer believed, based on his experience and training, that the meeting was consistent with a narcotics deal.

At some point during the three-day period prior to applying for the search-warrant, law enforcement conducted a controlled buy of marijuana from E.G. using another

confidential reliable informant, CRI-2. The officer directed CRI-2 to meet with E.G. at the barbershop. Officers monitored that location and observed E.G. sitting in the silver Camaro in the rear parking lot of the barbershop. CRI-2 reported to the officer that CRI-2 met with E.G. at the vehicle, where CRI-2 observed E.G. in possession of marijuana, baggies, and a scale. CRI-2 reported that E.G. sold CRI-2 a quantity of marijuana in exchange for buy funds provided by law enforcement. CRI-2 provided the officer with the suspected marijuana he purchased from E.G., which the officer found field-tested positive for marijuana. After the meeting, officers observed E.G. enter the barbershop.

Appellant contends that information provided by CRI-1 was not "sufficient to establish probable cause" and that the search-warrant affidavit "does not provide a nexus, either directly or by inference, between the barbershop and [E.G.]'s drugs and contraband." We address each argument in turn.

CRI-1's Tip

Appellant argues that CRI-1's tip was not sufficient to establish probable cause because the search-warrant affidavit did not establish that CRI-1 "had a proven track record of providing reliable information," CRI-1's information about illegal activity inside the barbershop "was disproved by subsequent police investigation," and CRI-1's information was "too vague and uncertain to establish probable cause."

When a search-warrant application includes information from an informant, the supporting affidavit "must provide the magistrate with adequate information from which he can personally assess the informant's credibility." *State v. Siegfried*, 274 N.W.2d 113,

114 (Minn. 1978). This court has articulated six factors that are relevant when assessing the reliability of a confidential, but not anonymous, 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).

As to CRI-1's reliability, only the second and third reliability factors are relevant here. "The second factor is fulfilled by a simple statement that the informant has been reliable in the past . . . ." *Id.* It is not necessary for officers to provide details regarding the informant's past veracity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999); *Ross*, 676 N.W.2d at 304.

Appellant argues that the search-warrant "affidavit does not state that CRI-1 had provided reliable information in the *past* . . . [i]nstead, the affidavit states the obvious, that CRI-1 is providing information to police about the present case and the present defendants." But appellant misinterprets the relevant statement from the search-warrant affidavit. The affidavit states that "CRI-1 has *provided* ongoing assistance to law enforcement leading to the recovery of evidence and prosecution of *the defendants involved*." (Emphasis added.) Given that the affidavit uses the past participle "provided" and refers to obtaining evidence and prosecuting multiple defendants based on CRI-1's

information, which had not happened in this case at the time the officer submitted the search-warrant application, it is clear that the affidavit is referring to CRI-1's past conduct. The search-warrant affidavit's statement regarding CRI-1's past assistance to law enforcement shows that CRI-1 was currently reliable.

As to the third reliability factor, appellant argues that the "investigation conducted by police after they spoke with CRI-1 disproved any notion [E.G.] was selling or storing drugs and contraband inside the barbershop." Appellant notes that

> (1) police saw that all three drug sales took place outside the barbershop; (2) police observed that [E.G.] conducted two sales (second suspected and controlled buy) in his car without accessing the barbershop; (3) police saw that before the third drug deal (first suspected sale), [E.G.] accessed two storage areas of his car before meeting his alleged customer; and (4) the informant who participated in the controlled buy told police he/she saw a scale, baggies and other marijuana in [E.G.]'s car.

"[C]orroboration of even minor details can lend credence to the informant's information where the police know the identity of the informant." *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (quotation omitted).

In this case, the officer conducted surveillance at the barbershop identified by CRI-1 and observed the gold Camry registered to E.G. The officer confirmed with CRI-1 that E.G. was the "TRUE" identified in CRI-1's tip. The officer observed E.G. engage in two short meetings with other persons near the barbershop that the officer believed, based on his experience and training, were consistent with narcotics deals. E.G. returned to the barbershop after the first meeting. The officer directed CRI-2 to conduct a controlled buy of marijuana from E.G. and CRI-2 purchased marijuana from E.G. while E.G. sat in the

Camaro in the rear parking lot of the barbershop. E.G. returned to the barbershop after the controlled buy. In short, police confirmed that the person who CRI-1 reported was involved in the distribution of controlled substances from inside the barbershop was distributing controlled substances in the area of the barbershop.

Contrary to appellant's argument, the fact that police and CRI-2 only observed E.G. conduct drug transactions outside the barbershop does not disprove CRI-1's tip that "TRUE" was "involved in the distribution of controlled substances" from inside the barbershop. Instead, those observations tend to corroborate CRI-1's tip by establishing that the criminal activity that CRI-1 had reported—the distribution of controlled substances including marijuana—occurred in the immediate area of the barbershop.

As to CRI-1's basis of knowledge, appellant argues that CRI-1's tip was "vague and uncertain" and the affidavit "provides no clue as to when and how CRI-1 got [that] information."

A "basis of knowledge may be supplied directly, by first-hand information, such as when a CRI states that he purchased drugs from a suspect or saw a suspect selling drugs to another," or it may 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." *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

Although the search-warrant affidavit does not contain evidence of first-hand information directly establishing CRI-1's basis of knowledge, CRI-1 provided details that

suggest that he was familiar with E.G. and his narcotics sales. CRI-1 (1) identified E.G. by a nickname, "TRUE"; (2) reported that E.G. was involved in the distribution of controlled substances, including marijuana, from a Minneapolis barbershop at a specific address; (3) stated that E.G. was a barber at the barbershop; (4) provided a physical description of E.G.; and (5) identified the cell-phone number of the phone E.G. used to facilitate the sales of controlled substances. Moreover, police surveillance of the barbershop and CRI-2's controlled buy established a link between E.G. and narcotics sales at the barbershop, which allows an inference that CRI-1's information was gained in a reliable way and is not merely based on reputation or rumor.

The search-warrant affidavit adequately established CRI-1's reliability and basis of knowledge. Because whether CRI-1's tip gave the issuing magistrate a substantial basis for the issuing magistrate's probable-cause determination is dependent on whether the search-warrant affidavit established a sufficient nexus between the barbershop and E.G.'s criminal activity, we next address that issue.

Nexus between Barbershop and E.G.'s Criminal Activity

Appellant argues that "[a]ll evidence obtained during the search of [the] barbershop must be suppressed because there was no nexus between the barbershop and [E.G.]'s illegal activities."

"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. That is, 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). However, "direct 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. Circumstances that courts consider in determining whether there is a sufficient nexus between the evidence sought and the place to be searched include "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.* at 623; *State v. Pierce*, 358 N.W.2d 672, 673 (Minn. 1984).

Appellant argues that the "district court erred" by denying his suppression motion "when it found the affidavit supported an inference police would find proceeds from E.G.'s drug deals inside the barbershop" and that "[i]f probable cause depends on police finding cash proceeds inside the barbershop, then probable cause is stale." However, when reviewing a district court's pretrial order on a motion to suppress evidence, appellate courts review the district court's legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). And appellate courts "may affirm the district court on any ground, including one not relied on by the district court." *State v. Fellegy*, 819 N.W.2d 700, 707 (Minn. App. 2012), *review denied* (Minn. Oct. 16, 2012). Thus, unlike the issuing magistrate's probable-cause determination, to which we defer, we are not bound by the district court's legal reasoning in its suppression order.

The search warrant regarding the barbershop in this case identifies many items other than cash proceeds, including marijuana and other controlled substances, cell phones and

storage media, scales and packaging materials, and firearms and ammunition. We therefore do not limit our nexus analysis to whether there was a nexus between cash proceeds and the barbershop. Instead, we consider whether there was a nexus between the evidence sought as a whole and the barbershop.

Appellant argues that "[t]he type of crime involved, drug dealing, is, like many crimes, conducted in secret locations, not a public place like a barbershop." But CRI-1's tip that E.G. was involved in the distribution of controlled substances from inside the barbershop supports the inference that narcotics and related contraband would be found inside the barbershop, especially given that E.G. returned to the barbershop after both the first suspected drug transaction and the controlled buy.

Appellant argues that "there is no reason for [E.G.] to stash money at work when he could easily keep it on his person." Depending on the volume of potential drug transactions, it may not have been feasible for E.G. to keep all of the proceeds on his person. And even if E.G. were more likely to keep money on his person, it is reasonable to infer that E.G. would have kept some of the other items sought—such as controlled substances, storage media, firearms, and ammunition—at the barbershop if he were using the barbershop to facilitate drug dealing.

Appellant argues that "[t]he public nature of a business like a barbershop, with the continuous presence of co-workers and customers, provided limited opportunity for concealment." Although it may be difficult to conceal contraband in the publicly accessible parts of the barbershop, it would be significantly easier to conceal it in parts of the barbershop not open to the public.

Lastly, appellant argues that it is unreasonable to infer that E.G. would "stash drug proceeds at his workplace" rather than in his home or vehicle. This argument is unpersuasive because CRI-1's tip supports the inference that the barbershop was not just E.G.'s workplace; it was also a place he used to distribute controlled substances.

The totality of circumstances here established a sufficient nexus between the evidence sought and the barbershop.

In sum, the totality of circumstances—including CRI-1's tip, police observation of suspected narcotics deals during surveillance of the barbershop, and CRI-2's controlled buy—provided the issuing magistrate a substantial basis for concluding that probable cause existed. The district court did not err in denying appellant's motion to suppress evidence obtained in the search of the barbershop.

II.

Appellant contends that his motions to suppress statements and the searches of his Cadillac Escalade and records on the Minnesota Prescription Monitoring Program should "be granted under the fruit of the poisonous tree doctrine" because his "statements would not have been made but for the illegal search" of the barbershop and because "the warrants for the searches of his vehicle and records were obtained using information from" that search. "Evidence that 'would not have come to light' but for police exploitation of their illegal actions is generally deemed 'fruit of the poisonous tree' and excluded from the state's use at trial." *State v. Davis*, 910 N.W.2d 50, 54 (Minn. App. 2018) (quoting *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417 (1963)). Because the issuing magistrate had a substantial basis for concluding that probable cause existed to issue the

search warrant for the barbershop, the search of the barbershop was not illegal. Therefore, appellant's statements and evidence obtained in the subsequent searches are not fruit of the poisonous tree. The district court did not err in denying appellant's motions to suppress that evidence.

III.

Appellant contends that his motion for "return of money and property seized during the search of the barbershop" should be granted because "Minn. Stat. § 626.21 requires the return of property and money seized during illegal searches." Minn. Stat. § 626.21 allows a "person aggrieved by an unlawful search and seizure" to move the district court "for the return of the property." Because the search of the barbershop was not an unlawful search, Minn. Stat. § 626.21 does not apply. The district court did not err by denying appellant's motion for the return of money and property seized during the search of the barbershop.

Affirmed.