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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2073**

State of Minnesota,
Respondent,

vs.

Bruce Everett Boyd,
Appellant.

**Filed May 4, 2020
Affirmed
Ross, Judge**

Morrison County District Court
File No. 49-CR-18-690

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Segal, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Morrison County deputies suspecting that Bruce Boyd was keeping a stolen trailer in his driveway obtained and executed a warrant to search Boyd's property and found the

stolen trailer. After a jury found him guilty of receiving stolen property and the district court entered a judgment of conviction, Boyd unsuccessfully petitioned the district court for postconviction relief. He argued to the district court and now argues on appeal that his trial counsel's failure to challenge the search warrant's constitutionality constituted ineffective assistance of counsel. We affirm because the omitted constitutional challenge would have failed.

FACTS

The Morrison County Sheriff's Office received a stolen-trailer report in April 2018. The trailer's owner, whom we will call Sam Victim, alleged that his gray 2017 utility trailer had disappeared from outside his Little Falls home. Victim gave officers a detailed description of the stolen trailer, and his wife posted a picture of the trailer on Facebook.

Victim soon received a response from a man we will call Joe Observer. Observer told Victim that he "thinks [Victim's] stolen trailer is sitting at Bruce Boyd's residence off Lake Camile Drive" in Randall, which is about ten miles from Little Falls. Victim relayed that information to the sheriff's office.

Deputy Mark Dzieweczynski investigated. He drove by Boyd's property, saw Boyd standing outside his home, and noticed a gray trailer sitting near the house. The deputy turned around and drove back to Boyd's house, but Boyd was nowhere in sight. Deputy Dzieweczynski could see from the road that someone had begun spray-painting the trailer green and partially covered it with a tarp. He went to Boyd's front door to discuss the trailer. The door sat wide open, but Boyd did not come to speak with the deputy. Deputy Dzieweczynski reported what he saw to his supervisor, who knew that Boyd had a history

of keeping stolen property at his home and had previously been arrested for it. The supervisor drafted an affidavit detailing the circumstances just outlined and applied for a search warrant.

The district court issued the search warrant, and deputies executed it. They approached and closely examined the trailer. They saw that it matched the description of Victim's trailer, including customizing details (D-rings installed in the corners of the bed to secure items) and damage details (a missing rivet, damaged clamps, and a defect in the wood near one of the D-rings). The state charged Boyd with receiving stolen property, and a jury found him guilty, disbelieving Boyd's claim that he had bought the trailer from a friend. The district court sentenced Boyd to 60 months in prison. Boyd appealed, and we stayed the appeal at Boyd's request so he could pursue postconviction relief. Boyd's postconviction petition questioned the quality of his trial counsel's assistance. The district court denied Boyd's petition.

D E C I S I O N

Boyd challenges the district court's denial of his postconviction petition. We ordinarily review a district court's decision denying a petition for postconviction relief for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). But when a convicted defendant first files a direct appeal that is stayed to allow him to file a petition for postconviction relief, we will apply the standard of review for direct appeals. *See State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). Boyd's postconviction petition claimed that he suffered constitutionally deficient assistance of trial counsel. The federal and state constitutions provide a criminal defendant the right to the assistance of counsel.

U.S. Const. amend. VI; Minn. Const. art. I, § 6. Whether a defendant received ineffective assistance of counsel involves mixed questions of law and fact, which we review de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

To prevail on a claim of ineffective assistance of counsel, a convicted defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that he was prejudiced by his counsel's deficient performance. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987). The alleged deficiency here was Boyd's attorney's failure to challenge the validity of the search warrant on Fourth Amendment grounds. A defendant claiming ineffective assistance of counsel based on his counsel's failure to litigate a Fourth Amendment claim must establish that the constitutional claim has merit such that it would have affected the outcome of his case. *Kimmelman v. Morrison*, 477 U.S. 365, 375, 106 S. Ct. 2574, 2583 (1986). This Boyd has failed to establish.

Boyd contends specifically that his trial counsel was ineffective because he failed to challenge the search warrant leading to the discovery of the stolen trailer in his yard. The contention rests on the alleged lack of probable cause in the warrant affidavit. We limit our review to assessing whether the judge who issued the warrant had a "substantial basis for concluding that probable cause existed" based on the totality of the circumstances, deferring to the issuing judge. *State v. Fawcett*, 884 N.W.2d 380, 384 (Minn. 2016). The answer depends on whether the warrant application and supporting affidavit would allow a reasonable person to conclude that there is a fair probability that police would find evidence of a crime in a particular place. *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). Factors bearing on this probability

include the nature of the items sought, the extent of a suspect's opportunity for concealment, inferences about where a defendant would keep such items, and information linking the crime to the place searched. *State v. Pierce*, 358 N.W.2d 672, 673 (Minn. 1984); *State v. Souto*, 578 N.W.2d 744, 747–748 (Minn. 1988). Our review satisfies us that the totality of the circumstances presented in the warrant affidavit gave the district court a substantial basis to conclude that there was probable cause that deputies would find Victim's stolen trailer in Boyd's driveway.

First, the information in the affidavit obviously linked Boyd's driveway to the stolen trailer. The deputy's corroborating, direct observation of the trailer, standing on Victim's description of the trailer, meant that Victim's stolen trailer was likely sitting in Boyd's driveway. The affidavit drew this connection and described the basis for the deputy's knowledge.

We are not persuaded otherwise by Boyd's suggestion that the information linking the stolen trailer to his residence was unreliable because the affidavit never established Observer's credibility. The suggestion does have some basis, because the affidavit merely implies that Observer's knowledge arose from his personal observations; Boyd correctly notices that the affidavit does not expressly describe Observer's basis of knowledge. To the extent the district court had a justifiable basis to infer that Observer's knowledge arose from his personal observations, its reliance on his observations is sound because district courts can presume that information from a civilian witness is credible. *State v. Harris*, 589 N.W.2d 782, 789 (Minn. 1999). This is especially so when the witness is apparently merely a concerned citizen. *See State v. McGrath*, 706 N.W.2d 532, 540 (Minn. App. 2005)

(recognizing that a concerned citizen “acts with an intent to aid law enforcement out of concern for society or for personal safety” and is generally reliable), *review denied* (Minn. Feb. 22, 2006). But we can assume for the purposes of this opinion that the district court could not properly rest its decision on the inference. This is because the affidavit plainly provides the deputy’s basis of knowledge. And we are not moved by Boyd’s effort to discredit Deputy Dzieweczynski’s corroboration of the Victim’s report based on the deputy’s identifying only the type of trailer and its color. Even minimal corroboration of a witness’s information may be sufficient. *State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985). And in this case, the deputy’s observations are more than corroborative; they represent his own details linking Boyd’s driveway and the reported stolen trailer. The affidavit’s description of the deputy’s observations was enough to allow the issuing judge to issue the warrant.

Second, not only did Boyd have the opportunity to conceal the stolen trailer, the deputy’s observations also strongly suggested that Boyd in fact had taken steps to conceal it. Facts supporting this suspicion include the partial spray-painting and the partial covering of the trailer with a tarp. The conduct implies guilt, and this factor supports the warrant.

Third, the district court could infer that Boyd would keep stolen items on the property. Although a defendant’s arrest record cannot alone support a probable-cause determination, an issuing judge may consider a suspect’s criminal history as part of the totality of the circumstances. *See State v. Holiday*, 749 N.W.2d 833, 844 (Minn. App. 2008). That the affiant knew that Boyd had a history of receiving and concealing stolen property at his home supports the probable-cause decision.

Fourth, the district court could infer that Boyd intentionally avoided contact with the deputy immediately after the deputy saw Boyd near the trailer. Boyd reasonably argues that his conduct “cannot support a *sole* inference of flight from apprehension.” (Emphasis added.) That Boyd’s conduct might support some inference *other than* his fleeing or avoiding contact with police is immaterial to the fact that it can also support the inference of his fleeing or avoiding contact with police. And this in turn implies guilt.

On balance, the circumstances embodied in the affidavit readily support the issuing judge’s probable-cause decision underlying the warrant. Because the affidavit supports the decision to issue the warrant, challenging the warrant as unconstitutional would have been a losing proposition. That Boyd’s trial counsel did not make the proposition on Boyd’s behalf therefore did not constitute ineffective assistance. The district court properly rejected Boyd’s postconviction petition. Boyd also submitted a separate, supplemental brief with his appellate counsel’s brief, but we will not consider the separate brief because it includes no discernable argument on any point of law.

Affirmed.