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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0499**

State of Minnesota,
Respondent,

vs.

Jeron Demar Faulkner,
Appellant.

**Filed February 18, 2020
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-17-10173

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

JESSON, Judge

After a police officer observed heavy foot and vehicle traffic around appellant Jeron Demar Faulkner's residence and discovered drug paraphernalia in his trash, he applied for

a warrant to search Faulkner's home. A district court judge issued the warrant, and police discovered ammunition and drugs in Faulkner's home. Now Faulkner challenges the validity of that search warrant. Because probable cause supported the warrant, we affirm.

FACTS

In March 2017, a Minneapolis police officer was conducting an unrelated narcotics investigation near appellant Jeron Demar Faulkner's house. During that investigation, which involved much surveillance, the officer observed a significant amount of foot and vehicle traffic around Faulkner's home. According to the officer, individuals would arrive, enter Faulkner's home, and leave a few minutes later.

Based on these observations, the officer researched the home's address in a database and learned that Faulkner was the current resident. A review of Faulkner's criminal history revealed previous felony convictions for second-degree possession of a controlled substance and being a prohibited person in possession of a firearm.

After learning this information—and sometime in the 72 hours before he applied for a warrant—the officer searched through the garbage in a container outside Faulkner's house. The trash pull revealed the following items: several marijuana stems, baggies, a box of baking soda, a marijuana end, and mailings addressed to Faulkner.

The officer then applied for a warrant to search Faulkner's house, believing that narcotics were being sold or stored at the residence. In the search-warrant affidavit, the officer outlined his training and experience, which included conducting narcotics-related investigations and working as a task-force officer with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for four years. The officer also described his observations

and the results of the garbage search. A judge issued the search warrant, finding that probable cause existed.

Eight days later, police searched Faulkner's house. During the search, the officers found a 45-caliber magazine with ammunition, a plastic case containing narcotics, a shoe box containing suspected marijuana, a digital scale, \$280 in cash, and mailings addressed to Faulkner. Based on the discovery of these items, the state charged Faulkner with one count of being a prohibited person in possession of ammunition and two counts of fifth-degree drug possession.

Before trial, Faulkner moved to suppress the evidence discovered during the search of his home, arguing that the search warrant lacked probable cause and relied on stale information. The district court denied Faulkner's motion. It reasoned that under the totality of the circumstances—which included the officer's training and experience, his observations of heavy foot and vehicle traffic, Faulkner's criminal record, and the evidence found during the garbage search—the facts in the search-warrant affidavit established probable cause. Additionally, the district court determined that the information relied on was not stale, pointing to indicia of ongoing criminal activity and the contraband discovered during the garbage search.

After the district court denied his motion to suppress, Faulkner's case proceeded to trial, where a jury found him guilty of all charges. The district court sentenced Faulkner to 60 months in prison for being a prohibited person in possession of ammunition and 21 months for one count of fifth-degree drug possession, to be served concurrently. Faulkner appeals.

DECISION

Faulkner argues that because the search warrant relied on a single trash pull, the warrant for his house was not supported by probable cause. Further, Faulkner maintains that the warrant was stale because it was executed at least eight days after the officer's observations and the garbage search. We address each argument in turn.

Evidence Supporting the Search Warrant

Faulkner claims that because the warrant relied on a single trash pull, probable cause was not established. Both the United States and Minnesota Constitutions provide 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) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). In reviewing a probable-cause determination, this court uses a “totality of the circumstances approach,” meaning that “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) (quotation omitted).

When determining whether probable cause supports the issuance of a search warrant, “our only consideration is whether the issuing judge had a substantial basis for concluding that probable cause existed.” *State v. Fawcett*, 884 N.W.2d 380, 384 (Minn. 2016) (quotation omitted). And the essential question for this court's review is “whether the totality of facts and circumstances described in the affidavit would justify a person of reasonable caution in believing that the items sought were located at the place to

be searched.” *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). In analyzing this question, “[o]ur review is limited to the information presented in the warrant application and supporting affidavit.” *Fawcett*, 884 N.W.2d at 384-85. And the task of the issuing judge “is to make a practical, common-sense decision.” *Yarbrough*, 841 N.W.2d at 622.

We turn to the search warrant application and affidavit, which contained several pieces of relevant information. First, the affidavit described the officer’s training and experience, including his 11 years as a police officer, four years serving as a task-force officer with the ATF, and his experience conducting narcotics-related investigations. Next, the officer described his observations of Faulkner’s home. These included “an enormous amount of foot and vehicle traffic,” involving individuals entering Faulkner’s residence and departing shortly after. Based on the officer’s training and experience, the traffic appeared related to drug sales.

The affidavit also detailed the officer’s research into Faulkner and his criminal history, including a prior conviction for second-degree drug possession. And the officer described items discovered in Faulkner’s garbage, including several marijuana stems, a marijuana end, drug baggies, a box of baking soda (commonly used to cut narcotics, according to the officer), and mailings bearing Faulkner’s name. The officer stated that “[t]he marijuana field tested positive.”

Based on this information, the district court judge found that probable cause existed and issued the warrant. We agree. The officer’s affidavit described incriminating evidence found in Faulkner’s trash, including several marijuana stems and a marijuana end. And

“[c]ontraband seized from a garbage search can provide an independent and substantial basis for a probable-cause determination.” *State v. McGrath*, 706 N.W.2d 532, 543 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Accordingly, the items discovered during the trash search *alone* could have supported the judge’s finding of probable cause. But in addition to those items, the officer’s affidavit detailed specific observations and explained how his training and experience led him to believe that the abnormal amount of foot and vehicle traffic was related to narcotics. *See State v. Krech*, 399 N.W.2d 203, 206 (Minn. App. 1987) (identifying “incessant traffic of brief visits” as “very significant” when determining whether probable cause existed), *aff’d as modified*, 403 N.W.2d 634 (Minn. 1987). When considering the information contained in the warrant application and the supporting affidavit, the totality of the circumstances supports the conclusion that “a fair probability” existed that contraband would be found in Faulkner’s house. *See Yarbrough*, 841 N.W.2d at 622. Accordingly, the issuing judge had a substantial basis to conclude that the facts provided in the warrant affidavit established probable cause.

Staleness of Information

Faulkner also contends that the search warrant lacked probable cause when it was executed because it was based on stale information. A “delay in executing a search warrant raises two issues: (1) did the delay violate statutes, and (2) did the delay cause the search to become unconstitutional?” *State v. King*, 690 N.W.2d 397, 401 (Minn. App. 2005), *review denied* (Minn. Mar. 29, 2005). In Minnesota, the relevant statute allows police officers ten days to execute a search warrant. Minn. Stat. § 626.15(a) (2016). Here, police

executed the warrant within the 10-day statutory timeframe, so no statutory violation occurred.

The more difficult question becomes “whether the delayed execution constituted a constitutional violation.” *King*, 690 N.W.2d at 401. “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).

But “[c]ourts have refused to set arbitrary time limits or to establish a rigid formula in making the determination of whether probable cause underlying a search warrant has grown stale.” *King*, 609 N.W.2d at 401. Rather, courts take an approach of common sense and flexibility, considering the circumstances of each case. *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *review denied* (Minn. Jan. 14, 1985). The Minnesota Supreme Court has identified four factors to consider when evaluating the staleness of information: (1) any indications of ongoing criminal activity, (2) whether the items sought are incriminating or innocuous, (3) whether the items are easily disposable or transferable, and (4) whether the items are of enduring utility. *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998). And “[w]hen an activity is of an ongoing, protracted nature, the passage of time is less significant.” *Id.*

Here, the district court concluded that the information supporting the warrant was not stale when police searched Faulkner’s home. In reaching this conclusion, the district court noted that the most significant factor was the indication of ongoing criminal activity

at Faulkner's residence. As explained by the district court, the officer observed suspicious activity he believed indicated narcotics trafficking on several occasions spanning multiple weeks. And the incriminating nature of the items found in Faulkner's trash supported this suspicion. Based on these indications of ongoing criminal activity and the incriminating nature of the evidence found during the garbage search, the district court determined that executing the search warrant eight days after its issuance was constitutional.

The district court's conclusion is sound. The affidavit supporting the warrant application explained that, over several weeks, the officer observed "an enormous amount of foot and vehicle traffic" that appeared to be related to drugs. This supports the conclusion that ongoing criminal activity may have been occurring at Faulkner's house. Further, the discovery of incriminating evidence in Faulkner's trash lends even more support to the officer's assertion that criminal activity at Faulkner's house was ongoing. In addition to the overtly criminal items discovered, the officer noted that other seemingly innocuous items, like the box of baking soda, can be involved with illegal activity. Because the officer's observations and the evidence found during the garbage search indicate that there may have been ongoing criminal activity at Faulkner's, the passage of time between the issuance of the warrant and its execution is less significant. *See Souto*, 578 at 750.

Still, Faulkner contends that there was no reliable evidence of ongoing criminal activity. In support, he notes "that absent additional facts tending to show otherwise, a one-shot type of crime, such as a single instance of possession or sale of some form of contraband, will support a finding of probable cause only for a few days at best." *State v. Cavegn*, 356 N.W.2d 671, 673 (Minn. 1984). But although only one garbage

search occurred, the officer observed “an enormous amount” of suspicious foot and vehicle traffic near Faulkner’s home “over the course of several weeks.” And appellate courts have upheld multi-day delays in executing search warrants when the provided facts establish probable cause to show the repeated sale of drugs. *Id.* (concluding that probable cause was not stale when a search warrant stated that a controlled buy occurred “within the past week”); *see also Yaritz*, 287 N.W.2d at 17 (six-day delay between issuance of warrant and execution was reasonable based on information of drug sales); *King*, 690 N.W.2d at 399, 401-02 (concluding that a seven-day delay between issuance of search warrant and its execution did not make probable cause unconstitutionally stale).

In sum, the information supporting the search warrant was not unconstitutionally stale when police searched Faulkner’s home. And because probable cause supported the warrant, we conclude that the district court properly denied Faulkner’s motion to suppress evidence discovered in his home.

Affirmed.