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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1594

State of Minnesota,
Appellant,

vs.

Angela Joy Derstine,
Respondent.

Filed February 10, 2020
Reversed and remanded
Smith, John, Judge[*]

Clay County District Court
File No. 14-CR-19-2297

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

Brian J. Melton, Clay County Attorney, Tara B. Nagel, Assistant County Attorney, Moorhead, Minnesota (for appellant)

Brian P. Toay, Wold Johnson P.C., Fargo, North Dakota (for respondent)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Smith, John, Judge.

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

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse the district court's order suppressing evidence and dismissing charges against respondent, Angela Joy Derstine, because: 1) the district court erred in applying the protections of the "Good Samaritan Law," Minn. Stat. § 604A.05 (2018); and 2) the information in the search warrant established a substantial basis to support the issuing judge's probable cause determination. We remand for further proceedings.

FACTS

The state charged respondent Angela Joy Derstine with fifth-degree drug possession under Minn. Stat. § 152.025, subd. 2(1) (2018). The complaint alleged that law enforcement executed a search warrant at a mobile home (the residence) and found Derstine and S.K. there. Law enforcement found "numerous bags of methamphetamine packaged for sale, cash, drug paraphernalia [and] marijuana." The total weight of the methamphetamine, which was found in S.K.'s bedroom, was 132.8 grams. There were eight tablets of a schedule IV controlled substance (Clonazepam) in Derstine's purse, and Derstine admitted to police that she had been regularly purchasing methamphetamine from S.K. The state charged Derstine with possession of the Clonazepam.

Derstine filed a motion to suppress the fruits of the search conducted pursuant to the warrant referenced in the complaint and to dismiss the charge against her. Derstine argued that the circumstances described in the warrant application did not establish probable cause to search the residence. She also argued that some information in the warrant affidavit—specifically, information relating to an April 2019 medical call related to a drug overdose—

should not have been included because it falls within the immunity protection outlined in Minn. Stat. § 604A.05. Derstine maintained that if that information were properly excised from the warrant affidavit, the affidavit would not establish probable cause. The state argued that it was not improper for law enforcement to use the information and that the affidavit established probable cause to search the residence.

The warrant affidavit included information about suspected drug activity of persons connected to the residence, and a search of garbage set out for collection near the residence that revealed drug paraphernalia with drug residue, and the suspected drug activity of a third person who had arranged to deliver methamphetamine to a police informant. At the time that the person had agreed to deliver methamphetamine to the police informant, a third person was driving a vehicle that had been seen outside the residence, but the third person was arrested before any transaction took place.

The information that Derstine alleged to be improperly included in the warrant affidavit concerned a previous incident at the residence in April 2019 when police had responded to the residence regarding a drug overdose. The victim admitted to overdosing on narcotics. S.K. told police that the victim uses methamphetamine daily. Police learned that the owner of the residence allowed S.K. to live there. Police observed "in plain view on a shelf inside the [residence] a clear plastic coin sized zipseal bag with a small white crystal consistent with methamphetamine." The warrant applicant did not specify whether the substance was ever chemically tested.

The district court granted Derstine's motion to suppress and dismiss. The district court concluded that Minn. Stat. § 604A.05 precluded law enforcement from including

information about the April 2019 incident in their search warrant affidavit. Setting aside this information, the district court determined that the affidavit lacked information to establish probable cause for the search, and it consequently suppressed the evidence and dismissed the charge against Derstine.

D E C I S I O N

The state argues that the district court erred in concluding that Minn. Stat. § 604A.05 precluded law enforcement from including the information about the April 2019 overdose in the warrant affidavit that led to the search and charges against Derstine. The state also argues that the district court erred in determining that the warrant affidavit failed to establish probable cause.

As a preliminary matter, in an appeal by the state of a pretrial order, this court will reverse only if the state "demonstrates clearly and equivocally that the district court erred in its judgment and, unless reversed, the error will have a critical impact on the outcome of the trial." *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001), *review dismissed* (Minn. June 22, 2001). "Dismissal of a complaint satisfies the critical impact requirement." *Id.* Because the district court suppressed the evidence that formed the basis of the charge against Derstine and then dismissed the charge for lack of probable cause, this appeal meets the critical impact test. *See State v. Mike*, 919 N.W.2d 103, 107 (Minn. App. 2018) (indicating that the critical impact requirement was met where the district court suppressed critical evidence and then dismissed the complaint for lack of probable cause), *review denied* (Minn. Aug. 20, 2019).

I. The district court erred in determining that the information learned in the overdose incident was improperly included in the warrant affidavit.

The state first argues that the district court erred in determining that Minn. Stat. § 604A.05 precluded law enforcement from using the information learned through the April 2019 overdose incident in applying for a warrant to search the residence, and erred in determining that the validity of the warrant should be analyzed without consideration of the information at issue. We must interpret Minn. Stat. § 604A.05. We interpret a statute de novo. *Dupey v. State*, 868 N.W.2d 36, 39 (Minn. 2015). An appellate court's goal in interpreting a statute is to "ascertain and effectuate the intention of the legislature." *Id.* (quoting Minn. Stat. § 645.16 (2014)). "The first step is to examine the language of the statute to determine if it is ambiguous." *Id.* "If the statutory language is unambiguous, we must enforce the plain meaning of the statute and not explore the spirit or purpose of the law." *Id.* "But if the statutory language is ambiguous, we may look beyond the language of the statute to ascertain the Legislature's intent." *Id.*

At issue in this appeal are subdivisions one and four of section 604A.05:

> **Subdivision 1. Person seeking medical assistance; immunity from prosecution.** A person acting in good faith who seeks medical assistance for another person who is experiencing a drug-related overdose may not be charged or prosecuted for the possession, sharing, or use of a controlled substance under section 152.023, subdivision 2, clauses (4) and (6), 152.024, or 125.025, or possession of drug paraphernalia. A person qualifies for the immunities provided in this subdivision only if:
>
> > (1) the evidence for the charge or prosecution was obtained as a result of the person's seeking medical assistance for another person; and

> (2) the person seeks medical assistance for another person who is in need of medical assistance for an immediate health or safety concern, provided that the person who seeks the medical assistance is the first person to seek the assistance, provides a name and contact information, remains on the scene until assistance arrives or is provided, and cooperates with the authorities.
>
> Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.
>
> . . . .

Subd. 4. Effect on other criminal prosecutions.

(a) The act of providing first aid or other medical assistance to someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided.

(b) Nothing in this section shall:

> (1) be construed to bar the admissibility of any evidence obtained in connection with the investigation and prosecution of other crimes or violations committed by a person who otherwise qualifies for limited immunity under this section;
>
> (2) preclude prosecution of a person on the basis of evidence obtained from an independent source;
>
> (3) be construed to limit, modify, or remove any immunity from liability currently available to public entities, public employees by law, or prosecutors; or
>
> (4) prevent probation officers from conducting drug testing of persons on pretrial release,

> probation, furlough, supervised release, or parole.

The parties offer competing interpretations of section 604A.05. The state contends that the statute is unambiguous and does not preclude law enforcement from using information learned while responding to an overdose-emergency call to obtain a search warrant. The state also maintains that the immunity provided by section 604A.05 does not extend to Derstine because she was not a "person seeking medical assistance," as she was not involved in the overdose incident. Derstine argues that because the statute provides that the immunity prevents the person seeking medical assistance from being "charged *or prosecuted*" for certain crimes, that the legislature intended to prevent law enforcement from using information gained in an overdose-emergency call in any investigation.

We hold that the statute is unambiguous regarding the scope of immunity related to information learned in a drug-related overdose incident. Section 604A.05 provides immunity only to "[a] person acting in good faith who seeks medical assistance for another person who is experiencing a drug-related overdose." The statute also protects only that specific person against certain specified charges if the "evidence for the charge or prosecution was obtained as a result of the person's seeking medical assistance for another person." Minn. Stat. § 604A.05, subd. 1. Notably, the immunity protects against charges or prosecution only for the "possession, sharing, or use of a controlled substance under section 152.023, subdivision 2, clauses (4) and (6), 152.024, or 152.025, or possession of drug paraphernalia." *Id.* The statute does not afford immunity for any other crimes, and it allows charges and prosecution—even against the person seeking medical assistance—for

first-degree controlled-substance crime under Minn. Stat. § 152.021 (2018), second-degree controlled-substance crime under Minn. Stat. § 152.022 (2018), and any degree of controlled-substance sale so long as the charges or prosecution are not for "sharing" a controlled substance. Thus, the statute grants immunity only to a specific person against being charged or prosecuted for specific crimes—provided that the evidence supporting the charge was obtained "as a result of" the overdose call. The statute does not prevent law enforcement officers from investigating other crimes based on information they learn in the overdose incident that triggers this immunity.

Derstine argues that the word "prosecution" is broad enough to include any form of investigation and that, consequently, the statute precludes law enforcement from using the information to obtain a search warrant aimed at discovering evidence of a crime. Thus, she argues, law enforcement violated the statute's grant of immunity to S.K. by seeking a warrant to search the residence based on the suspected methamphetamine observed during the overdose incident. We are not persuaded. The statute leaves open the possibility that even the person entitled to immunity may be charged with a controlled-substance crime for substances discovered during the overdose incident. Moreover, the statute specifically indicates that it should not "be construed to bar the admissibility of any evidence obtained in connection with *the investigation* and prosecution of other crimes or violations committed by a person who otherwise qualifies for limited immunity under this section." Minn. Stat. § 604A.05, subd. 4(b)(1) (emphasis added). Given that the legislature used the words "investigation" and "prosecution" in the statute, we conclude that the term "prosecuted" used in the phrase "charged or prosecuted" is not so broad as to preclude

officers from relying on their observations during an overdose incident in investigating other crimes. *See Dereje v. State*, 837 N.W.2d 714, 720 (Minn. 2013) (indicating that "when different words are used in the same context, we assume that the words have different meanings").

Because Minn. Stat. § 604A.05 does not preclude law enforcement from using information learned in an overdose-related call to investigate other crimes, we conclude that the district court erred when it determined that the warrant affidavit improperly incorporated the overdose-incident information.

II. The district court erred by suppressing evidence obtained through the execution of the warrant and by dismissing the charge against Derstine.

The state next argues that the district court erred in concluding that the warrant affidavit did not establish probable cause. In evaluating the warrant affidavit, the district court excised the information stemming from the overdose incident and concluded that the remaining information was insufficient to support the issuing judge's probable cause determination. Because we have concluded that it was error to excise the information, we review the warrant in its entirety to determine probable cause. Even so, Derstine maintains that the warrant affidavit, even including the information relating to the overdose incident, was insufficient to support probable cause.

The United States and the Minnesota Constitutions 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 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).

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 depends on 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). "Marginal or doubtful cases should be resolved by the preference for warrants." *State v. Papadakis*, 643 N.W.2d 349, 355 (Minn. App. 2002).

Here, the warrant affidavit included the following information: (1) law enforcement suspected that the owner of the residence was supplying methamphetamine; (2) another

person who was a “known source for large amounts of methamphetamine” was “set to deliver” methamphetamine to a police informant; (3) he was seen driving a silver vehicle at the time that he was purportedly going to deliver the methamphetamine; (3) the same silver vehicle was observed parked outside the residence; (4) this person was arrested after attempting to flee in the silver vehicle and then on foot; (5) law enforcement searched five garbage bags placed outside near the residence for regular trash collection; (6) in one of the bags, law enforcement found methamphetamine residue on a small plastic box and on a small plastic bag that is commonly used to package and distribute controlled substances, tubes of marijuana vapor product, and paraphernalia used to inject controlled substances; (7) in another bag, law enforcement found a receipt with the owner of the residence’s name printed on it; (8) in other bags, law enforcement found items of mail addressed to S.K. at various North Dakota addresses and an item of mail addressed to another woman at a nearby address; (9) law enforcement had seen someone who was consistent in appearance with this other woman at the residence with S.K.; (10) law enforcement responded to a drug-overdose call at the residence in which the overdose victim admitted to overdosing on a controlled substance; and (11) while responding to the overdose call, police observed a clear plastic bag that contained a small white crystal that was consistent with methamphetamine.

We conclude that the affidavit is sufficient to establish a substantial basis from which the issuing judge could find probable cause. The evidence discovered in the garbage search and during the overdose call are particularly persuasive in establishing a substantial basis to support probable cause. This court has stated that “[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); *see also Papadakis*, 643 N.W.2d at 356 (concluding that a trash can search that uncovered cocaine residue and drug paraphernalia "provided an independent and substantial basis for the district court's probable cause determination"); *State v. Botelho*, 638 N.W.2d 770, 777 (Minn. App. 2002) (concluding that cocaine residue and the appellant's personal effects found in trash "independently corroborated the officer's suspicion that drugs were present in the appellant's residence"). Thus, the methamphetamine residue and drug paraphernalia discovered in the garbage outside the residence is strong evidence that controlled substances would be found inside the residence. The direct observation of suspected methamphetamine at the residence further bolsters the inference that there was ongoing possession of methamphetamine at the residence.

Derstine argues that the connection between the residence and the drug evidence found in the garbage is weak and that the information relating to the methamphetamine observed during the overdose call was stale. Derstine relies on the indication that the garbage bags were "near" the residence (and not "at" the residence), and that law enforcement discovered a letter addressed to another woman at a nearby address in one of the bags. But the warrant affidavit indicated that law enforcement also found a receipt listing the owner of the residence in one of the bags, law enforcement found letters addressed to S.K. (who was known to stay at the residence) in another bag, and law enforcement observed a person who appeared to be the other woman at the residence. Moreover, law enforcement knew that a drug overdose had occurred at the residence; that

the overdose victim used methamphetamine daily; and that methamphetamine was observed inside the residence during the overdose call. Considering the affidavit in totality, we conclude that the issuing judge could reasonably infer that it was likely that the methamphetamine discovered in the garbage search was connected to the residence.

We are also convinced that the information supporting the issuing judge's probable cause determination was not stale. "The proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998) (quotation omitted). "Factors relating to staleness 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." *Id.* The overdose incident occurred six weeks before law enforcement applied for the search warrant. If the warrant application had been based only on the overdose-incident information, the facts may have been too stale to support a finding of probable cause. But here, there was other information to support the warrant. Notably, the garbage search that revealed methamphetamine residue and drug paraphernalia provided an "indication of ongoing criminal activity"—possession of methamphetamine. The garbage search occurred only two days before the warrant was issued. The information supporting the issuing judge's probable cause determination was not stale.

Giving great deference to the issuing judge's probable cause determination, we conclude that the warrant affidavit established a substantial basis to support a finding of probable cause. The district court erred by determining that the warrant lacked sufficient

support, by suppressing evidence obtained as a result of the warrant, and by dismissing the charge against Derstine. Consequently, we reverse the district court's dismissal of the charge and suppression of the evidence and remand for further proceedings.

Reversed and remanded.