STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1102

State of Minnesota,
Respondent,

vs.

Luis Enrique Leal,
Appellant.

Filed August 16, 2021
Affirmed
Gaïtas, Judge

Chippewa County District Court
File No. 12-CR-20-25

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

Matthew Haugen, Chippewa County Attorney, Christopher Reisdorfer, Assistant County Attorney, Montevideo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Christine W. Chambers, Special Assistant Public Defender, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Worke, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Luis Enrique Leal appeals his conviction for first-degree drug possession, arguing that the district court erroneously denied his motion to suppress the evidence that

police found in his home while executing a search warrant. He contends that the search violated his constitutional rights because the search-warrant application did not support a finding of probable cause for the search. Because the search-warrant application established a fair probability that Leal's home would contain evidence of criminal activity, there was no constitutional violation. We affirm.

FACTS

On January 7, 2020, a detective with the Pine to Prairie Drug Task Force arrested an individual for possessing a controlled substance. The individual agreed to cooperate with the detective by revealing the source of the drugs, thereby becoming a "cooperating defendant" (CD). The CD identified the source as Luis Leal, whose nickname is "Leo." The CD also provided Leal's home address. According to the CD, on January 5, 2020, the CD entered Leal's home and saw a large quantity of heroin there. In addition to supplying this information, the CD showed the detective a text message exchange on the CD's phone between the CD and a number that the CD said was Leal's. During the exchange, the CD discussed sending money to Leal through Western Union. The CD told the detective that the money discussed in the texts was owed to Leal for drugs.

The detective confirmed through department of motor vehicles (DMV) records that the address provided by the CD was Leal's home address. He also matched Leal's photo from DMV records with photos of Leal that the CD provided, which were stored on the CD's phone and social media. The detective then contacted another drug task force, the CEE-VI Drug Task Force, to pass on the information from the CD.

A second detective, a member of the CEE-VI Drug Task force, verified that the cellphone number in the CD's text messages was registered to Leal. He also discovered that Leal had a 2015 conviction for a first-degree controlled substance offense. On January 8, 2020, the second detective drafted a search-warrant application containing the CD's allegations, the independent investigation performed, and a statement that, in his experience, it was "common for drug dealers to receive payments for controlled substances through Western Union money grams." A judge reviewed the search-warrant application and issued a search warrant for Leal's residence.

On January 9, 2020, the CEE-VI Drug Task Force executed the search warrant at Leal's home. They found over 23 grams of cocaine, 25.6 grams of marijuana, 400.5 grams of heroin, about $1,300 in cash, torn money-gram receipts in a garbage can, a notebook with a ledger that listed names and contact information, and a variety of drug paraphernalia. Leal was present in the home at the time of the search and subsequently arrested. Based on the items found, respondent State of Minnesota charged Leal with one count of first-degree sale of a controlled substance (heroin), Minn. Stat. § 152.021, subd. 1(3) (2018), and one count of first-degree possession of a controlled substance (heroin), Minn. Stat. § 152.021, subd. 2(a)(3) (2018). The state also gave notice of its intent to seek an aggravated sentence.

Leal moved to suppress the evidence seized from his residence. He argued to the district court that the search-warrant application failed to establish probable cause for the search of his home and, therefore, the search violated his constitutional rights. Leal asked

the district court to exclude all of the evidence found as a remedy for the constitutional violation. In a written order, the district court denied Leal's motion to suppress.[1]

Leal waived his right to a jury trial, and the state agreed to dismiss the first-degree-sale charge and withdraw its request for an aggravated sentence. To preserve his constitutional challenge to the search warrant for appeal, Leal had a stipulated facts court trial under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. The district court found Leal guilty of first-degree possession of a controlled substance and sentenced him to 126 months in prison.

Leal appeals.

DECISION

In this appeal, Leal asks us to reverse the district court's order denying his motion to suppress the state's evidence. He argues that the district court erred by concluding that the search-warrant application established probable cause for the search of his home. Leal contends that the request for a search warrant was primarily based on the claims of an unreliable informant—the CD, who had a motive to fabricate the truth. Additionally, he asserts that his 2015 drug conviction was too remote to salvage the otherwise inadequate search-warrant application.

[1] In addition to challenging the sufficiency of the allegations in the search-warrant application, Leal moved for a *Franks* hearing. *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676 (1978) (permitting challenges to the validity of a search-warrant affidavit in a pretrial hearing when a defendant alleges and can offer proof of deliberate falsehood or reckless disregard for the truth in the affidavit). The district court determined that Leal failed to make a sufficient showing to warrant a *Franks* hearing. Leal does not challenge that decision on appeal.

"When reviewing pretrial orders on motions to suppress evidence, [appellate courts] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). In a challenge to the validity of a search warrant, an appellate court gives "great deference" to the determination of the issuing judge that there was probable cause for the search. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). The precise question before the reviewing court is "whether the issuing judge had a substantial basis for concluding that probable cause existed." *Id.* When considering this question, a court should not review the individual components of the search-warrant application in a hyper-technical fashion, but should consider whether the totality of the allegations established probable cause. *See State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). Our review is limited to the "four corners of the document"; we do not consider information outside of the search-warrant application in determining whether there was probable cause. *See State v. McGrath*, 706 N.W.2d 532, 539-40 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006).

Before we apply our standard of review to address the search warrant here, we briefly outline the law concerning search warrants. The Fourth Amendment to the United States Constitution provides that "no Warrant shall issue, but on probable cause, supported by oath or affirmation." U.S. Const. amend. IV. Our state constitution likewise requires probable cause for a search warrant. Minn. Const. art. I, § 10. The probable-cause requirement is intended to safeguard citizens from rash and unfounded invasions of privacy

and from unsubstantiated criminal charges. *Brinegar v. United States*, 388 U.S. 160, 176, 69 S. Ct. 1302, 1311 (1949).

The Fourth Amendment specifically protects the sanctity of the home—"physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585-86, 100 S. Ct. 1371, 1379-80 (1980) (quoting *United States v. United States District Court*, 407 U.S. 297, 313, 92 S. Ct. 2125, 2134 (1972)). The right to be secure in one's own home is a fundamental right. *See Payton*, 445 U.S. at 589-90, 100 S. Ct. at 1381-82.

Given the significance of this right, the privacy of the home should only be invaded if the police have a warrant issued by a neutral judge upon a finding of probable cause. *See State v. Nolting*, 254 N.W.2d 340, 343 (Minn. 1977). The task of a judge considering a search-warrant application is "to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983); *see also Wiley*, 366 N.W.2d at 268 (applying this precept from *Gates*). The issuing judge should examine the "totality of the circumstances" to determine if there is probable cause to believe it is more likely than not that the items sought will be found in the place to be searched. *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332; *see generally* 2 Wayne R. LaFave, Search and Seizure, § 3.2(e) (4th ed.). "Elements bearing on this probability include information linking the crime to the place to be searched and the freshness of the information." *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998).

In deciding whether there is probable cause to authorize a search, the issuing judge can consider information provided by informants. *See State v. Holiday*, 749 N.W.2d 833, 840 (Minn. App. 2008). But the judge cannot presume an informant's reliability. *State v. Siegfried*, 274 N.W.2d 113, 114 (Minn. 1978). Instead, the search-warrant application must supply information that allows the judge to independently assess the informant's credibility. *Id.* The judge reviewing this information should consider both the informant's basis of knowledge and veracity. *See Souto*, 578 N.W.2d at 750. Courts have delineated several principles bearing on the reliability of information provided by confidential informants—informants whose identity has been withheld. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). A "first-time citizen informant" can be presumed reliable so long as the search-warrant application avers that this informant has no criminal history. *Id.* When an informant has provided verified information in the past, the informant is considered more reliable. *Id.* An informant's reliability can be established if the police can corroborate the information provided. *Id.* (citing *Wiley*, 366 N.W.2d at 269). Informants who voluntarily come forward are presumably more reliable than informants whose cooperation is compelled. *Id.* (citing *State v. Gabbert*, 411 N.W.2d 209, 213 (Minn. App. 1987)). And an informant is considered slightly more reliable if the informant makes a statement against the informant's interests. *Id.* (citing *State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990)).

Other circumstances can also enhance the reliability of an informant's allegations. For example, an informant's "personal, first-hand basis of knowledge" may enhance

credibility. *Holiday*, 749 N.W.2d at 840. And an informant's information is more reliable if it is based on recent observation. *Wiley*, 366 N.W.2d at 269.

Against this legal backdrop, we consider Leal's arguments regarding the sufficiency of the allegations in the search-warrant application in his case.

A. The district court did not err in concluding that the search-warrant application established the CD's reliability.

Leal first attacks the reliability of the CD—the informant who supplied police with much of the information in the search-warrant application. He argues that the CD was not sufficiently trustworthy to establish probable cause for the search. Leal contends that the CD's own criminal charges provided a significant motive to falsely incriminate others, making the CD inherently unreliable. He also points out that most of the CD's information was available to the public and easily accessible, undercutting its reliability. According to Leal, the CD's allegations were therefore too unreliable to support a probable-cause finding.

We initially address the CD's status as an individual charged with a crime. During oral argument, Leal's counsel focused on the informant's status as a cooperating criminal defendant, arguing that this factor made the CD much more likely to lie than a garden-variety informant. The law recognizes that a citizen informant or an informant who voluntarily approaches police may be more reliable than other informants. *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004); *Ward*, 580 N.W.2d at 71. But the fact that an informant has been charged is not a per se basis for finding the CD unreliable. *See McCloskey*, 453 N.W.2d at 703-04. A judge presented with a search-warrant application

may consider all circumstances bearing on an informant's credibility. *Id.* The CD's status as a criminal defendant was certainly a factor in the equation. But the issuing judge also was entitled to consider any other facts relevant to the CD's reliability.

The district court's suppression order identified two such facts—the CD made a statement against interest and the police corroborated much of the CD's information. Leal maintains, however, that neither of these were sufficient to establish the trustworthiness of the CD's allegations.

First, Leal challenges the district court's determination that the CD's statement to the police was a statement against interest. He notes that when the CD admitted to purchasing drugs from Leal, the CD had already been arrested for drug possession. Thus, he argues, the CD's admission to buying drugs was not truly a statement against interest.

The CD's statement may not have been particularly valuable to police given other evidence implicating the CD. But the statement was nonetheless an implicit admission of guilt, which made it a statement against the CD's interest. And "[t]he mere fact that the statement was in some way against the informant's interest is of some minimal relevance in a totality-of-the-circumstances analysis of probable cause." *McCloskey*, 453 N.W.2d at 704. Thus, the district court did not err in considering the CD's admission as a fact bearing on the CD's reliability.

Second, Leal contends that the district court improperly relied on police corroboration of the CD's information to find the CD reliable. According to Leal, the information that corroborated the CD's allegations was in public records and could have

been easily obtained by anyone without special knowledge. Therefore, he argues, the corroborating information was not probative of the CD's reliability.

Leal cites our decision in *State v. Albrecht*, in support of this argument. 465 N.W.2d 107 (Minn. App. 1991). In *Albrecht*, we affirmed the district court's determination that a search-warrant application failed to establish probable cause because the only evidence corroborating the anonymous informant's tip was the suspect's address and ownership of a vehicle parked in the driveway of that address. *Id.* at 108-09. We concluded that "such corroboration without more, is not sufficient to support a finding of probable cause." *Holiday*, 749 N.W.2d at 841 (quotation omitted) (explaining the holding in *Albrecht*).

Leal is correct that police corroborated some of the CD's allegations with information from public sources. But corroboration of even minor details can enhance the reliability of an informant's information. *Id.* And contrary to Leal's assertions, the search-warrant application described additional corroborating evidence that was not publicly available. A detective reviewed text messages on the CD's phone between the CD and a number confirmed to be Leal's phone. Those messages discussed money that the CD owed to Leal, which Leal wanted to receive via Western Union, a common method of paying for drug transactions. *See State v. Wiberg*, 296 N.W.2d 388, 396 (Minn. 1980) ("An informant's reliability on a particular occasion can also be established if the statements of the informant can be at least partially corroborated independently."). And the CD produced photos on the CD's phone of an individual matching Leal's DMV photo. Unlike *Albrecht*, the corroboration here was significant and specific to the drug-sale activity alleged by the CD.

Other circumstances also bolstered the CD's reliability. As noted by the district court, all of the CD's information was based on the CD's own personal observations. *See Holiday*, 749 N.W.2d at 840. Furthermore, the CD's information was fresh—the CD reported seeing heroin in Leal's home just two days before speaking to the detective. *See Wiley*, 366 N.W.2d at 269.

Given the facts in the search-warrant application, the issuing judge could reasonably find that the CD's information was sufficiently reliable to be included in the probable-cause determination. Likewise, the district court did not err in relying on the CD's information to conclude that there was probable cause for the search warrant.

B. The district court did not err in considering Leal's 2015 drug conviction in its probable-cause determination.

Leal also argues that the district court erred by considering his 2015 drug-sale conviction to determine that the search-warrant application established probable cause. He contends that the five-year-old conviction was too stale to support a finding of probable cause.

"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). But criminal records are "best used as corroborative information" and not as a basis for a probable cause finding. *Id.* (quotation omitted). Moreover, the older the conviction, the less reliable it is in establishing probable cause. *Id.*

In support of his argument that his prior conviction was stale, Leal cites *State v. Blacksten*, where the supreme court addressed a defendant's seven-year-old aggravated-

robbery conviction. 507 N.W.2d 842, 847 (Minn. 1993). *Blacksten* did not involve a search warrant, however. Rather, the supreme court considered whether police had probable cause to arrest the defendant for an aggravated robbery.[2] *Id.* Given the facts in *Blacksten*, where the only other evidence of the defendant's involvement in the robbery was his association with another individual arrested for the robbery, the supreme court held that the prior conviction was insufficient to provide probable cause for the arrest. *Id.* The supreme court noted that the conviction was not recent. *Id.* And the court also observed that the incident underlying the conviction was not sufficiently similar to the robbery under investigation. *Id.*

Blacksten does not help Leal's argument. Leal's prior conviction was not the only information suggesting that Leal was selling drugs. The search-warrant application provided additional facts suggesting that Leal's home would contain evidence of drug sales, including the CD's claim that Leal was the CD's source for drugs, the CD's statements about observing heroin in the home just two days earlier, and text messages from Leal requesting that money owed be paid via Western Union. And although the district court mentioned the 2015 conviction as a circumstance supporting the probable-cause determination, the conviction was not the focus of the district court's order. It was just one fact that the district court considered in conjunction with the other information in

[2] Probable cause for a search and probable cause to arrest involve different inquiries. "The test of probable cause to arrest is whether the objective facts are such that under the circumstances, a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed." *In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997).

the search-warrant application. We accordingly reject Leal's argument that, pursuant to *Blacksten*, the district court erred in considering the 2015 conviction because it was too old. Furthermore, we agree with the district court that the conviction had some probative value in the probable-cause determination.

C. The search warrant established probable cause for a search of Leal's home.

Finally, viewing the issuing judge's decision to authorize a search with the required deference, we conclude that the totality of the circumstances alleged in the search-warrant application provided a substantial basis to find probable cause for a search of Leal's home. *See Rochefort*, 631 N.W.2d at 804. Those circumstances established a fair probability that police would find evidence of a crime in the home. *See Wiley*, 366 N.W.2d at 268. Therefore, the district court did not err in denying Leal's motion to suppress the evidence.

Affirmed.