STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1700

State of Minnesota,
Respondent,

vs.

Johnnie Jones,
Appellant.

Filed November 21, 2022
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CR-20-16748

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

Michael O. Freeman, Hennepin County Attorney, Anna R. Light, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Tracy M. Smith, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Hennepin County judge found Johnnie Jones guilty of unlawful possession of a firearm based on evidence that he kept a nine-millimeter handgun in his bedroom despite being ineligible to possess a firearm. Jones challenges the district court's denial of his pre-

trial motion to suppress the evidence of the handgun. We conclude that the search warrant that authorized the search of Jones's home stated facts that established probable cause. Therefore, we affirm.

FACTS

In July 2020, Deputy Peterson of the Hennepin County Sheriff's Office was contacted by a confidential informant who previously had provided information that was found to be true and correct. On this occasion, the informant told Deputy Peterson that the informant had seen a firearm and crack cocaine at the Minneapolis home of a person later identified as Jones. The informant provided Deputy Peterson with a physical description of Jones and stated that Jones drives a Chevrolet Tahoe with a particular license-plate number.

Deputy Peterson independently determined that Jones resided at the home identified by the informant. Deputy Peterson showed the informant a photograph of Jones, and the informant confirmed that the photograph is of Jones. Deputy Peterson also showed the informant a photograph of the home where Jones resided, and the informant confirmed that the photograph is of the home where the informant saw Jones in possession of the firearm and crack cocaine. Deputy Peterson learned that Jones had a prior felony conviction that prohibited him from possessing a firearm.

Deputy Peterson applied to a district court judge for a warrant to enter and search Jones's home. The warrant application recited the information that the informant had provided, stated that the informant had assisted law enforcement in the past, and described

Deputy Peterson's corroboration of the informant's tip. The judge approved the application and issued the search warrant.

Law-enforcement officers executed the search warrant seven days later. Upon entering the home, officers made contact with four persons, including Jones. In an upstairs bedroom, which Jones had occupied, officers found a nine-millimeter handgun, a loaded nine-millimeter magazine, synthetic marijuana, and a digital scale.

The state charged Jones with one count of unlawful possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2019), and one count of fifth-degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subd. 2(1) (2018).

In July 2021, Jones moved to suppress the evidence arising from the search on the ground that the search warrant was not supported by probable cause. At a hearing on the motion, neither party presented any witness testimony, but both parties submitted memoranda of law concerning the validity of the search warrant. In August 2021, the district court denied the motion, reasoning that the warrant application stated facts that established the requisite probable cause.

In September 2021, the parties agreed to a stipulated-evidence court trial. *See* Minn. R. Crim. P. 26.01, subds. 3, 4. The district court found Jones guilty of the alleged firearm offense but not guilty of the alleged controlled-substance offense. The district court imposed an executed sentence of 60 months of imprisonment. Jones appeals.

DECISION

Jones argues that the district court erred by denying his motion to suppress evidence. He contends that the warrant application was not supported by probable cause and that the warrant was stale when it was executed.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV; *see also* 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.'" *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Whether probable cause exists is a "practical, common-sense decision" based on the totality of the circumstances. *Id.* at 622-23.

If there is a challenge to an issuing court's determination of probable cause, the reviewing court is limited to the information contained in the warrant application. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). The reviewing court "should afford the district court's determination great deference" and should consider only "whether the issuing judge had a substantial basis for concluding that probable cause existed." *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001); *see also Rugendorf v. United States*, 376 U.S. 528, 533 (1964). Because the issuing judge's determination should be based on the "totality of the circumstances," the reviewing court must be careful not to review each component of the

application in isolation. *Massachusetts v. Upton*, 466 U.S. 727, 732-33 (1984). The resolution of doubtful or marginal cases "'should be largely determined by the preference to be accorded to warrants.'" *Id.* at 734 (quoting *United States v. Ventresca*, 380 U.S. 102, 109 (1965)).

If the facts and circumstances establishing probable cause are supplied by a confidential informant, the "informant's 'veracity,' 'reliability,' and 'basis of knowledge' are all highly relevant in determining the value of his report." *Gates*, 462 U.S. at 230. These characteristics are not "entirely separate and independent requirements to be rigidly exacted in every case" but, rather, are "closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is 'probable cause.'" *Id.*

A.

In this case, the district court determined that the warrant application stated facts and circumstances that established probable cause. The district court reached its conclusion by reasoning that the informant's previous collaboration with law enforcement supported the informant's reliability, that the informant came forward voluntarily, that the informant provided information that could be self-inculpatory, and that the informant's tip was corroborated by Deputy Peterson.

Jones contends that the district court erred on the ground that the information in the application is too vague to support a finding of probable cause. Our review of the warrant application leads to the conclusion that, based on the totality of the circumstances, the issuing judge had a substantial basis for concluding that the warrant application was supported by probable cause. Three reasons support this conclusion.

First, the informant's veracity is established by the informant's previous collaboration with law enforcement. The prior occasions on which the informant worked with law enforcement were referenced in the warrant application. The informant's prior collaboration enhances the veracity of the tip because it puts the informant in "a position to be held accountable." *State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990); *see also State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985); *State v. Daniels*, 200 N.W.2d 403, 406-07 (Minn. 1972).

Second, the informant's basis of knowledge is demonstrated by the informant's first-hand knowledge of Jones's conduct. "Recent personal observation of incriminating conduct has traditionally been the preferred basis for an informant's knowledge." *Wiley*, 366 N.W.2d at 269. The warrant application stated that the informant had personally observed Jones in possession of a firearm in his own residence. The informant also provided Jones's home address, a description of Jones's vehicle by make and model and license-plate number, and a physical description of Jones. An informant's "statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case." *Gates*, 462 U.S. at 234.

Third, the reliability of the informant's tip is enhanced by Deputy Peterson's corroboration of the details provided by the informant. Deputy Peterson corroborated multiple details of the informant's tip, including the physical description of Jones, the fact that Jones resided in the residence where the informant had observed the firearm, and the fact that Jones owned the Chevrolet Tahoe described by the informant, which Deputy Peterson saw parked at the residence. The United States Supreme Court has "consistently

recognized the value of corroboration of details of an informant's tip by independent police work." *Id.* at 241. "'[C]orroboration through other sources of information reduce[s] the chances of a reckless or prevaricating tale.'" *Id.* at 244-45 (quoting *Jones v. United States*, 362 U.S. 257, 269 (1960)). To support reliability by corroboration, "there is no mandate that *every* fact in the [informant's report] be corroborated, that a certain number of facts be corroborated, or that certain types of facts must be corroborated." *State v. Holiday*, 749 N.W.2d 833, 841 (Minn. App. 2008). The corroboration of even minor details can lend credence to an informant's report. *Draper*, 358 U.S. at 313; *McCloskey*, 453 N.W.2d at 704; *State v. Siegfried*, 274 N.W.2d 113, 115 (Minn. 1978).

Jones challenges the district court's reliance on Deputy Peterson's corroboration of the tip by asserting that the informant merely provided information that is easily verifiable and, thus, not supportive of a finding of probable cause. Jones cites *State v. Cook*, 610 N.W.2d 664 (Minn. App. 2000), *rev. denied* (Minn. July 25, 2000), in which this court concluded that a warrantless arrest was not supported by probable cause, in part because law-enforcement officers "did no independent corroboration other than to verify that the vehicle described by the CRI was parked in the YMCA lot and that the man leaving the YMCA and getting into the driver's side of the vehicle matched the description of Cook given to police by the CRI." *Id.* at 668. We reasoned that the tip "did not predict any suspicious behavior on Cook's part" and was "entirely innocuous and lacked any incriminating aspects that might corroborate the CRI's claim that Cook was selling drugs at the YMCA." *Id.* In this case, however, Deputy Peterson corroborated more details than the location of Jones's vehicle and a person matching a description of Jones. Deputy

Peterson also corroborated the location of Jones's residence and confirmed with the informant that Jones's residence was where the informant had observed the firearm and crack cocaine. In addition, the tip in *Cook* "fail[ed] to offer any explanation for the basis of the CRI's claim that Cook was selling drugs." *Id.* But the informant in this case personally observed a firearm and crack cocaine in Jones's possession at his home, and Deputy Peterson determined that Jones's prior felony conviction prohibited him from possessing a firearm.

Jones further contends that "[a]t least three of the *Ross* factors weighed against reliability, while two others were of neutral utility given their lack of information." Jones refers to this court's opinion in *State v. Ross*, 676 N.W.2d 301 (Minn. App. 2004), which cited our opinion in *State v. Ward*, 580 N.W.2d 67 (Minn. App. 1998). In *Ward*, we described "six considerations bearing on the reliability of an informant who is confidential but not anonymous to police." 580 N.W.2d at 71. The *Ward* opinion did not prescribe a multi-factor balancing test; it merely listed examples of circumstances in which an informant has been deemed reliable enough to support a finding of probable cause. *See id.* The Supreme Court caselaw requires courts to consider the "totality of the circumstances," *Upton*, 466 U.S. at 732, and to consider the informant's "'veracity,' 'reliability,' and 'basis of knowledge'" as "closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is 'probable cause,'" *Gates*, 462 U.S. at 230. That some of the circumstances identified in *Ward* and *Ross* are not present in this case does not foreclose the conclusion that, based on the totality of the circumstances, the

facts stated in the warrant application established the probable cause necessary for the issuance of a search warrant.

B.

As noted above, Jones also argues that this court should reverse the district court's pre-trial ruling on the ground that the warrant was stale when it was executed, seven days after it was issued. In response, the state argues that Jones forfeited his staleness argument by not presenting it to the district court and by raising it for the first time on appeal. The state is correct that Jones did not make a staleness argument in the district court; he argued only that the warrant application was not supported by probable cause. A probable-cause challenge usually is based solely on the information contained in the warrant application. *See Souto*, 578 N.W.2d at 749-50. Because Jones limited his motion to that issue, the parties and the district court agreed that there was no need for an evidentiary hearing.

A defendant may challenge the admissibility of the state's evidence on Fourth Amendment grounds at an omnibus hearing. Minn. R. Crim. P. 11.02(b), (g). If the defendant does not request an omnibus hearing, the defendant waives all arguments concerning the admissibility of evidence obtained in a search and seizure. *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 14 (Minn. 1965). Similarly, if the defendant requests an omnibus hearing, the defendant waives any arguments that were not asserted at the omnibus hearing. *State v. Merrill*, 274 N.W.2d 99, 109 (Minn. 1978) (refusing to consider argument concerning warrantless search because defendant challenged different search at omnibus hearing). This rule applies with special force if the state did not have an opportunity to present relevant evidence on the issue that is raised for the first time on

appeal. *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996). Accordingly, we will not consider Jones's staleness argument for the first time on appeal.

In sum, the district court did not err by concluding that the facts stated in the warrant application established probable cause and, thus, did not err by denying Jones's motion to suppress evidence.

Affirmed.