STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1364

State of Minnesota,
Respondent,

vs.

Kevin Haymore,
Appellant.

Filed June 20, 2011
Affirmed
Worke, Judge

Olmsted County District Court
File No. 55-K0-01-326

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

John Arechigo, Arechigo & Stokka, LLP, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges his drug conviction, arguing that the district court erred (1) in finding that probable cause supported a search of appellant's person when the search-warrant affidavit included information from unreliable informants and did not

establish a sufficient nexus between criminal activity and the place to be searched; and (2) in failing to suppress evidence found during a strip-search because the search was unreasonable and violated his constitutional rights. We affirm.

D E C I S I O N

Following a stipulated-facts proceeding, the district court found appellant Kevin Haymore guilty of first-degree controlled-substance crime. Our review following a stipulated-facts proceeding is limited to whether the district court properly denied appellant's suppression motion. *See* Minn. R. Crim. P. 26.01, subd. 4. "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in . . . not suppressing [] the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Search Warrant

Appellant first argues that the search warrant to search his person was not supported by probable cause. No search warrant may be issued except upon probable cause. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Probable cause exists when the facts show that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). The totality of the circumstances is considered when determining whether probable cause exists. *State v. Fort*, 768 N.W.2d 335, 342 (Minn. 2009).

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including

> the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Gates, 462 U.S. at 238, 103 S. Ct. at 2332. "[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). We give great deference to the issuing judge's probable-cause determination, *Fort*, 768 N.W.2d at 342, and resolve marginal cases in favor of the issuance of the warrant. *State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990).

Informants

Appellant asserts that probable cause was lacking because the search-warrant application included information from confidential reliable informants (CRIs) of unknown veracity and reliability. An informant's tip can support a finding of probable cause provided the informant is reliable. *See State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000) (stating that "[p]olice may rely on an informant's tip if the tip has sufficient indicia of reliability"), *review denied* (Minn. July 25, 2000). Whether the information provided by an informant contributes to a finding of probable cause is determined by examining the totality of the circumstances, particularly the informant's credibility and veracity. *State v. Ross*, 676 N.W.2d 301, 303-04 (Minn. App. 2004).

Past reliability

"[A]n informant who has given reliable information in the past is likely also currently reliable." *Id.* at 304. Officers need not provide specifics of the informant's past veracity. *Id.* The assertion of past reliability is satisfied with "a simple statement that the

informant has been reliable in the past"; this statement indicates that the informant provided accurate information in the past and lends credibility to the informant's current story. *Id.* An informant's report must also show a basis of knowledge, which may "be supplied indirectly through self-verifying details that allow an inference that the information was gained in a reliable way and is not merely based on a suspect's general reputation or on a casual rumor circulating in the criminal underworld." *Cook*, 610 N.W.2d at 668.

Here, on January 31, 2001,[1] Officer Daryl Seidel applied for a search warrant to search appellant, also known as, "Dreadlock Joe." The supporting affidavit indicated that "[a]ll [four of] the CRIs have made numerous purchases of narcotics from drug sellers while under the control of narcotics investigators." The affidavit further stated that CRI 3 "worked with the Narcotics Unit for an extended period and [] conducted numerous controlled buys that [] led to numerous narcotic search warrants. These search warrants [] resulted in the arrest and conviction of several people for controlled substance crimes." These statements establish reliability because the language indicates that the CRIs' prior information was accurate. *See Ross*, 676 N.W.2d at 304.

Corroboration

"[A]n informant's reliability can be established if the police can corroborate the information." *Id.* "[T]here is no mandate that *every* fact . . . be corroborated, that a certain number of facts be corroborated, or that certain types of facts must be

[1] Following his arrest in 2001, appellant absconded to Illinois. He returned to Minnesota in 2008.

corroborated." *State v. Holiday*, 749 N.W.2d 833, 841 (Minn. App. 2008). "[C]orroboration of [even] minor details lends credence to an informant's tip and is relevant to the probable-cause determination." *Id.*; *see also McCloskey*, 453 N.W.2d at 701, 704 (stating that "minimal corroboration," including telephone number and description of detached garage was relevant in the totality-of-the-circumstances assessment); *State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985) (stating that corroboration of name, residence, and make of vehicle lent credence to informant's tip). Corroboration of only "part of the informer's tip as truthful may suggest that the entire tip is reliable." *State v. Siegfried*, 274 N.W.2d 113, 115 (Minn. 1978). A CRI's credibility is further bolstered if he can provide details that are not "easily obtained." *Holiday*, 749 N.W.2d at 841.

Here, two CRIs conducted controlled buys from a person known as "Big Tony" who sold narcotics out of a particular apartment. At some point in December 2000, CRI 4 informed officers that "Big Tony" was no longer selling out of the apartment and that "Dreadlock Joe" was now selling out of the apartment. "Dreadlock Joe" was well-known to the narcotics unit; officers previously had face-to-face contact with him. The warrant application indicated that Officer Thomas Kaase oversaw a controlled buy at the address reported by CRI 4 within the last 72 hours. CRI 3 was used for the controlled buy. Officer Kaase outfitted CRI 3 with a transmitting device and officers watched and listened as the CRI went to the apartment. CRI 3 and another male, whose voice Kaase recognized as appellant's, could be heard discussing the sale of crack. CRI 3 was seen and heard leaving the apartment. CRI 3 met with Kaase and handed the officer a

substance that he reported purchasing from appellant and that tested positive for cocaine. Appellant was then observed leaving the apartment. The controlled buy corroborated the information provided by the CRIs. Therefore, the CRIs' information supported a finding of probable cause supporting the search warrant.

Connection between criminal activity and place to be searched

Appellant next argues that probable cause was lacking because the search-warrant application failed to establish a connection between ongoing criminal activity and the place to be searched. The affidavit showed that a recent controlled buy was conducted. *See State v. Yaritz*, 287 N.W.2d 13, 17 (Minn. 1979) (stating that six-day delay in executing search warrant was reasonable). Further, CRI 3 reported buying the controlled substance from appellant. There is a connection between the selling of narcotics and the search of appellant. This is especially true, because the affidavit indicated that appellant did not live in the apartment where he sold drugs; thus, it was reasonable to search his person for drugs he transported.

Additionally, officers knew of appellant and his criminal history. *See State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) ("A person's criminal record is among the circumstances a judge may consider when determining whether probable cause exists for a search warrant."). While a criminal record alone does not support a probable-cause determination, previous convictions support such a determination and corroborate the information provided by the CRIs. *See Holiday*, 749 N.W.2d at 844; *McCloskey*, 453 N.W.2d at 704 (stating that even "relatively minor trouble with the law" has probative value in determining probable cause); *State v. Cavegn*, 356 N.W.2d 671, 673 n.1 (Minn.

1984) (stating that "prior convictions, if relevant, may be considered on the issue of probable cause"). Therefore, there was a connection between criminal activity and the place to be searched. The district court did not err in finding that probable cause supported the warrant and in refusing to suppress the evidence.

Search

Right to Counsel

Appellant next argues that the search was unconstitutional because officers failed to vindicate his right to counsel, relying on *State v. Bekkerus*, 297 N.W.2d 136 (Minn. 1980). The court in *Bekkerus* held that the district court did not err in concluding that the officers were not required to read the appellant a *Miranda* warning during the execution of a search warrant. 297 N.W.2d at 138. The district court determined that the appellant did not believe that his freedom was restricted in any way when the warrant was executed. *Id.*

Here, officers approached appellant after seeing him leave the apartment. Appellant was advised that officers had a search warrant and secured appellant in handcuffs and a belt so that appellant could not dispose of evidence. While the "belt" was an unusual procedure, the officers believed that it was necessary because informants reported that appellant carried drugs in his buttocks, and during an earlier search-warrant execution, an officer believed that appellant had performed such a maneuver. Appellant was told that he was being transported to a detention center for a strip-search. At the detention center, appellant requested an attorney, but was told that he was not under arrest. Appellant apparently argues that his freedom was restricted during the execution

of the warrant and, therefore, the officers were required to read him a *Miranda* warning and he was entitled to the presence of counsel. But *Bekkerus* does not stand for the principle that an individual has a right to counsel during the execution of a search warrant. Appellant was not being interrogated. He was not questioned. Therefore, the officers were not required to read appellant a *Miranda* warning prior to execution of the search warrant, and appellant was not entitled to have an attorney present during execution of the warrant.

Reasonableness of search

Finally, appellant argues that the search was unreasonable because the officers invaded his body cavity and humiliated him. Appellant relies on *State v. Fay* in arguing that officers conduct an unreasonable search when their conduct evinces a deliberate disregard of an individual's constitutional rights. 488 N.W.2d 322 (Minn. App. 1992). The unjustifiable conduct in *Fay* included more than five officers arriving at Fay's home during the night, smashing down his door with a battering ram, confronting him with drawn guns, throwing him to the floor, handcuffing him, blindfolding him, and questioning him without first reading him a *Miranda* warning. *Id.* at 324. This court determined that this conduct "clearly" interfered with Fay's constitutional rights. *Id.*

Here, appellant was instructed to remove his clothing and bend over, which is a normal request during a strip-search. Appellant became uncooperative and only partially bent over. A jailer was able to see something in between appellant's buttocks and appellant was instructed to spread his buttocks. Appellant attempted to push whatever he had between his buttocks into his rectum causing officers to assist appellant to the floor.

As appellant lay face down on the floor, a jailer, wearing gloves, removed a large piece of plastic wedged between appellant's buttocks that contained 34 individually wrapped pieces of crack cocaine. Appellant admitted that he had approximately a half ounce of cocaine between his buttocks. Appellant also admitted that the drugs were not in his rectum and that nobody invaded his anal cavity.

The district court found that officers did not conduct a cavity search because the item appellant was concealing was between two body parts. This finding is supported by the record. The item was visible to officers and it was removed by an officer merely grasping it and removing it. The officers' conduct was not similar to that in *Fay*, and was reasonable under the circumstances. *See id*. The officers did not use force until appellant failed to comply, and then the force used was reasonable under the circumstances. Therefore, the district court did not err in finding that the search was reasonable and that the evidence should not be suppressed.

Affirmed.