STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1459

State of Minnesota,
Respondent,

vs.

Donald Edward Rollins,
Appellant.

Filed August 1, 2011
Affirmed
Minge, Judge

Itasca County District Court
File No. 31-CR-09-1149

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

John J. Muhar, Itasca County Attorney, Todd S. Webb, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Peterson, Judge; and Muehlberg, Judge.*

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

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

MINGE, Judge

Appellant challenges his conviction for fourth-degree possession of a controlled substance with intent to sell, Minn. Stat. § 152.024, subd. 2(2) (2008), arguing that the search warrant was not supported by probable cause and that the district court abused its discretion by not permitting inquiry into a possible *Miranda* violation. Because the district court had a substantial basis for finding probable cause and did not abuse its discretion in foreclosing inquiry into the *Miranda* issue, we affirm.

FACTS

In February 2010, Officer Andy Morgan received a tip that appellant Donald Rollins was selling and using marijuana at his Grand Rapids apartment, and that he and another identified individual were purchasing the marijuana in the Twin Cities. The police department began an investigation and independently confirmed parts of the informant's tips, including ownership of a pick-up truck reportedly used to transport marijuana. The police department conducted a canine sniff of the parked pick-up truck, and the drug dog alerted to the odor of a controlled substance. Officer Morgan then applied for and received a search warrant for Rollins's bedroom and the common area of his apartment.

Around the time the canine unit left for the dog sniff, two officers went to Rollins's apartment to detain him until a search warrant was obtained and brought to the apartment. A manager of the apartment building let the officers inside and brought them to Rollins's room. The manager knocked on the door and opened it, and they found

Rollins sleeping. The officers directed him to come out and wait in the common area until a search warrant arrived.

Approximately 30 minutes later, Officer Morgan arrived with the search warrant. The officers searched the bedroom and found 168 Ritalin pills, 48 grams of marijuana, $310 in cash, and a digital scale. Rollins was arrested and charged with fourth-degree possession of a controlled substance with intent to sell under Minn. Stat. § 152.024, subd. 2(2).

Rollins moved to suppress all of the evidence, arguing that the officers illegally entered his apartment without probable cause or a search warrant. The district court held an omnibus hearing and heard testimony from four officers, Rollins, and Rollins's father. The district court denied the suppression motion, finding probable cause to support issuance of the search warrant and that the evidence was seized pursuant to the search warrant. The district court also declined to permit testimony on or address Rollins's argument that his *Miranda* rights were violated because Rollins did not provide notice to the state in accord with Minn. R. Crim. P. 10.01, subd. 2, .03, subd. 1.

Rollins waived his right to a jury trial and stipulated to the evidence against him pursuant to Minn. R. Crim. P. 26.01, subd. 3. The district court found him guilty of the charged offense and imposed a sentence. This appeal follows.

D E C I S I O N

I. Probable Cause to Search

The United States and Minnesota Constitutions require that search warrants be supported by probable cause. U.S. Const. amends. IV, XIV, § 1; Minn. Const. art. I,

§ 10. When reviewing a district court's probable cause determination in issuing a search warrant, this court grants the district court "great deference" and limits its review to considering "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). This deferential standard of review supports the strong constitutional preference for searches conducted pursuant to a warrant. *Id.* at 805.

Probable cause must be determined only from the information present in the affidavit supporting the application for a search warrant. *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005). Probable cause to search exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). The district court examines the totality of the circumstances to determine whether there were "specific facts to establish a direct connection between the alleged criminal activity and the site to be searched." *Id.* (quotation omitted). In establishing such a link, the issuing judge looks to the freshness of the information and the reliability of the source. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998).

Rollins argues that the affidavit did not provide a substantial basis to believe that drugs or evidence of drug activity would be found in his bedroom because the affidavit failed to establish the reliability of the informant or a connection to his bedroom and relied on stale information.

Reliability of the Informant

An affidavit must provide the issuing judge with "adequate information from which he can personally assess the informant's credibility." *State v. Holiday*, 749 N.W.2d 833, 840 (Minn. App. 2008) (quoting *State v. Siegfried*, 274 N.W.2d 113, 114 (Minn. 1978)). In evaluating credibility, the issuing judge should consider the "basis of knowledge" and "veracity" of the informant. *Souto*, 578 N.W.2d at 747, 750 (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332).

"Recent personal observation of incriminating conduct has traditionally been the preferred basis for an informant's knowledge." *State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985); *see also Gates*, 462 U.S. at 234, 103 S. Ct. at 2330 (noting that first-hand observations give a tip greater weight). The informant in this case provided first-hand knowledge, stating that he or she had observed "Don" in possession of marijuana, drug paraphernalia, and large amounts of cash, and saw him using marijuana in the apartment common area within fourteen days of contacting the police department. The individual observed numerous unknown people enter "Don's" apartment at all hours of the night, stay for a very brief period, and then leave—behavior Officer Morgan averred as being consistent with the sale and use of a controlled substance. The individual also reported that "Don" traveled to the metro area with another person approximately every two weeks to purchase marijuana in a white pick-up truck with Wisconsin plates. In subsequent conversations, the informant told the officer that appellant and the other person left Grand Rapids in the white pick-up truck and returned the following day.

The veracity of an informant can be established "by showing that details of the tip have been sufficiently corroborated so that it is clear the informant is telling the truth on this occasion." *Siegfried*, 274 N.W.2d at 115. "Even corroboration of minor details lends credence to an informant's tip and is relevant to the probable-cause determination." *Holiday*, 749 N.W.2d at 841. Officer Morgan corroborated portions of the informant's report by matching the description of "Don" with a photo of Rollins obtained from the Department of Public Safety, confirming that Don Rollins and the other named individual lived in the apartment complex, and confirming that a white pick-up truck with Wisconsin plates was parked in the apartment parking lot and that it belonged to a person with the same last name as the other individual, presumably his father. The dog sniff also supported the informant's claim that Rollins and the other individual used the pick-up truck to transport a controlled substance. Given that significant aspects of the informant's information were independently verified, the issuing judge did not abuse his discretion in relying on the information to issue a warrant.

Nexus with Rollins's Bedroom

"This court has historically required a direct connection, or nexus, between the alleged crime and the particular place to be searched, particularly in cases involving the search of a residence for evidence of drug activity." *Souto*, 578 N.W.2d at 747–48.

In this case, Officer Morgan relied on his experience as a police officer in concluding that the reported activity of numerous individuals entering Rollins's bedroom at all hours, remaining for a short time, and then leaving was consistent with controlled substance sale and use, and provided a direct connection to the bedroom. Officer Morgan

also provided the same information about the informant, allowing the issuing judge to independently decide how much weight to give the observation. In the totality-of-the-circumstances analysis, the issuing judge could also consider other information to support the probability of drug activity, including the observed drug use in the common area of Rollins's apartment.

Freshness of the Information

Rollins also argues that the information in the affidavit was stale, relying on the supreme court's decision in *Souto* for support. In *Souto*, six to ten months had passed between the reported incriminating conduct and the application for a search warrant. *Id.* at 578 N.W.2d 750. Here, the informant reported seeing the incriminating conduct within 14 days of speaking to the police and the warrant was executed five days after the initial report. The informant also discussed biweekly trips to the metro area to purchase more marijuana and, in another conversation that occurred two days before the search, told the police that Rollins and the other named individual had made an overnight trip consistent with the reported pattern of purchasing marijuana. The day before the search, management of the apartment building also reported observing Rollins remove a white plastic bag from the pick-up truck and take it back into the building. Finally, the affidavit noted the positive alert to the outside of the pick-up truck for the odor of a controlled substance on the day the search warrant was requested and executed. The passage of time in this case is not comparable to *Souto*. Officer Morgan continued investigating and receiving more information up to the day of the search, culminating with the positive canine alert to the odor of a controlled substance from the pick-up.

Looking at the affidavit as a whole, the district court could assess the reliability of the informant based on the information corroborated by Officer Morgan. The district court also had a basis to link the observed drug activity to Rollins's bedroom through the traffic of numerous individuals and observed drug use, and to Rollins based on his regular trips to the Twin Cities and positive drug sniff of the vehicle. Finally, the information relied on in the affidavit was not stale, given the ongoing investigation, and relatively short time frame between the observed illegal activity and the search. Based on these reasons, we conclude that the district court had a substantial basis for finding probable cause to issue the warrant.

II. Notice for Pretrial Motion

Rollins also argues that the district court abused its discretion by not considering arguments regarding a *Miranda* violation on the grounds that he did not provide the required notice to the state. *See Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966). Defenses, objections, issues, or requests that can be determined before trial must be made by motion and served on the opposing party. Minn. R. Crim. P. 10.01, subd. 2, .03, subd. 1. "[A] pretrial motion to suppress should specify, with as much particularity as is reasonable under the circumstances, the grounds advanced for suppression in order to give the state as much advance notice as possible as to the contentions it must be prepared to meet at the hearing." *State v. Needham*, 488 N.W.2d 294, 296 (Minn. 1992) (citing 1 W. LaFave and J. Israel, *Criminal Procedure* § 10.1(b) (1984)). This court has interpreted *Needham* as not "requir[ing] a detailed defense omnibus hearing motion in all circumstances, nor [requiring] a finding of waiver where no prejudice is shown." *State v.*

Balduc, 514 N.W.2d 607, 609–10 (Minn. App. 1994). We review the district court's exclusion of evidence during the omnibus hearing for an abuse of discretion. *See State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) ("Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion."); *cf. Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995) (upholding the exclusion of evidence as a sanction for spoliation under an abuse-of-discretion standard).

Rollins filed a pretrial motion that included four general grounds to suppress evidence. The motion argued for the suppression "of all evidence due to illegal, unauthorized entry into the premises without probable cause." At the omnibus hearing, defense counsel then attempted to question one of the officers on whether he had given Rollins a *Miranda* warning. The district court sustained the prosecutor's objection and did not allow the line of questioning.

The prehearing motion does not disclose that Rollins intended to challenge whether the police officers gave him a *Miranda* warning before questioning him. While there is no showing of prejudice to the prosecutor from the lack of notice, the rules of criminal procedure require defenses to be stated with particularity. That was not done here and the district court had broad discretion in deciding what sanction to impose, including denial of the opportunity to allow inquiry into the *Miranda* issue.

Because the district court had a substantial basis for finding probable cause and did not abuse its discretion in preventing inquiry about a *Miranda* warning, we affirm.

Affirmed.

Dated: