STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0090

State of Minnesota,
Respondent,

vs.

Jay Michael McGuire,
Appellant.

Filed March 25, 2008
Affirmed
Minge, Judge

Dakota County District Court
File No. K3-05-1403

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

James C. Backstrom, Dakota County Attorney, Vance B. Grannis, III, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Craig E. Cascarano, 150 South 5th Street, Suite 3260, Minneapolis, MN 55402 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Schellhas, Judge.

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

MINGE, Judge

Appellant challenges his conviction of possession of a controlled substance in the third degree, arguing that the application for a search warrant to search his home lacked probable cause. We affirm.

FACTS

The residence of appellant Jay Michael McGuire was searched pursuant to a search warrant obtained by Farmington police officers. The search-warrant affidavit stated that a Farmington police officer stopped a vehicle and in it discovered a clip and ammunition for a .44 magnum handgun and that the vehicle belonged to an individual named Earnest Martin. Subsequently, Martin's stepfather told the officer that his Desert Eagle, a .44 magnum handgun, had been stolen. Martin then voluntarily came to the police station and told the officer that he had placed the .44 magnum handgun in the rear bedroom of appellant's residence. The officer obtained the warrant to search appellant's residence for the stepfather's stolen .44 magnum handgun.

While the officer searched his home, appellant located and gave the officer the .44 magnum handgun. Because the officer also noticed numerous suspected controlled substances in plain view throughout the home, he called the Dakota County Drug Task Force. The task force continued the search and discovered more controlled substances and a short-barrel shotgun.

Appellant was charged with a controlled-substance crime in the third degree, possession of a stolen firearm, possession of a short-barrel shotgun, and possession of

drug paraphernalia. Appellant moved to suppress the evidence recovered as a result of the search, arguing that the search-warrant application lacked probable cause. The district court denied this motion.

After the motion ruling, the parties agreed to proceed pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found that the state had proven, beyond a reasonable doubt, that appellant was guilty of possession of a controlled substance in the third degree, possession of a stolen firearm, and possession of a short-barrel shotgun. Pursuant to agreement, the district court dismissed all of the charges except the controlled-substance crime in the third degree and sentenced appellant on that count. This appeal follows.

D E C I S I O N

The issue on appeal is whether the search-warrant affidavit established probable cause for the search. In determining whether or not a warrant application establishes probable cause, issuing magistrates are asked to make practical, common-sense decisions as to whether, given all the circumstances presented to them, 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). This court accords great deference to a district court's determination that probable cause exists to issue a search warrant. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). We examine whether there was a substantial basis to conclude that probable cause existed. *State v. Harris*, 589 N.W.2d 782, 787-88 (Minn. 1999).

We review the totality of the circumstances without "engaging in a hypertechnical examination" of the affidavit. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (quotation omitted). This approach is meant to be flexible. *Gates*, 462 U.S. at 238-39, 103 S. Ct. at 2332. This court does not consider what information the police possessed when they applied for the warrant, but rather what information was presented in the application affidavit. *State v. Kahn*, 555 N.W.2d 15, 18 (Minn. App. 1996). In marginal or close cases, the preference is for finding probable cause. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985).

In his brief, appellant urged this court to consider Martin a confidential informant and to utilize the test outlined in *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004), for reliance on such informants. But Martin is a known individual named in the search warrant. In oral argument, appellant conceded that Martin is not a confidential informant. In the alternative, appellant argues that Martin was "the typical 'stool pigeon' who is arrested and, who at the suggestion of the police, agrees to cooperate and name names in order to curry favor with the police." *State v. McCloskey*, 453 N.W.2d 700, 703 (Minn. 1990). But the record before this court contains no indication that officers tendered any deal to Martin. On the contrary, it appears that Martin had decided to turn himself in and face criminal responsibility for his actions. By informing the police that he had placed the .44 magnum at appellant's address, Martin was making a statement against his own interest.

The district court was presented with an affidavit stating that Martin told the Farmington police officers that he had placed the stolen .44 magnum in the rear bedroom

of appellant's residence. The statement from Martin's stepfather concerning the stolen .44 magnum handgun, and his submission of a theft report regarding the gun, are additional indicators that the gun was stolen. Initial police interest in the gun was based on the police discovery of the .44 magnum ammunition in Martin's car. The affidavit also recited that Martin's connection with appellant's residence and the location of that residence had been independently verified by the police. Furthermore, it states that the owner of the property told the officer that Martin had been at that address that day. Because Martin's statements to the police were supported by and consistent with other evidence, we conclude that the police had good reason to rely on those statements, and that the search-warrant application established probable cause to believe the stolen .44 magnum would be found at appellant's residence. The district court did not err in denying the motion to suppress the evidence discovered as a result of the search conducted pursuant to the warrant.

Affirmed.

Dated: