STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0838

State of Minnesota,
Respondent,

vs.

Dorsey Howard,
Appellant.

Filed August 5, 2008
Affirmed
Lansing, Judge

Hennepin County District Court
File No. 06007516

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and Stoneburner, Judge.

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

LANSING, Judge

The district court determined, on stipulated facts, that Dorsey Howard was guilty of illegal possession of a firearm. On appeal, Howard argues that the district court erred by denying his pretrial motion to suppress the firearm because the search-warrant application that police were executing when they saw the firearm in plain view relied on information obtained under a previous invalid warrant. Because the district court judge who issued the initial search warrant had a substantial and valid basis for concluding that probable cause existed and Howard has failed to establish an adequate legal or evidentiary basis for his alternative challenges to the warrants, we affirm.

F A C T S

Police executed three search warrants at the home of Dorsey Howard in January and February 2006. While executing the third warrant, police found a sawed-off rifle in plain view in Howard's bedroom. Howard had a prior conviction for third-degree controlled substance crime, and the state charged him with being a felon in possession of a firearm.

Before trial, Howard moved to suppress the firearm. He argued that the warrant issued for the first search was invalid because the affidavit supporting it did not provide a substantial basis for determining probable cause and that the second and third warrants were similarly invalid because they were based on evidence recovered during the first, allegedly unlawful, search.

At the suppression hearing, a police detective testified that he began investigating Howard after he was contacted by a confidential reliable informant (CRI). Within days of this contact, the detective prepared an affidavit to support an application for a search warrant for Howard's home.

The affidavit stated, in relevant part, that the CRI is personally known to the affiant; that the CRI has given information to the affiant that has been verified to be true, correct and accurate; that information learned from the CRI has led to the arrest and prosecution of persons who committed crimes against Minnesota and the United States of America; that the CRI told the affiant Howard's address; that the CRI knows that Howard bought stolen Minneapolis Police Department uniforms, badges, and leather; that the CRI told the affiant that Howard carries a handgun and uses the Minneapolis police uniform as a disguise when Howard stops known drug dealers on the street and then robs them; that Howard uses a white Ford Crown Victoria and a red light to stop persons; that according to the CRI, the Minneapolis police uniforms, badges and leather were inside Howard's home within the past seventy-two hours; and that the affiant confirmed with the Minneapolis Police Department that Howard lived at the address provided by the CRI and is "a known criminal who has three pages of documented contacts with the Minneapolis Police Department."

After reviewing the affidavit, a district court judge signed the warrant, and it was executed on January 26, 2006. The police did not find the objects described in the warrant, but they found evidence of identity theft and also found items they believed to

be stolen. Based on this newly discovered evidence, the police applied for and obtained a second search warrant and conducted a second search.

During the second search, police seized the items they believed to be stolen and the evidence of identity theft. The police took Howard into custody and interviewed him at the Hennepin County Jail. Although the police released Howard without charging him, they continued their investigation based on their belief that they would find additional stolen property in Howard's home. They applied for and obtained a third warrant to search Howard's home. During the third search on February 1, 2006, the police discovered the sawed-off, .22-caliber rifle in plain view and charged Howard with being a felon in possession of a firearm.

Following the suppression hearing, the district court determined that the judge who issued the first search warrant had a substantial basis for concluding that probable cause existed; that the first, second, and third search warrants were valid; and that the firearm discovered during the third search was admissible.

Howard and the state agreed to submit the case for a trial on stipulated facts. They also agreed that, if Howard was convicted, the state would dismiss two other charges against Howard and jointly recommend a thirty-six-month prison sentence. The district court found Howard guilty of being a felon in possession of a firearm and sentenced him to thirty-six months in prison. Howard appeals his conviction.

D E C I S I O N

I

The United States and Minnesota Constitutions provide that warrants must be supported by probable cause. U.S. Const. amends. IV, XIV; Minn. Const. art. I, § 10. 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." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted). When reviewing a determination of probable cause, we analyze whether the affidavit offered in support of the warrant, viewed as a whole, provides a substantial basis for a finding of probable cause. *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995). We accord significant deference to the issuing judge's determination of probable cause. *Illinois v. Gates*, 462 U.S. 213, 236, 103 S. Ct. 2317, 2331 (1983). The task of the issuing judge is to make a practical, common-sense decision about whether the affidavit in support of the warrant sets forth sufficient, competent evidence that probable cause exists. *State v. Harris*, 589 N.W.2d 782, 788 (Minn. 1999).

Howard argues that the judge who issued the first warrant did not have a substantial basis for concluding that probable cause existed because the affidavit "did not specify the basis of the informant's purported knowledge." This argument rests, in significant part, on the idea that a single component of the probable-cause test—the basis-of-knowledge component—must be examined in isolation and held to a strict standard.

Minnesota has adopted a totality-of-the-circumstances standard for examining whether a search warrant is supported by probable cause. *Zanter*, 535 N.W.2d at 633. In

evaluating the totality of the circumstances, the district court should consider the reliability and the basis of knowledge of the persons supplying the information. *Id.* But the deficiency in one component of the test may be compensated for by a strong showing in another. *Gates*, 462 U.S. at 233, 103 S. Ct. at 2329.

The affidavit supporting the first search warrant contained the following relevant information: that the CRI was personally known to the affiant; that the CRI had given reliable information in the past that had led to arrests and prosecutions; that the CRI had supplied the affiant with Howard's address and the make and model of Howard's vehicle; that the affiant confirmed that Howard lived at the address provided by the CRI and learned that Howard is "a known criminal who has three pages of documented contacts with the Minneapolis Police Department"; that the CRI knew Howard purchased items that had been stolen from the Minneapolis Police Department and used these items and a handgun to rob known drug dealers; and that "[a]ccording to the CRI, the Minneapolis [p]olice [u]niforms, badges, and leather were inside [Howard's home] within the past 72 hours."

This information served four important functions. First, it established that the CRI was personally known to the affiant and that information supplied by the CRI in the past had led to arrests and prosecutions. *See State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985) (stating that affidavit provided magistrate with reason to credit informant's story when affidavit stated that informant had been used over several years successfully). Second, it provided a detailed report of the suspected criminal activity, which indicated that the information had been obtained in a reliable way and was not based on a casual

rumor. *See State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (noting that amount of detail supplied by informant is relevant consideration), *review denied* (Minn. July 25, 2000). These details included Howard's address, the make and model of his car, and the way in which he carried out his criminal activities. Third, the affidavit confirmed that Howard lived at the address provided by the CRI. *See Wiley*, 366 N.W.2d at 269 (stating that corroboration of even minor detail can add credence to informant's tip). And fourth the affidavit suggests, without explicitly stating, that the basis for the CRI's knowledge was that he had personally viewed the uniforms, badges, and leather inside Howard's home within the last three days. *See State v. Olson*, 436 N.W.2d 92, 95 (Minn. 1989) (indicating that informant's information is more reliable when obtained by personal observation).

Even if we accepted Howard's argument that the affidavit does not provide a reasonable basis for inferring that the CRI personally observed the uniforms, badges, and leather inside Howard's home, an indirect basis of knowledge is still acceptable because of the detail that the CRI provided to the affiant, the independent verification of one of those details, the past relationship between the CRI and the affiant, and the fact that a warrant was obtained. *See Cook*, 610 N.W.2d at 668 (emphasizing importance of "quantity and quality of detail in the CRI's report" when basis of knowledge is supplied indirectly and noting that standard is higher for warrantless search).

Applying the totality-of-the-circumstances standard in combination with the degree of deference that we accord to the issuing judge, we conclude that the affidavit provided a substantial basis for determining that probable cause existed for the issuance

of the initial search warrant. Because we conclude that the warrant was supported by probable cause and that the first search was lawful, we need not reach the related issue of whether—if the first search had been unlawful—the exclusionary rule would require suppression of the firearm that was discovered during the third warrant-based search. *See Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963) (discussing fruit-of-poisonous-tree doctrine and noting that evidence is inadmissible if it has been obtained through exploitation of unlawfully acquired evidence).

II

Howard sets forth two additional arguments in his pro se supplemental brief. He contends that the affiant for the first warrant acted with reckless disregard for the truth and that the second and third warrants are invalid because of several technical defects. Howard did not raise these issues in the district court. When an issue has not been raised in the district court, it generally cannot be argued on appeal. *State v. Henderson*, 706 N.W.2d 758, 759 (Minn. 2005). Even if Howard had properly preserved these issues for review, his arguments are not persuasive.

Howard's argument that the affiant for the first warrant acted with reckless disregard for the truth is unavailing because it lacks evidentiary support. Evidence will not be suppressed on the basis that the affiant recklessly included a false statement in his affidavit unless the defendant shows by a preponderance of the evidence that the affiant recklessly disregarded the truth and the affidavit's remaining content is insufficient to establish probable cause. *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676 (1978). Howard's argument that the affiant acted with a reckless disregard for the

truth rests on his assertion that the affiant's CRI was a particular individual with the initials DZ, who Howard contends is untrustworthy and strongly biased against Howard. The record, however, is devoid of evidence indicating that the affiant's CRI was DZ, and Howard has failed to submit any offer of proof that would entitle him to a hearing on the issue. *See id.* at 171, 98 S. Ct. at 2684 (noting that offer of proof is required to mandate evidentiary hearing and emphasizing that challenger's attack must be more than conclusory).

Howard raises technical challenges to the second and third warrants. He contends that the second and third warrants were invalid because they did not list Howard's name or his apartment number, did not include a date and time, did not mention a gun or rifle, and were not signed by the judge. On appellate review, we uphold a warrant when the procedures specified in the statute were substantially followed and the technical defects do not affect the defendant's ability to challenge the issuance of the warrant. *State v. Andries*, 297 N.W.2d 124, 126 (Minn. 1980).

None of the six omissions that Howard identifies provide a basis for reversal. Four of the allegations are contradicted by the record: the copies of the second and third warrants in the appendix of Howard's pro se brief bear date stamps, designate the time of day for the search, are signed by a judge, and do not include Howard's apartment number because he lived in a house rather than an apartment. While Howard correctly notes that the warrants do not state Howard's name, he has not demonstrated that this omission violated a statutory requirement or affected his ability to challenge the warrant. The warrants only authorized searches of Howard's home and vehicles—not his person—and

properly listed his address and license-plate numbers. *See* Minn. Stat. § 626.11 (2004) (stating that "warrant shall direct the officer to search the person or place named for the property or things specified"). And, finally, it is not significant that the second and third warrants do not list the firearm because seizure of the firearm was justified under the plain-view doctrine. *See State v. Bradford*, 618 N.W.2d 782, 795 (Minn. 2000) (explaining that evidence can be seized if initial entry was justified, item is in plain view, discovery was inadvertent, and officers had probable cause to believe item was evidence of crime).

Affirmed.