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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1937**

State of Minnesota,
Respondent,

vs.

James Paul Campbell,
Appellant.

**Filed November 13, 2012
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62CR107164

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Stauber, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant challenges his conviction of possession of a firearm by an ineligible person, arguing that the district court erred by not suppressing evidence because the

search warrant was not supported by probable cause and a dog sniff was not supported by reasonable, articulable suspicion. Appellant also raises a number of arguments in his pro se supplemental brief. We affirm.

FACTS

Appellant James Paul Campbell was previously convicted in Texas of possession with intent to distribute approximately four kilograms of cocaine. Appellant is on probation for the offense until December 7, 2017. After his conviction in Texas, appellant's supervision was transferred to Minnesota in December 2005. Bill Lindenn of the Hennepin County Community Corrections Department was appellant's supervisor. Mr. Lindenn met with appellant on August 25, 2010, after learning that appellant had sent lengthy letters to a federal judge in which he requested to be allowed to exercise his "right" to cultivate and consume marijuana, use and possess cocaine or firearms, and travel freely.

Detective Brady Sweitzer of the Hennepin County Sheriff's Department also received notification of the letters appellant had sent. Detective Sweitzer, who is assigned to the Violent Offender Task Force and has been a police officer for approximately 17 years, knew from his investigation that appellant was a member of a street gang known as the Vice Lords. After learning of appellant's letter to the federal judge, Detective Sweitzer organized a team of six or seven police officers who began surveillance on appellant after his meeting with Mr. Lindenn.

As the officers followed appellant, they observed what they later described as evasive maneuvers—specifically, appellant drove through the streets of Minneapolis,

making multiple stops. This conduct was considered to be consistent with a person trying to escape surveillance. Appellant eventually led the surveillance team to a public storage facility in St. Paul. Appellant remained at the facility only briefly, and police did not observe appellant place anything in or remove anything from the facility. Appellant was later observed entering his residence carrying a large green plastic bag that had been in the trunk of his vehicle.

Based on these observations, law enforcement applied for a search warrant to determine if appellant rented a unit at the storage facility. The district court issued a warrant allowing law enforcement to obtain information regarding the storage lockers, including the names of the renters. After executing the warrant, law enforcement learned that appellant was renting a unit at the facility. With the permission of the storage-facility management, law enforcement conducted a drug-detection dog sniff in the public hallway outside the lockers near appellant's unit. The dog alerted to the odor of narcotics next to the door of the unit rented by appellant. Law enforcement then applied for and obtained a second search warrant to enter the storage unit. The second warrant was executed on August 26. Inside the storage locker, law enforcement found four handguns, one assault rifle, and a small amount of marijuana.

Appellant was charged with possession of a firearm by an ineligible person. Appellant moved to suppress the evidence, arguing that the search warrants were not supported by probable cause and that there were misrepresentations in the supporting affidavits. At the hearing on the motion, appellant also argued that the police lacked

reasonable articulable suspicion justifying the dog sniff. The district court denied the suppression motion in its entirety.

Following denial of the motion, appellant waived his right to a jury trial and agreed to proceed with a stipulated facts trial under Minn. R. Crim. P. 26.01, subd. 3. The district court found appellant guilty and sentenced him to 60 months' imprisonment. This appeal follows.

D E C I S I O N

I.

When reviewing a district court's pretrial order on a motion to suppress evidence, an appellate court reviews the district court's factual findings to determine whether they are clearly erroneous and the district court's legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). An appellate court may independently review the facts not in dispute and determine, as a matter of law, whether the district court erred by not suppressing the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

A. The search warrant

Evidence obtained by an unconstitutional search and seizure is inadmissible. *State v. Mathison*, 263 N.W.2d 61, 63 (Minn. 1978). In general, a search is valid only if it is conducted pursuant to a valid search warrant issued by a neutral and detached magistrate after a finding of probable cause. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999).

A court determines whether probable cause for a search exists by examining the totality of the circumstances:

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 [the court], 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.

State v. Souto, 578 N.W.2d 744, 747 (Minn. 1998) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). Both the district court and a reviewing court may consider only the information in the application for the search warrant to determine whether probable cause exists. *State v. Secord*, 614 N.W.2d 227, 229 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000).

“Determinations of probable cause by the issuing judge are afforded ‘great deference’ by [an appellate] court and are not reviewed de novo.” *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995); *see also State v. Rochefort*, 631 N.W.2d 802, 805 (Minn. 2001) (holding that the appropriate standard of review for an appellate court reviewing a district court’s probable cause determination made upon issuing a warrant is the deferential, substantial-basis standard). “[T]he resolution of doubtful or marginal cases should be ‘largely determined by the preference to be accorded to warrants.’” *State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990) (quoting *United States v. Ventresca*, 380 U.S. 102, 109, 85 S. Ct. 741, 746 (1965)). This is such a “doubtful or marginal” case.

However, the deference accorded to the issuing judge is not without limits. *State v. Gabbert*, 411 N.W.2d 209, 212 (Minn. App. 1987).

Even if [a] warrant application [is] supported by more than a ‘bare bones’ affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates

deserve, the warrant [is] invalid because the magistrate's probable-cause determination reflected an improper analysis of the totality of the circumstances.

Id. (quoting *United States v. Leon*, 468 U.S. 897, 915, 104 S. Ct. 3405, 3416 (1984)).

The state must provide sufficient information to the magistrate to determine whether probable cause exists. *Gates*, 462 U.S. at 239, 103 S. Ct. at 2333 (explaining that “[the magistrate’s] action cannot be a mere ratification of the bare conclusions of others”).

An appellate court’s task on appeal is to “ensure that the issuing judge had a ‘substantial basis’ for concluding that probable cause existed” under the totality of the circumstances. *Zanter*, 535 N.W.2d at 633 (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332). When analyzing the sufficiency of the affidavit, a reviewing court must review the affidavit as a whole rather than each component in isolation. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). “Because [appellate courts] examine the totality of the circumstances, ‘a collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause.’” *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quoting *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004)). If a warrant is void for lack of probable cause, the evidence seized in execution of the search warrant must be suppressed. *State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989).

Appellant challenges the search of the storage facility’s records, claiming that the search-warrant application did not establish probable cause. The evidence presented in the search-warrant affidavit to establish probable cause to search the public storage facility’s records may be summarized as follows: (1) Detective Sweitzer began an investigation of the Vice Lord street gang in 2007, and since that time multiple members

of the gang “have been arrested, charged and convicted of narcotics & weapons violations”; (2) during his investigation, Detective Sweitzer has investigated appellant for narcotics and weapons related offenses; (3) Detective Sweitzer knew that appellant is a member of the Vice Lords and had previously been arrested for weapons offenses; (4) appellant sent a letter to a federal judge requesting to be “allowed to exercise his right . . . to possess unregistered, unlicensed firearms and ammunition”; (5) appellant made “evasive maneuvers in his vehicle to attempt to evade law enforcement”; (6) law enforcement surveillance observed appellant drive to a public storage facility and leave “after a short stay”; (7) based on Detective Sweitzer’s training and experience, “individuals often rent storage lockers to store drugs, weapons, proceeds of illegal activity and other related items”; and (8) law enforcement observed appellant carry a garbage bag from his vehicle into a residence.

Appellant argues that the evidence is insufficient to establish probable cause because Detective Sweitzer’s observations were conclusory because the detective did not observe anything illegal. But “[i]nnocent or noncriminal activity can contribute to the totality of the circumstances on which a finding of probable cause is based.” *State v. McGrath*, 706 N.W.2d 532, 543 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). And when determining whether a warrant application is supported by probable cause, a police officer’s training and experience may be considered. *State v. Brennan*, 674 N.W.2d 200, 204 (Minn. App. 2004), *review denied* (Minn. Apr. 20, 2004).

Appellant also argues that the affidavit lacks a temporal context. In support of this argument, appellant relies on *State v. Rosenthal*, 269 N.W.2d 40 (Minn. 1978). In

Rosenthal, the supreme court addressed a search-warrant affidavit that did not contain any temporal reference. 269 N.W.2d at 40-41. The court held that the evidence obtained as a result of the search executed under the warrant should have been suppressed because the warrant application contained statements that were nothing but conclusions without any explanation for the basis of the conclusion. *Id.* at 41-42. As a result, the court noted the fact that the affidavit was silent on timeliness, but did not address it “beyond expressing [its] strong disapproval of the omission of time from an affidavit in support of a search warrant application.” *Id.* at 42 n.2. But the supreme court later noted that omission of time from an affidavit “is not per se fatal.” *Harris*, 589 N.W.2d at 789. And in any event, unlike the affidavit in *Rosenthal*, Detective Sweitzer’s affidavit did in fact contain references to timeliness. Appellant’s argument on this ground is therefore unavailing.

Finally, appellant argues that the search-warrant application failed to establish a connection between the alleged crime and the storage locker. Minnesota caselaw “has historically required a direct connection, or nexus, between the alleged crime and the particular place to be searched.” *Souto*, 578 N.W.2d at 747. We conclude that *Souto* is distinguishable from the present case and therefore does not require reversal here. *Souto* concerned a police search of a residence looking for drugs and records concerning drug transactions. *Id.* at 745. Here, the search at issue was not of appellant’s residence or even his storage locker, but rather a search of the storage facility’s rental records. Additionally, unlike the defendant in *Souto*, appellant was a probationer. *See State v. Anderson*, 733 N.W.2d 128, 139-40 (Minn. 2007) (concluding that a defendant’s status as

a probationer diminishes a reasonable expectation of privacy as probationers do not enjoy the absolute liberty to which every citizen is entitled).

We therefore conclude that, while thin, the search-warrant application presented the issuing judge with a substantial basis for concluding that probable cause existed. *See McCloskey*, 453 N.W.2d at 704 (stating that resolution of close cases should be determined by the preference to be accorded to warrants).

B. The dog sniff

The supreme court has held that “a drug-detection dog sniff in the area immediately outside a self-storage unit is not a search under the Fourth Amendment.” *Carter*, 697 N.W.2d at 209. However, such action does constitute a search under the Minnesota Constitution. *Id.* at 211. In determining the level of suspicion required to justify a drug-detection dog sniff outside of a self-storage locker, the supreme court adopted the Pennsylvania Supreme Court’s holding that a drug-detection dog may be deployed when (1) “the police are able to articulate reasonable grounds for believing that drugs may be present in the place they seek to test” and (2) “the police are lawfully present in the place where the canine sniff is conducted.” *Id.* at 212 (quoting *Commonwealth v. Johnston*, 530 A.2d 74, 79 (Penn. 1987)).

Appellant’s argument regarding the drug sniff asserts that Detective Sweitzer’s statement in the initial search-warrant application that people “often rent storage lockers to store drugs, weapons, proceeds of illegal activity and other related items” is too conclusory to give rise to reasonable grounds for believing that drugs may be present in the storage facility. In essence, appellant’s challenge to the reasonable suspicion

supporting the dog sniff is the same as his challenge to the probable cause establishing a nexus to the storage facility analyzed above. And because probable cause is a higher standard than reasonable suspicion, appellant's argument is unavailing.

The dog sniff was therefore supported by reasonable, articulable suspicion and the district court did not err by denying appellant's motion to suppress the evidence obtained as a result of the search.

II.

Appellant filed a pro se supplemental brief in which he argues that his conviction must be overturned because it interferes with his rights as a sovereign. But while people in the aggregate are sovereign, under our representative form of government the legislative branch authorizes laws, the executive branch carries them out, and the judicial branch has jurisdiction to try civil and criminal matters. *See, e.g.*, Minn. Const. art. VI, § 3 (“The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.”); Minn. Stat. § 609.025(1) (2010) (providing that a person may be convicted and sentenced under the laws of this state if the person “commits an offense in whole or in part within this state”). The argument raised in appellant's pro se supplemental brief is therefore without merit.

Affirmed.