

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1585**

State of Minnesota,  
Respondent,

vs.

Miguel Gonzalez Montez,  
Appellant.

**Filed June 25, 2012  
Affirmed  
Muehlberg, Judge\***

Kandiyohi County District Court  
File No. 34-CR-10-965

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

Jennifer K. Fischer, Kandiyohi County Attorney, Stephen J. Wentzell, Assistant County Attorney, Willmar, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Ross, 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.

## UNPUBLISHED OPINION

**MUEHLBERG**, Judge

Appellant challenges the district court's decision that the affidavit that supported the search warrant sufficiently supported probable cause. Because the affidavit provided a substantial basis for probable cause, we affirm

### FACTS

On November 16, 2010, an officer from the Kandiyohi County Sheriff's Department assigned to a multi-county Drug Task Force (DTF) applied for a search warrant. The affidavit in support of the warrant indicated that in April of 2010, the DTF officer received a complaint of drug-related activity at a specific house in Raymond, Minnesota. The complainant identified herself to the officers but wanted to remain anonymous for her own safety. The complainant indicated that the owner of the house "is selling a lot of methamphetamine and marijuana out of his house" and that he "has been selling drugs for a long time." The affidavit further reported that on June 3, 2010, another Sheriff's Deputy "was doing a follow-up investigation on a burglary" at that house. During the investigation, the Sheriff's Deputy spoke to another identified citizen who indicated that she lived at the same house for about three months, during which time "there were drugs going in and out of the residence all the time."

In September 2010, the DTF officer spoke with two other individuals who both identified themselves but wished to remain anonymous. These individuals indicated that the owner of the house was living in a camper on his property because an individual nicknamed "Psych" was living in and selling drugs from the house. It was unknown how

this specific arrangement came about, but the DTF officer indicated in the affidavit that individuals have been known to give their property to drug dealers in exchange for drug debts. The individuals speaking to the DTF officer indicated that “Psych” had been living at the house for the past three weeks and that there were a lot of people coming and going but making only short visits to the house. These individuals indicated that the first name of the person known as “Psych” was Miguel and that he was known to drive a white Oldsmobile or a red Ford Tempo. The DTF officer indicated that police already knew that appellant Miguel Montez went by the nickname “Psycho,” that Montez’s girlfriend owned a white Buick LeSabre and a red Ford Tempo, and that Montez drove those vehicles.

The affidavit indicated that the DTF officer received further information about Montez on November 13, 2010. On that date, another Sheriff’s Deputy working in Raymond notified the DTF officer that he observed a van at the local gas station that was registered to a person with a warrant. The Deputy observed that Montez was driving the van rather than the registered owner. The Deputy then observed Montez drive the van into the unattached garage at the same house.

On November 15, 2010, the DTF officer arranged with the sanitation authority to pick up the trash from the house in order to investigate the contents. The next day, which was the usual trash day, the DTF officer assisted the sanitation company in collecting the garbage from the house. The DTF officer stated that the trash was placed on the street in front of the house, away from the house, awaiting collection. The sanitation truck driver cleared the truck before picking up the trash and immediately emptied it to prevent

commingling of garbage. Upon investigating the contents of the trash, the DTF officer found “[n]umerous cut corners of baggies, a baggie with both corners cut off of it and small zip lock baggie”; a “notebook page with initials and dollar amounts on them,” including “one line on the page with ‘Cherrie-3.8g containing the bag,’” believed to indicate drug sales or debts; and a number of pieces of mail addressed to the owner of the house and another person living there. The small zip lock baggies and the cut corners of baggies field-tested positive for methamphetamine.

Three individuals were associated by name with the house through the contacts described in the affidavit. All three were known to reside at the house. Of those three, the owner of the house and another individual had criminal histories including controlled substance violations, while the third person had no criminal history. Montez also had a criminal history, including controlled substance violations, and “is a documented member of West Side Gangster Disciples Gang.”

Based on this information, all of which was in the affidavit, a search warrant was issued on November 16, 2010. A number of officers, including the DTF officer who applied for it, executed the search warrant shortly after 7 a.m. on November 17, 2010. Upon entry, police found the owner of the house and another man inside. Officers searched the house and found that there was a padlocked room on the upper floor. Upon entering that room, officers found a bed; both male and female clothing; a small amount of white powder field tested to be cocaine; numerous glass pipes for smoking methamphetamine, both used and unused; an EBT card signed in the name of Miguel Montez; items with the name of Montez’s girlfriend; notebooks with Spanish writing on

them; and a mirror with the word “Psych” written on it. Police also searched the garage, in which they found a syringe; “a notebook that said Miguel on the front of it which had some pay/owe information in it, names with numbers, possibly debts”; and pictures of people showing gang signs. The owner of the house told officers that he rented the padlocked upstairs room and the garage to Montez.

Because Montez was not at the house when the search warrant was executed, and because of the evidence found at the house, the DTF officer radioed to other police officers to locate and arrest Montez. Montez was eventually stopped and arrested while driving a white sedan in Willmar, Minnesota. Because the vehicle was to be towed, the arresting officers conducted an inventory search of the vehicle. During this initial inventory search, the officers found a digital scale with drug residue on it and methamphetamine pipes in the vehicle. Because of the nature of these items, the officers stopped the search in order to get a search warrant. After getting a search warrant, officers found numerous items in the car including a multitude of identification and paperwork in various names, including Miguel Montez; two laptop computers; a number of digital scales; at least two cell phones; \$1,037 in cash; various drug paraphernalia; 38.2 grams of methamphetamine including packaging; 3.2 grams of cocaine including packaging; and 1.5 grams of marijuana including packaging.

Montez was charged with first degree possession of more than 10 grams of a controlled substance with intent to sell under Minn. Stat. § 152.021, subd. 1(1) (2010), first degree possession of more than 10 grams of a controlled substance under Minn. Stat. § 152.021, subd. 2(1) (2010), and second-degree possession of more than 6 grams of a

controlled substance under Minn. Stat. § 152.022, subd. 2(1) (2010). A contested omnibus hearing was held, and Montez challenged the probable cause for the original search warrant. The district court denied the motion to suppress evidence. Montez waived his right to a jury trial and a *Lothenbach* proceeding was held, after which Montez was found guilty and sentenced to 114 months in prison. Montez appeals.

## D E C I S I O N

Montez appeals the district court's decision that the affidavit in support of the search warrant sufficiently shows probable cause to search the house. Montez focuses this argument primarily on the anonymous nature of two of the informants relied on in the search warrant affidavit.

The United States and Minnesota Constitutions require that a search warrant be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. When reviewing a district court's probable-cause determination in issuing a search warrant, this court grants "great deference" to the issuing judge's determination of probable cause. *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. Appellate courts resolve marginal cases in favor of the issuance of the warrant. *State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990).

"When reviewing a district court's decision to issue a search warrant, our only consideration is whether the judge issuing the warrant 'had a substantial basis for concluding that probable cause existed.'" *State v. Jenkins*, 782 N.W.2d 211, 222–23 (Minn. 2010) (quoting *Rochefort*, 631 N.W.2d at 804). A substantial basis means a fair

probability “given the totality of the circumstances set forth in the affidavit before the issuing judge.” *State v. Brennan*, 674 N.W.2d 200, 204 (Minn. App. 2004), *review denied* (Minn. Apr. 20, 2004). This should be a practical and “common-sense” decision. *State v. McGrath*, 706 N.W.2d 532, 544 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Courts do not “review each component of the affidavit in isolation.” *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). Rather, “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). Circumstances to consider include “the veracity and basis of knowledge of persons supplying hearsay information . . . that contraband or evidence of a crime would be found in a particular place.” *Brennan*, 674 N.W.2d at 204. Courts also consider whether there is “information linking the crime to the place to be searched and the freshness of the information.” *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). The affidavit must establish a “direct connection, or nexus between the crime alleged and the place to be searched, particularly in cases involving the search of a residence for evidence of drug activity.” *McGrath*, 706 N.W.2d at 539 (quotation omitted).

Montez argues that the search warrant affidavit “was fatally defective with regard to the reliability of the informants.” An informant’s tip can provide a basis for finding probable cause, but the informant’s reliability is critical in making the probable-cause determination. *See State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000) (“Police may rely on an informant’s tip if the tip has sufficient indicia of reliability.”), *review denied* (Minn. July 25, 2000). “[A]n informant’s reliability can be established if the police can

corroborate the information.” *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004). “[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 corroborated.” *State v. Holiday*, 749 N.W.2d 833, 841 (Minn. App. 2008). Even corroboration of 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 704 (stating that “minimal corroboration,” including telephone number and description of detached garage, was relevant in the totality-of-the-circumstances assessment); *Wiley*, 366 N.W.2d at 269 (stating that corroboration of name, house, and make of vehicle lent credence to informant’s tip).

Considering these requirements, the first and second informants listed in the affidavit were not reliable informants. The only information provided by the first informant was that the owner of a specific house was selling drugs from his house in Raymond, and had been doing so for some time. The second person gave largely similar information. There is no information about the identity of the informants, or the basis for the information. The only information that could be corroborated is whether the person named did in fact own the house in Raymond. Even if corroborated, the paucity of that corroborated information undermines reliability. Further, considering the lack of information regarding how the first informant’s information was related, and that the second informant’s information came during a robbery investigation at the house, it is unlikely that either informant could be considered a “concerned citizen” informant. *See McGrath*, 706 N.W.2d at 540 (“A concerned citizen acts with an intent to aid law enforcement out of concern for society or for personal safety.”).

In September of 2010, the DTF officer spoke with two more individuals who gave information relevant to the search warrant. Like the first and second informant, these individuals remained publicly anonymous but identified themselves to police. However, they gave far more specific information about the situation at the house, including that the owner had been removed from the house, that an individual nicknamed “Psych” was living there, and that “Psych” drove a white Oldsmobile and a red Ford Tempo. This information was corroborated in part by knowledge already possessed by law enforcement, in that they knew the nickname “Psych,” and knew that he had access to vehicles like those described through his girlfriend. *See Holiday*, 749 N.W.2d at 844 (indicating that corroborating the defendant’s criminal record, “name, nickname, physical description, residence, vehicle, and gang affiliation” could be considered sufficient to show the informant’s reliability). This information was further corroborated by another officer observing Montez using the garage at the house, which indicated that Montez was connected to the house as more than a mere houseguest. As such, the informants might be considered reliable as to the uncorroborated information regarding Montez dealing drugs. We note however that there appears to be a question about the freshness of this information.

The information from the informants, however, was not the sole basis for probable cause for the search warrant. Rather, the information received from the informants indicated to police that further investigation was needed. That investigation took the form of a trash search. “Contraband seized from a garbage search can provide an independent and substantial basis for a probable-cause determination.” *McGrath*, 706

N.W.2d at 543. “[A]n examination of garbage by the police is a search and is therefore subject to the constraints imposed by the Fourth Amendment.” *State v. Oquist*, 327 N.W.2d 587, 590 (Minn. 1982). “However, when a police officer searches trash, set on the curb for routine pickup, without trespassing on the premises, no illegal search has occurred.” *State v. Goebel*, 654 N.W.2d 700, 703 (Minn. App. 2002) (citation omitted); *see also Oquist*, 327 N.W.2d at 591 (finding no reasonable expectation of privacy in trash in an open garbage can).

The search warrant affidavit in this case clearly states “that the garbage can was placed away from the residence and was sitting on the street in front of” the house. There is no indication that this statement is incorrect, either in the record or on argument from Montez. As a result, the search of the garbage from the house is constitutionally permissible. That search turned up significant evidence of drug sale activity at the house, including baggies with methamphetamine residue and written notations indicating drug sales. That evidence, combined with the observation of Montez using the garage at the house just three days earlier, establishes a connection between drug sales, Montez, and the house. As such, this evidence from the garbage search provided an independent basis for the probable cause required to grant a search warrant of the house.

Though the information gleaned from the garbage search would be sufficient, the district court’s probable cause finding is further supported by the criminal records, which included controlled substance crimes, of Montez and two other individuals associated with the house. *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 do lend support such a determination. *See Holiday*, 749 N.W.2d at 844; *see also 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”). Prior controlled substances convictions are certainly relevant when determining whether there is probable cause to believe that controlled substance crimes are being committed.

The affidavit shows that police had background knowledge that drug sales were taking place at a house, and that the owner, Montez, and others were living there and possibly selling drugs from the house. Three of these four men who were identified in the affidavit have records of controlled substance crimes. On November 13, 2010, police corroborated Montez’s connection to the house. On November 16, 2010, police legally searched the garbage at the house and found significant indicia of drug sales. That same day, police were issued a search warrant. Early the next morning, police executed the search warrant.

Because there was significant background information supporting probable cause, because the controlled substance conviction records of the individuals at the house supported probable cause, because the trash search provided an independent basis for

probable cause, and because all of these circumstances are considered in totality, we conclude that there was probable cause to support the search warrant.

**Affirmed.**