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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0836**

State of Minnesota,  
Respondent,

vs.

Joseph Leo Dohmen,  
Appellant.

**Filed February 25, 2013  
Affirmed  
Larkin, Judge**

Chisago County District Court  
File No. 13-CR-08-930

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

Janet Reiter, Chisago County Attorney, Nicholas A. Hydukovich, Assistant County  
Attorney, Center City, Minnesota (for respondent)

Steven J. Meshbesh, Kevin M. Gregorius, Meshbesh & Associates, P.A.,  
Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and  
Rodenberg, Judge.

## UNPUBLISHED OPINION

**LARKIN**, Judge

Appellant challenges the district court's denial of his motion to suppress evidence obtained during a search of his residence. He argues that the underlying search warrant was invalid because its supporting affidavit did not establish a sufficient nexus between suspected criminal activity and his residence. We affirm.

### FACTS

In early May 2008, Chisago County Sheriff's Investigator Dan Neitzel received a tip that appellant Joseph Leo Dohmen had made a series of suspicious pseudoephedrine purchases. On May 14, Neitzel obtained a warrant to search Dohmen's residence. During execution of the warrant on May 20, officers discovered trace amounts of methamphetamine, several items that can be used for the manufacture of methamphetamine, and an electronic incapacitation device.

The state charged Dohmen with first-degree methamphetamine manufacture, fifth-degree controlled-substance possession, and possession of an electronic incapacitation device. Dohmen moved to suppress the evidence obtained during the search, claiming that the warrant was not supported by probable cause. The district court held a contested evidentiary hearing on the motion, concluded that there was probable cause for the warrant, and denied Dohmen's motion. Dohmen subsequently waived his right to a jury trial and agreed to a stipulated-facts trial. The district court found Dohmen guilty of the charged offenses. This appeal follows, in which Dohmen contends that the district court erred by denying his motion to suppress.

## DECISION

The United States and Minnesota Constitutions provide that no warrant shall issue without a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, a search is lawful only if it is executed pursuant to a valid search warrant issued by a neutral and detached judge based on a finding of probable cause. *See* Minn. Stat. § 626.08 (2010); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). “When determining whether a search warrant is supported by probable cause, we do not engage in a *de novo* review.” *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Instead, “when reviewing a district court’s probable cause determination made in connection with the issuance of a search warrant, an appellate court should afford the district court’s determination great deference.” *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). This court limits its “review to ensuring that the issuing judge had a substantial basis for concluding that probable cause existed.” *McGrath*, 706 N.W.2d at 539.

To determine whether the issuing judge had a substantial basis for finding probable cause, we look to the “totality of the circumstances.”

The task of the issuing [judge] is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, 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. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). In reviewing the sufficiency of a search-warrant

affidavit under the totality-of-the-circumstances test, “courts must be careful not to review each component of the affidavit in isolation.” *Id.* “[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). “Furthermore, the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded warrants.” *Wiley*, 366 N.W.2d at 268 (quotation omitted).

“When the request of the court is for the issuance of a warrant to search a particular location, there must be specific facts to establish a direct connection between the alleged criminal activity and the site to be searched.” *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998). “[T]he required nexus between the place to be searched and the items to be seized need not rest on direct observation; instead, the nexus may be inferred from the totality of the circumstances, including the type of crime involved, the nature of the items sought, the extent of an opportunity for concealment, and reasonable assumptions about where a suspect would likely keep that evidence.” *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). “A person’s criminal record is among the circumstances a judge may consider when determining whether probable cause exists for a search warrant.” *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005).

The issuing judge’s probable-cause determination in this case was based on the following information. In the seven months preceding issuance of the search warrant, Dohmen made numerous purchases of pseudoephedrine, a precursor to methamphetamine. The supporting affidavit states that Dohmen made 16 separate

pseudoephedrine purchases, several of them on the same day, or within a day or two of each other, at different pharmacies, including three purchases in a six-day period at three different pharmacies in three different cities. The affidavit states that the manner of Dohmen's pseudoephedrine purchases was consistent with "smurfing", i.e. purchasing a legal amount of pseudoephedrine from numerous stores in order to manufacture methamphetamine. The affidavit also states that on two prior occasions in 2001 and 2004, police searched Dohmen's residence and found methamphetamine labs. As a result of the prior searches, Dohmen was convicted of first-degree methamphetamine manufacture and third-degree controlled substance possession, establishing, beyond a reasonable doubt, that Dohmen has a history of engaging in narcotics-related activity at his residence.

Dohmen argues that this information did not establish a sufficient nexus between suspected criminal activity and his residence. Dohmen contends that the facts of this case are similar to those in *Souto*, 578 N.W.2d at 751, and *State v. Kahn*, 555 N.W.2d 15, 19 (Minn. App. 1996), in which the appellate courts found an insufficient nexus between the alleged criminal activity and the defendants' residences. In *Souto*, the supporting affidavit stated that a package containing drugs was mailed to Souto's previous residence ten months earlier, an informant stated that a suspected drug dealer whom Souto knew received methamphetamine by having it mailed to his friends, a confidential informant witnessed Souto use and purchase methamphetamine at parties six months earlier, there were numerous phone calls between Souto's residence and the suspected drug dealer, and the affiant knew through information supplied by informants and law enforcement

officers that Souto was involved in the wide-scale possession and/or distribution of methamphetamine and/or marijuana. 578 N.W.2d at 748. The supreme court held that this information did not establish a sufficient nexus between the alleged criminal activity and the place to be searched, stating that “the affidavit at issue here did not indicate that Souto ever arranged drug deals, sold, or distributed drugs, much less that she performed such acts from her home.” *Id.* at 748-49.

In *Kahn*, the supporting affidavit stated that Kahn was arrested for possession of an ounce of cocaine, that possession of an ounce of cocaine is consistent with drug dealing rather than personal use, and that Kahn resided at the place to be searched. 555 N.W.2d at 18. This court stated that “[m]ore than mere possession of an ounce of cocaine is required to demonstrate probable cause that an individual is a dealer and that his home contains evidence or contraband.” *Id.*

This case is readily distinguishable from *Souto* and *Kahn*. Unlike those cases, in which there was no evidence that the defendants had engaged in drug-related activity at their residences, Dohmen was twice convicted of crimes stemming from his manufacture and possession of methamphetamine at his residence. Dohmen’s history of manufacturing methamphetamine at his residence, his resulting convictions, and his suspicious pseudoephedrine purchases establish a sufficient nexus between the suspected criminal activity and Dohmen’s residence.

Dohmen also argues that the prior discovery of methamphetamine labs at his residence happened too long ago to be probative, stating that “[a]ny significance given to those past discoveries should be meaningless given the factor of time.” *See Souto*, 578

N.W.2d at 750 (stating that a warrant cannot be based on stale information and that “proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time” (quotation omitted)). In determining whether information supporting a search warrant is stale, the issuing judge must apply “practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984) (quotation omitted), *review denied* (Minn. Jan. 14, 1985). “The court’s approach should be one of flexibility and common sense.” *Id.* And “[w]hen an activity is of an ongoing, protracted nature, the passage of time is less significant.” *Souto*, 578 N.W.2d at 750. In this case, methamphetamine labs were discovered at Dohmen’s residence in 2001 and 2004, he was convicted of two crimes as a result of those discoveries, and he made suspicious pseudoephedrine purchases in 2007 and 2008. Common sense dictates that the criminal activity at Dohmen’s residence in the past is probative, despite the passage of time.

Dohmen further argues that the search warrant was invalid because there may have been an innocent explanation for his pseudoephedrine purchases, or possibly a noninnocent explanation that did not implicate his residence. But the mere existence of innocent explanations for a suspect’s behavior does not defeat probable cause. *See State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001) (“The fact that there might have been an innocent explanation for [respondent’s] conduct does not demonstrate that the officers could not reasonably believe that [respondent] had committed a crime.”). Lastly, Dohmen implicitly argues that because the search-warrant affidavit alleged that he had made “illegal” pseudoephedrine purchases and the “illegality of those purchases is not

clear,” the search warrant was invalid. But even if Dohmen’s pseudoephedrine purchases were not illegal, such a showing is not necessary to establish probable cause.

In sum, exercising the deference that is required, we conclude that the issuing judge had a substantial basis to conclude that there was probable cause to search Dohmen’s residence. Thus, the district court did not err by denying Dohmen’s motion to suppress.

**Affirmed.**