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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2229**

State of Minnesota,  
Respondent,

vs.

Carolyn Jo Russell,  
Appellant.

**Filed April 7, 2009  
Affirmed  
Ross, Judge**

Ramsey County District Court  
File No. KX-07-160

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134, and

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

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

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Randall, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## **UNPUBLISHED OPINION**

**ROSS, Judge**

Carolyn Jo Russell appeals from her 2007 conviction of identity theft, arguing that evidence discovered when Maplewood police executed a search warrant on her apartment should not have been admitted in her trial. Russell contends that the warrant application did not sufficiently link her apartment to any criminal activity. Because a direct connection between criminal activity and Russell's apartment exists in the warrant application, we affirm.

### **FACTS**

In August 2006, a manager at a Maplewood sporting goods store reported to police that a woman had just attempted to purchase \$293 worth of merchandise with a check rejected by the store's check processor as counterfeit or forged. The woman left the store before police arrived, but the manager retained the check, a Minnesota state identification card, and an application to renew a Minnesota driver's license left by the woman. All three items bore the same name and address: C. Carter, at a Saint Paul apartment.

Maplewood Police Officer John Bohl examined the documents. Officer Bohl suspected that the identification card and the renewal form were forged or counterfeit. The identification card number was not valid, but it matched the number of a driver's license that expired in 1999, held by Carter. Carter had reported her identity stolen in 2003. Officer Bohl contacted the bank named on the check and learned that the checking account was closed, having been opened with a purported deposit using a counterfeit check.

Officer Bohl discovered that the suspect had left an acquaintance behind when she fled the store, a man who had tried unsuccessfully to retrieve the check and the identifying documents from the store manager. Officer Bohl arrested the man for aiding and abetting check forgery and searched him. He was carrying mail that bore the same address as the suspicious documents that the suspect had left behind.

Officer Bohl's investigation of the address revealed that it was the apartment of Carolyn Russell. Officer Bohl waited for Russell to return home, arrested her, and brought her to the sporting goods store where the manager identified her as the woman who tried to pass the suspicious check.

Six days after Russell's arrest, Officer Bohl applied for a warrant to search her apartment. The warrant application included the facts just described, noting particularly that the suspicious documents all bore the apartment's address. The district court issued the warrant. The resulting search produced, among other evidence, identification and financial information relating to 55 different individuals and at least eight false or altered identification documents that bore Russell's name or photograph.

The state charged Russell with identity theft. Russell moved to suppress the evidence seized from her apartment, claiming that the police lacked probable cause to obtain the search warrant. The district court denied the motion. Russell waived her right to a jury trial under the procedure set forth in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), preserving her right to appeal the evidentiary ruling. This appeal follows her conviction.

## DECISION

Russell challenges her conviction on the ground that it rests on evidence seized during a constitutionally invalid search. She argues specifically that the search warrant was not supported by probable cause because the warrant application did not establish a connection between criminal activity and her apartment. The argument is unavailing.

The federal and state constitutions require that search warrants be issued only on probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. When this court reviews a district court's determination that probable cause supported the issuance of a warrant, we assess whether a substantial basis justifies the determination. *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995). This deferential standard leads us to inquire whether the issuing judge made "a practical, commonsense decision" that the totality of the circumstances described in the warrant application established "a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* (quotation omitted). To provide a substantial basis to search a particular place, the warrant application must include facts that establish a nexus between the site and criminal activity. *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998). We consider the type of crime alleged, the items sought, and the location that the evidence might likely be kept. *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

The facts set forth in Officer Bohl's warrant application establish the required nexus. The application sought a warrant authorizing a search for scam-related documents and computerized data, and it stated that (1) the suspect attempted to use an identity other

than her own to pass a forged check; (2) the counterfeit and forged documents recovered at the sporting goods store all bore the same address; (3) the account from which the counterfeit check was drawn had been opened with a counterfeit check; (4) the suspect's male accomplice possessed mail addressed to the same apartment; (5) investigative interviews and a public records search revealed that the suspect resided at the apartment.

We disagree with Russell's assertion that "the search warrant affidavit did not set forth any specific facts suggesting that the apartment itself was connected to Russell's crime beyond the fact that Russell lived there." Officer Bohl did not discover where Russell lived until after investigating the documents bearing what turned out to be Russell's home address. The sequence of this discovery as highlighted in the warrant application plainly establishes a direct nexus between Russell's apartment and the criminal activity; the location to be searched was written all over the documents that the criminal left at the scene of her crime.

Because evidence described in the warrant application directly links the crime to Russell's apartment, there was a substantial basis to issue the search warrant and there is no basis for us to reverse Russell's conviction.

**Affirmed.**