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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0208

State of Minnesota,
Respondent,

vs.

Jonathan Rockford Gilbert,
Appellant.

Filed February 25, 2013
Affirmed
Rodenberg, Judge

Mille Lacs County District Court
File No. 48-CR-10-620

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

Janice S. Jude, Mille Lacs County Attorney's Office, Heather R. Van Zee, Assistant County Attorney, Milaca, Minnesota (for respondent)

David Merchant, State Public Defender, Bridget Kearns Sabo, Assistant State Public Defender, Roseville, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Connolly, Judge; and Hooten, Judge.

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

RODENBERG, Judge

On appeal from his conviction of one count of fifth-degree controlled substance possession and one count of possession of drug paraphernalia, appellant argues that the

district court erred in denying appellant's motion to suppress the evidence discovered in his separately rented, locked bedroom, that the search warrant application did not establish probable cause to believe that contraband would be found in that room, and that the search warrant did not specifically authorize a search of that room. Because the warrant application provided the issuing judge with a substantial basis to believe probable cause existed to search the entire house, including appellant's bedroom, we affirm.

FACTS

This appeal arises from a complaint filed on March 19, 2010, charging appellant Jonathan Gilbert with one count of fifth-degree controlled substance possession and one count of possession of drug paraphernalia based on evidence found during a search of a single-family residence where he rented a bedroom with his girlfriend, Lisa Nelson.

The relevant facts are undisputed. On February 14, 2010, police received a phone call alleging that a juvenile runaway was hiding at the residence located at 603 Old Highway 18 South, Princeton and that she was possibly being held against her will. In response, two officers conducted a welfare check at the residence and spoke with Corey Peters and Jane Saunders, who were inside the house at the time. Peters and Saunders stated that they did not know who or where the juvenile runaway was, but they allowed the police to enter the residence to search for her. The police did not locate the juvenile during their search of the house. Shortly after the police left, a 911 hang-up call was placed from within the house. The police immediately returned to the residence and eventually found the juvenile hiding in a camper located in the driveway. A police investigator was called to the scene, and the juvenile was interviewed. Peters and another

resident of the house, Mark Anderson, were also interviewed and eventually gave Mirandized statements.

Later that evening, Princeton police officer Sgt. Joe Backlund presented a district court judge with a search warrant application and supporting affidavit requesting judicial authorization to search the premises described as "603 Old Hwy 18, Single 2 level rambler style home Tan/beige in color" for controlled substances and items involved with the manufacture, packaging, sale, and use of controlled substances. Specifically, the request was to "search for the drugs inside the residence that have been used by the occupants over the last few days."

Sgt. Backlund alleged the following facts in his search warrant application: At 8:00 p.m. on February 14, 2010, Officer Jason Cederberg located a "signed runaway" from Sherburne County at the residence to be searched; the residence is owned by G.P.; Peters and his girlfriend, Saunders, live at the residence; also residing at the residence is Lisa Nelson, who is "renting a bedroom," and Anderson, who is renting the basement; the juvenile was "fully identified" to law enforcement, and made a statement to an investigator where she "alleg[ed] potential sexual misconduct"; the juvenile had observed occupants of the residence in possession of controlled substances, controlled substances in the bedrooms belonging to Peters and Nelson, controlled substances in a clear plastic baggy, a black suitcase in Nelson's bedroom containing an unidentified quantity of drugs, and Nelson hiding drugs in her slippers in her bedroom; Peters had forced the juvenile to smoke methamphetamine on February 5, 2010, out of a slender glass pipe with a glass bowl at the end; and on February 13, 2010, the juvenile "had [sic] marijuana one-hitter

pipe silver in color approximately 2" long." The application also alleged that Anderson and Peters had "made corroborating statements . . . regarding drug use at the residence."

On the basis of this application, the judge issued a warrant authorizing a search of the single-family residence. The warrant did not specifically reference Nelson's bedroom as an area of the residence to be searched. During the execution of the search warrant, officers observed a door that was padlocked. Because Nelson provided the officers with a key to the padlock, they were able to remove the padlock and enter the bedroom of appellant and Nelson. In the bedroom, the officers located and seized numerous glass pipes used to ingest methamphetamines, several pipes used to ingest marijuana, and two baggies containing a green leafy substance believed to be marijuana. The glass pipes, which appeared to contain methamphetamine residue, were found on what officers identified as appellant's side of the bedroom. The officers also located and seized what was believed to be illegal drugs and drug paraphernalia from the bedroom shared by Saunders and Peters and from Anderson's bedroom. Appellant was later arrested and charged.

In a motion filed May 14, 2010, appellant requested that the district court suppress the evidence obtained during the search of his bedroom, arguing that the warrant was supported by neither probable cause nor sufficient particularity as to his bedroom. At the omnibus hearing, appellant compared the residence to an apartment building with several rented bedroom units within one larger structure. He argued that, because the warrant named the entire residence as the place to be searched and did not specifically authorize search of his rented and locked bedroom, the warrant was not sufficiently particularized

to support the search of his room. Appellant also argued that the warrant application did not provide probable cause to issue the warrant because the application did not establish the juvenile's veracity as an informant.

The district court denied appellant's motion. The district court found the residence was "not [one] where we have easily identifiable complete units that are really independent and have no connection with each other." The district court emphasized that, even though appellant's bedroom was separately rented and locked, search of that room was still within the scope of the warrant because the room was a part of and connected to the residence as a whole, unlike individual apartment units in an apartment building. The district court also noted that, because the warrant was issued to search for drugs in a residence, it was not outside the scope of the warrant for the officers to look into all rooms since drugs are easily moved from room to room.

Regarding appellant's argument that the juvenile was not sufficiently reliable to support a finding of probable cause, the district court noted that the juvenile's identity was known to the officers, that she admitted using illegal substances, that the timeframe within which she claimed to have seen drugs in the residence was reasonably close in time to the request for and issuance of the warrant, and that the statements of Anderson and Peters corroborated the information provided by the juvenile.

Appellant waived his right to a jury in favor of a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4, and the district court found appellant guilty of both counts. The district court stayed adjudication and placed appellant on a supervised probation. This appeal followed.

D E C I S I O N

On appeal, appellant argues that the search warrant was not supported by probable cause to search his bedroom because the search warrant application was grounded in unreliable hearsay from the juvenile runaway, and that it was not sufficiently specific to provide probable cause to search his locked, rented room. Appellant also argues that the search of his room was outside the scope of the warrant. We address each argument in turn.

A.

When reviewing whether a search warrant is supported by probable cause, we afford "great deference" to the district court's probable-cause determination. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). 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). There is a strong preference for searches conducted pursuant to a search warrant, and "doubtful or marginal cases should be largely determined by the deference to be accorded to warrants." *Rochefort*, 631 N.W.2d at 804.

Probable cause is to be determined under a "totality of the circumstances" test:

> 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 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)). When determining whether a search warrant application establishes probable cause, the reviewing court "is restricted to consider[ing] only the information presented at the time of the application for the search warrant." *State v. Gabbert*, 411 N.W.2d 209, 212 (Minn. App. 1987) (citation omitted).

1.

Where, as here, an affiant's basis of knowledge or source of information is not personal knowledge, additional facts must be provided to assist the issuing judge in making an independent determination of the reliability of the information and the source. *State v. Jones*, 678 N.W.2d 1, 11 (Minn. 2004). A reviewing court considers multiple factors when evaluating the credibility and reliability of an informant:

> (1) a first-time citizen informant is presumably reliable; (2) an informant who has given reliable information in the past is likely also currently reliable; (3) an informant's reliability can be established if the police can corroborate the information; (4) the informant is presumably more reliable if the informant voluntarily comes forward; (5) in narcotics cases, "controlled purchase" is a term of art that indicates reliability; and (6) an informant is minimally more reliable if the informant makes a statement against the informant's interests.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004) (citing *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998)).

Here, because the search warrant application did not specifically allege that the juvenile was a first-time citizen-informant or that she was not involved in criminal activity, no presumption of reliability is available. *See Ward*, 580 N.W.2d at 71 (explaining that a "first-time citizen informant who has not been involved in the criminal

underworld is presumed to be reliable, but the affidavit must specifically aver that the informant is not involved in criminal activity"). Even so, the application provided information sufficient for the issuing judge to conclude that the juvenile was reliable. The juvenile here was known to the police; she was not anonymous. *See State v. Lindquist*, 295 Minn. 398, 400, 205 N.W.2d 333, 335 (1973) (stating that an informant who does not remain anonymous is more likely to be telling the truth because she could be arrested for making false statements). The juvenile admitted using illegal drugs in the house only nine days earlier. *See State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990) (providing that statements are relevant in a totality-of-the-circumstances analysis of probable cause when they are made against an informant's penal interest). Moreover, there was independent corroboration of the juvenile's statements. Even "minimal corroboration is [a] relevant factor on which the magistrate was entitled to rely in making the totality-of-circumstances assessment of probable cause." *Id*.

The search warrant application provided information that Anderson and Peters, two people who also lived in the house at the time the juvenile was there, made recorded, corroborating statements when questioned about drug use at the residence. It also provided information that Anderson was arrested for fifth-degree criminal sexual conduct and Peters was arrested for contributing to the delinquency of a minor and obstructing the legal process based on their own statements. These arrests are further corroboration of the juvenile's statements, which included allegations of potential sexual misconduct.

Without citing to any authority, appellant seems to argue that, because the information provided by the juvenile regarding Nelson's bedroom *specifically* was not

corroborated by others, that information is insufficiently reliable. Caselaw does not require that every detail of an informant's statement be corroborated. Instead, corroboration of even minor details can "lend credence" to an informant's information, especially where, as here, the police know the identity of the informant. *See Wiley*, 366 N.W.2d at 269.

The district court did not err in finding that the issuing judge had a substantial basis for concluding that the information provided by the juvenile was sufficiently reliable.

2.

Appellant argues that, even if the search warrant application established the juvenile's reliability, it did not provide facts sufficiently fresh for the issuing judge to find probable cause.

A search warrant must not be issued "on the basis of vague and uncertain information. Time is also crucial . . . ." *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984). There are no absolute limits regarding when information is too old to support probable cause. Instead, the district court must make a common-sense determination based on "practical considerations of everyday life" and the individual circumstances of each case. *Id*. (quoting *Brinegar v. United States*, 338 U.S. 160, 175, 69 S. Ct. 1302, 1310 (1949)). Indications of ongoing criminal activity support a conclusion that information is not stale. *See State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998).

The juvenile's information was not stale. Her statements indicated that illegal drugs were being used on a consistent, ongoing basis throughout the residence. Although the search warrant application did not specifically indicate when the juvenile saw the drugs and paraphernalia in appellant's bedroom, it cited the juvenile's statements that the juvenile had smoked methamphetamine in the residence with Peters nine days earlier and implied that the juvenile had used or at least seen a "one-hitter" being used in the residence the night before the search warrant was issued. The search warrant was issued the same day that the police located the juvenile at the residence. And the juvenile confirmed that those whom the juvenile had allegedly seen using and possessing drugs—Peters, Saunders, and Nelson—were living in the house at the time the search warrant was issued. Appellant is not entitled to relief on this ground.

3.

Appellant argues that the information provided in the warrant application did not support probable cause to search his bedroom specifically.

A search warrant is required to be particular "to prevent law enforcement officers, in their sole discretion unlimited by the detached and neutral judgment of a magistrate, from engaging in general or exploratory searches." *State v. Mathison*, 263 N.W.2d 61, 63 (Minn. 1978). To be valid, a search warrant must establish "a direct connection, or nexus, between the alleged crime and the particular place to be searched." *Souto*, 578 N.W.2d at 747. "[I]nformation linking the crime to the place to be searched" is a relevant factor when determining whether a nexus exists. *Id.*

The search warrant application here alleges facts that provide the requisite nexus between illegal drugs in both appellant's bedroom and the residence as a whole. The search warrant application established that Nelson's bedroom was rented and that drugs had been observed within the bedroom. The search warrant application recited that the "single 2 level rambler style home" located at "603 Old Hwy 18" was occupied by Peters, his girlfriend Saunders, and "also renting a bedroom at the home is a Lisa Marie Nelson." The search warrant application recited that the juvenile had "observed the occupants of the residence in possession of methamphetamine and marijuana." The search warrant application specifically provided that the juvenile had observed drugs "in the bedrooms belonging to a C. Peters and Saunders and a Lisa Marie Nelson," that the juvenile had observed "methamphetamine in a clear plastic baggy, and as well as the marijuana," and that the juvenile "observed a black suitcase in Nelson's bedroom that contains unidentified quantity of drugs as well as Nelson hiding drugs in her slippers in the same bedroom."

Given the strong preference for search warrants, and the deference we afford the probable cause determination of the issuing court, we conclude that the warrant application provided a substantial basis to believe that drugs and related paraphernalia would be found throughout the residence, including in appellant's bedroom.

B.

Finally, appellant argues that, because his bedroom was separately rented and locked, he had a legitimate expectation of privacy in it, it was outside the scope of the warrant issued to search the residence, and the police should have obtained a separate

warrant authorizing a search of the bedroom. In rejecting appellant's argument, the district court explained that the residence in question did not have "easily identifiable complete units that are really independent and have no connection with each other. Instead, we have a house where certain rooms might very well be rented and padlocked. But they still fall within the scope of a single residence." The district court agreed that whether a room is locked "may be a fact to consider" when examining the scope of a warrant, but concluded that a locked door does not, in these circumstances, remove a room from the scope of the warrant authorizing search of the entire residence.

In Minnesota, the "general rule" is that "a search warrant for a multiple occupancy building is invalid unless it describes the particular unit to be searched with sufficient definiteness." *State v. Lorenz*, 368 N.W.2d 284, 286 (Minn. 1985) (quotations omitted). This "multiple occupancy" rule applies mainly to traditional apartment buildings, and does not apply in situations of "community occupation" wherein two or more people "occupy a single residence in common rather than individually, as where they share common living quarters but have separate bedrooms." *Id.* at 286–87 (citation omitted). The community-occupation exception to the multiple-occupancy rule is justified, in part, because "where a significant portion of the premises is used in common and other portions, while ordinarily used by one person or family, are an integral part of the described premises and are not secured against access by the other occupants, then the showing of probable cause extends to the entire premises." *Id.* at 287.

Appellant relies on an Iowa case, *State v. Fleming*, in support of his argument that the police should have obtained a separate warrant to search his bedroom. 790 N.W.2d

560, 567 (Iowa 2010). In *Fleming*, the defendant was one of at least three people renting separate rooms within a single-family residence. *Id.* at 562. A warrant was issued to search the entire residence based on an application naming only another renter as having been in possession of drugs. Drugs were found in Fleming's bedroom when the warrant was executed. *Id.* Fleming moved to suppress the evidence, arguing that his private bedroom was outside the scope of the warrant. The Iowa Supreme Court concluded that the trial court erred in denying the motion to suppress, and in doing so rejected the reasoning underlying the community-occupation exception that unrelated individuals living together and sharing space and expenses agree to give up their right to privacy in their personal space. *Id.* at 567. Yet, the Iowa Supreme Court suppressed the evidence not because it rejected the community-occupation exception but rather because the search warrant application did not provide probable cause to search Fleming's room. *See id.* at 567–68. The warrant application made no showing that Fleming was in possession of drugs; the only person named in the application as being in possession of drugs was a different co-renter. *Id.* at 568.

Here, in addition to the exception to the multiple-occupancy rule adopted in *Lorenz*, the bedroom of appellant and Nelson was within the scope of the warrant authorizing a search of the house because the warrant application provided probable cause to search that bedroom. The application provided information that the juvenile had seen drugs in that bedroom and that she had seen Nelson hide drugs in the slippers which she kept in the bedroom. The warrant was supported by probable cause to search the

entire house, including appellant's bedroom. Therefore, the district court did not err in denying appellant's suppression motion.

Affirmed.