STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1074

State of Minnesota,
Respondent,

vs.

Michael Ray Huggett,
Appellant.

Filed April 22, 2013
Affirmed
Schellhas, Judge

Meeker County District Court
File No. 47-CR-11-627

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General, St. Paul, Minnesota; and

Stephanie Beckman, Meeker County Attorney, Ricky Fidelis Lanners, Assistant County Attorney, Litchfield, Minnesota (for respondent)

Robert D. Schaps, Schaps & Kulver P. A., Litchfield, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Schellhas, Judge; and Crippen, Judge.*

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

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

SCHELLHAS, Judge

Appellant argues that the district court erred by denying his motion to suppress evidence obtained during the execution of a no-knock search warrant. We affirm.

FACTS

On May 17, 2011, a concerned citizen known to law enforcement reported witnessing drug activity at appellant Michael Huggett's residence in Darwin six days earlier. The concerned citizen reported a smell of "dope" that was stronger than marijuana or cocaine and an encounter with Huggett, who was "high," and three other individuals, who made the concerned citizen feel uneasy. Also on May 17, a local church secretary reported to law-enforcement officers that, the previous day, she received a phone call from a frantic woman, who asked to speak with a priest about an active methamphetamine lab at the Old Lumberyard—the location of Huggett's residence. The woman mentioned the names "Michael" and "Mark," but ended the phone call before speaking with the priest. Two days later, the mayor of Darwin spoke to law-enforcement officers about short-term traffic at the Old Lumberyard.

On May 31, 2011, law-enforcement officers spoke with a confidential reliable informant (CRI), who reported that the CRI had been at the Old Lumberyard within the previous 72 hours, had been staying there on and off for about one week, and had seen methamphetamine being sold and used. The CRI stayed at the Old Lumberyard for about a week and continually saw Huggett and a man known as M.L. at the residence. The CRI reported seeing the following activity at the Old Lumberyard: M.L. leave and return with

bags of methamphetamine; four to five people come to the Old Lumberyard and purchase methamphetamine from Huggett and M.L.; women sometimes engage in sexual relations with M.L. in exchange for methamphetamine; a digital scale and other drug distribution items in the back of a large building where Huggett and M.L. sold methamphetamine; and a woman, who was high on methamphetamine, left and ran into the middle of the street screaming until the CRI calmed and returned her.

On May 31, 2011, law-enforcement officers applied for and obtained a no-knock search warrant for Huggett's Darwin residence. The officers applied for permission to make an unannounced entry to prevent the destruction of evidence and to protect the safety of the officers. The search-warrant application listed criminal-history reports for Huggett, M.L., and A.J., a man the concerned citizen identified as being at the residence. The criminal histories included drug-related offenses, weapons offenses, and assault offenses but did not distinguish between arrests, charges, or convictions and did not provide the dates or circumstances involved.

On June 1, 2011, law-enforcement officers executed the no-knock search warrant and discovered drugs and drug paraphernalia throughout Huggett's residence and in a shop area attached to the residence. Both the drugs and drug paraphernalia field-tested positive for methamphetamine and marijuana. Respondent State of Minnesota charged Huggett with: (1) fifth-degree controlled-substance possession in violation of Minn. Stat. § 152.025, subd. 2(b)(1) (2010); (2) possession of a small amount of marijuana in violation of Minn. Stat. § 152.027, subd. 4(a) (2010); and (3) possession of drug paraphernalia in violation of Minn. Stat. § 152.092 (2010).

Huggett moved to suppress the controlled-substance evidence, arguing that the search-warrant application lacked sufficient grounds for a no-knock provision. The district court denied the motion, and Huggett waived his jury-trial right and proceeded with a court trial. The court found Huggett guilty of all three charges.

This appeal follows.

D E C I S I O N

Huggett argues that the district court erred by denying his motion to suppress the controlled-substance evidence obtained during the execution of the no-knock search warrant. He claims that the search-warrant application failed to set forth sufficient particularized facts to provide a reasonable basis for a no-knock entry. He further claims that the affidavit in support of the search warrant included insufficient and misleading information regarding his and others' criminal histories and "created the illusion that [Huggett] had a violent and sordid criminal history."

The United States Constitution and the Minnesota Constitution guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Where the material facts are not in dispute, this court independently reviews whether a no-knock entry was justified. *State v. Wasson*, 615 N.W.2d 316, 320

(Minn. 2000); *see also State v. Barnes*, 618 N.W.2d 805, 810 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001).

"[U]nannounced entry may be justified where police officers have reason to believe that evidence would likely be destroyed if advance notice was given" or "under circumstances presenting a threat of physical violence." *Wilson v. Arkansas*, 514 U.S. 927, 936, 115 S. Ct. 1914, 1918–19 (1995). That felony drug investigations may frequently involve both the threat of physical violence and the destruction of evidence is indisputable. *Richards v. Wisconsin*, 520 U.S. 385, 391, 117 S. Ct. 1416, 1420 (1997). But blanket exceptions for drug investigations are prohibited. *Id.* at 394, 117 S. Ct. at 1421.

"Facts justifying an unannounced entry must be presented to the magistrate at the time of application . . . [and] failure to supply the necessary supportive facts to the issuing magistrate will nullify the warrant and facts later presented . . . will not bring the warrant back to life." *Garza v. State*, 632 N.W.2d 633, 638 (Minn. 2001). Law enforcement must "obtain specific advance authorization for an unannounced entry." *Wasson*, 615 N.W.2d at 320. While boilerplate language is not enough to support a no-knock warrant, *id.* at 322, the showing required for a no-knock entry "is 'not high.'" *Id*. at 321 (quoting *Richards*, 520 U.S. at 394, 117 S. Ct. at 1416). The standard for an unannounced entry is reasonable suspicion. *Id*. at 320. A reasonable suspicion is "something more than an unarticulated hunch," but less than an "objectively reasonable belief." *Id*. at 320–21. "[P]olice must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or

futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Id.* at 320 (quoting *Richards*, 520 U.S. at 394, 117 S. Ct. at 1416).

Appellate courts "may accept evidence of a threat to officer safety of a less persuasive character when the officer presents the request for a no-knock warrant to a magistrate." *Id.* at 321. "Consequently, when an officer complies with established procedure and obtains judicial pre-approval for an unannounced entry, this 'weighs against excluding the evidence seized.'" *State v. Botelho*, 638 N.W.2d 770, 778 (Minn. App. 2002) (quoting *Wasson*, 615 N.W.2d at 321).

Huggett argues that the search-warrant application did not set forth a reasonable basis for issuance of a no-knock warrant because the affidavit failed to include a particularized showing of dangerousness or the potential for destruction of evidence. We disagree.

The search-warrant application included criminal-history reports for Huggett, M.L., and A.J., who frequented the residence, in addition to information articulating a need for an unannounced entry. The application stated:

> Your Affiant, Agent Ardoff, reviewed the criminal history reports on Michael Hugget[t] and found the following offenses: Violation of the Federal Controlled Substance Act, Distribution of Methamphetamine, Tampering with a Witness, Assault in the Fifth Degree, Dangerous Weapons, Carrying Weapons without a permit, Illegally carrying/transporting a pistol and Domestic Assault.
>
> Your Affiant, Agent Ardoff, reviewed the criminal history reports on [M.L.] and found the following offenses: Fifth Degree Possession of a Controlled Substance, Fifth

> Degree Possession of Methamphetamine and Fifth Degree Assault.
>
> Your Affiant, Agent Ardoff, reviewed the criminal history reports on [A.J.] and found the following offenses: Numerous Alcohol Violations, Drugs-Other Controlled Substance Offense, Second Degree Assault-Dangerous Weapon and Disorderly Conduct.
>
> An unannounced entry is necessary (to prevent the loss, destruction or removal of the objects of the search and to protect the safety of the peace officers) because: Information received regarding the occupants of this residence show [sic] history of violent behavior including assaults and weapons violations. Information also indicates that occupants of this residence are commonly under the influence of controlled substances and act irrationally.

Huggett argues that this case is similar to *Botelho*. In *Botelho*, this court "reluctantly" concluded that the allegations in a search-warrant application were "not sufficiently particularized to support reasonable suspicion of a threat to officer safety or a threat of destruction of evidence." *Botelho*, 638 N.W.2d at 779. This case is distinguishable from *Botelho* because the search-warrant application in *Botelho* included boilerplate language, *id.* at 779, and limited and vague allegations about the criminal histories of individuals believed to frequent the residence for which the warrant was obtained. *Id.* at 774, 780–81. In this case, the search-warrant application included the criminal histories of Huggett, who lived at the residence, and two other identified individuals who frequented the residence. Furthermore, in *Botelho*, the application did not list specific offenses in the criminal histories, simply stating that people frequenting the location had "dangerous weapon criminal histories as well as histories reflective of obstructing legal process." *Id.* at 774. Here, the search-warrant application contained

criminal histories for Huggett, M.L., and A.J. that listed specific offenses relating to the individuals and included arrests, dismissed charges, and convictions.

Huggett also argues that his convictions for misdemeanor fifth-degree assault in 1992, gross misdemeanor carrying a weapon without a permit in 1994, and federal felony distribution of methamphetamine in 1994, were too stale to provide reasonable suspicion that knocking and announcing entry to his residence might prove dangerous. Staleness typically arises when considering whether a search warrant is supported by probable cause, a higher standard than that of reasonableness, which applies here. *See State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998) (concluding that because information in a search warrant was stale, the warrant lacked probable cause). Furthermore, the showing of reasonableness required "is not high." *Richards*, at 395, 117 S. Ct. at 1422. Appellate courts "may accept evidence of a threat to officer safety of a less persuasive character when the officer presents the request for a no-knock warrant to a magistrate." *Wasson*, 615 N.W.2d at 321. Here, the search-warrant application met that standard. The search-warrant application included detailed information from four sources regarding suspected drug use and drug trafficking at the residence and identified the criminal histories of three individuals who either frequented the residence or lived there. The information established a reasonable basis that knocking and announcing could result in the destruction of evidence or prove dangerous to officer safety.

Huggett contends that the search-warrant application should have distinguished between arrests and convictions and included the dates and circumstances surrounding the offenses, but we can find no published Minnesota case that requires a search-warrant

application to distinguish between arrests and convictions or to include specific dates of the same. We note that the district court stated that it was "troubled" by the agents' "characterization of the criminal histories in the warrant application, which did not differentiate convictions from mere arrests and charges, and also did not specify when or under what circumstances the offenses occurred" and that a "better practice would be to provide the issuing magistrate with times and circumstances of relevant convictions." We agree with the district court that the better practice is to provide the times and circumstances of relevant convictions to the issuing magistrate. The same better practice applies to relevant arrests.

We conclude that the district court did not err by denying Huggett's suppression motion because the search-warrant application provided sufficient particularized facts that established a reasonable basis that an unannounced entry was necessary.

Affirmed.