**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-2064**

State of Minnesota,
Respondent,

vs.

Robert Brooks Hoel,
Appellant

**Filed June 23, 2014**
**Affirmed**
**Johnson, Judge**

Ramsey County District Court
File No. 62-CR-10-7025

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

John J. Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Judge; and Chutich, Judge.

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

**JOHNSON**, Judge

A Ramsey County jury found Robert Brooks Hoel guilty of a controlled-substance crime based on evidence that he was growing a large quantity of marijuana in his home. Hoel argues that the district court erred by denying his motion to suppress evidence. We affirm.

## FACTS

On June 22, 2010, Officer Bryan Hall of the St. Paul Police Department was instructed by his supervisor to investigate a St. Paul residence associated with Hoel. Officer Hall learned that Hoel was implicated in a search of a marijuana-growing operation in the city of Duluth. Officer Hall went to the residence with Officer Shawn Murphy and another officer.

When they arrived at the home, the officers drove around the perimeter of the property to make observations. They saw that a sliding door to a second-floor balcony was open. The officers knocked on the home's front door for several minutes, but no one answered. The officers then drove around the perimeter of the property again and noticed that the second-floor sliding door had been closed, which led them to believe that someone was inside the home. They returned to the front door and knocked again for about seven or eight minutes before a man, J.S., opened the door.

When J.S. opened the front door, Officer Hall immediately smelled a strong odor of raw, unburnt marijuana emanating from the home. Officer Murphy also smelled the strong odor of marijuana from his position about four feet away from the front door.

Officer Murphy later testified that it would take "quite a few" marijuana plants to produce the strength of the odor he detected.

Officer Hall asked J.S. some questions. J.S. stated that the home belonged to Hoel and said that he was there to feed Hoel's cat. Officer Hall asked whether anyone else was in the home, and J.S. answered in the negative. Officer Hall noticed that J.S. was sweating profusely, that his voice was shaking, that his hands were jittery, and that he appeared nervous. J.S.'s appearance and behavior led Officer Hall to conclude that he was being "less than truthful" in his responses to their questions.

Officer Hall called his supervisor, and they agreed that Officer Hall should apply for a warrant to search the home. The three officers at the scene believed that it "was in [their] best interest . . . [to] do a protective sweep of the house" before Officer Hall left to seek a warrant. They entered the front door of the home, without J.S.'s permission, and did a visual check of the rooms and spaces that were large enough to conceal a person. At one point during the protective sweep, the officers observed two marijuana plants hanging in an open bedroom closet in plain view. The officers also noticed a strong odor of unburnt marijuana emanating from a locked door to one room inside the home.

At approximately 6:00 p.m., Officer Hall returned to the police department to prepare a warrant application. The other two officers stayed at the home with J.S. Officer Hall presented a warrant application that recited the facts described above, including information about the two marijuana plants hanging in the bedroom closet and information about the marijuana odor emanating from behind the locked door. A judge approved Officer Hall's warrant application and issued a warrant to search the home for

marijuana. At approximately 8:00 p.m., the officers executed the search warrant. After opening the locked door, the officers found 66 small marijuana plants. After opening another door within that room that led to another room, they found 33 large marijuana plants.

In August 2010, the state charged Hoel with one count of fifth-degree controlled substance crime, in violation of Minn. Stat. § 152.025, subd. 2(a)(1), (b) (2010). In January 2011, Hoel moved to suppress the evidence obtained by the execution of the search warrant. The district court held a contested omnibus hearing in September 2011. Officer Hall and Officer Murphy provided the only testimony. The district court denied the motion on the grounds that the warrant application was supported by probable cause and the warrantless entry was justified to preserve officer safety and to prevent the destruction of evidence.

The case was tried to a jury on three days in April 2012. The jury found Hoel guilty of the charged offense. The district court imposed a sentence of 19 months of imprisonment but stayed execution of the sentence for 10 years. Hoel appeals.

## D E C I S I O N

Hoel argues that the district court erred by denying his motion to suppress evidence. He contends that the officers violated his Fourth Amendment rights when they entered his home without a warrant and that the search warrant is defective because it was based on information obtained during the officers' warrantless entry. In response, the state argues that the officers' warrantless entry was a valid protective sweep of Hoel's home such that the search warrant is not tainted by unlawfully obtained information. In

the alternative, the state argues that, even if the officers' warrantless entry is invalid, the search warrant nonetheless is valid under the independent-source doctrine because Officer Hall's affidavit contains untainted information that is sufficient to provide probable cause for the issuance of the search warrant.

We first consider the state's alternative argument. In doing so, we assume without deciding that the officers violated the Fourth Amendment by entering Hoel's home without a warrant. As a general rule, evidence obtained as the direct or indirect result of a Fourth Amendment violation must be suppressed and may not be introduced at trial. *Murray v. United States*, 487 U.S. 533, 536-37, 108 S. Ct. 2529, 2533 (1988). But, under the independent-source doctrine, the suppression of such evidence is not required if the evidence could have been obtained without the Fourth Amendment violation. *State v. Lieberg*, 553 N.W.2d 51, 55 (Minn. App. 1996). The independent-source doctrine is rooted in the policy that unlawful police conduct should cause both law enforcement and a defendant to be placed in the same position as if the police had conducted themselves lawfully, but not a better or worse position. *See Murray*, 487 U.S. at 537, 108 S. Ct. at 2533. In essence, the independent-source doctrine prevents "criminals from turning police misconduct into a windfall." *Lieberg*, 553 N.W.2d at 55.

If an affidavit in support of a search warrant includes information that was obtained in violation of the Fourth Amendment, the independent-source doctrine requires courts to perform a two-step analysis to determine whether evidence gathered during the execution of the search warrant must be suppressed. *See id.* (citing *Murray*, 487 U.S. at 542, 108 S. Ct. at 2536). The first question is "whether the decision of the issuing

magistrate was 'affected' by the tainted information." *Id.* (quoting *Murray*, 487 U.S. 542, 108 S. Ct. at 2536). This question may be answered by "determining whether a sanitized affidavit would establish probable cause." *Id.* The second question is "whether that information prompted law enforcement officials to seek the warrant." *Id.* Under this second question, the district court "must conduct a factual inquiry into whether the unlawful search prompted the authorities to seek a warrant." *Id.* If the tainted information did not affect the magistrate's decision to issue the warrant and did not prompt law-enforcement officers to seek a warrant, then the evidence obtained in the search need not be suppressed. *See id.*

**A.**

The first question is whether a sanitized version of Officer Hall's affidavit would be sufficient to establish probable cause to issue a search warrant. *See id.*

In the context of an application for a search warrant, "[p]robable cause determinations involve 'a practical, common-sense decision whether, given all the circumstances set forth . . . , there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). Whether probable cause exists is based on the totality of the circumstances, not on "bits and pieces . . . in isolation." *Id.* (quotation omitted). The suspected information contained in the search warrant application must create a nexus between the suspected illegal activity and the place to be searched. *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998). The application also should contain fresh information that is "closely related to the time of the issue of the warrant." *Id.* at 749-50

(quotation omitted). The probable-cause determination may be based on odors that trained police officers can identify as being illicit. *State v. Lozar*, 458 N.W.2d 434, 439 (Minn. App. 1990), *review denied* (Minn. 1990). This court reviews the issuance of a search warrant to determine whether the issuing judge had "a substantial basis for its decision," *Lieberg*, 553 N.W.2d at 55, and we consider "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) (quotation omitted). The substantial-basis standard of review is deferential to the issuing judge's determination because the Fourth Amendment prefers searches that are conducted pursuant to a warrant. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001).

To sanitize Officer Hall's warrant application of information that was obtained during the protective sweep of Hoel's home, we remove two pieces of information: the reference to the two marijuana plants hanging in plain view in a bedroom closet and the information about the marijuana odor emanating from behind the locked door. After being so sanitized, Officer Hall's warrant application continues to include all other historical facts recited above: information about Hoel's involvement with a marijuana-growing operation at another location, information about the officers' observations of Hoel's home and their encounter with J.S. at the front door, and information about the officers' detection of "a strong odor of fresh, non-burnt marijuana" emanating from the front door of the home. Viewed in a practical, common-sense way, the totality of these circumstances would provide a judge with a substantial basis from which to conclude that

there was "a fair probability that contraband" would be found inside Hoel's home. *See Gates*, 462 U.S. at 238, 103 S. Ct. at 2332.

Hoel contends that the odor of marijuana, by itself, is insufficient to provide probable cause to search the home. But this court has stated to the contrary: "the detection of odors *alone*, which trained police officers can identify as being illicit, constitutes probable cause" to obtain a search warrant. *Lozar*, 458 N.W.2d at 439 (quotation omitted). Hoel also contends that *Lozar* was incorrectly decided because it relied on cases concerning the automobile exception to the warrant requirement. Regardless of its underpinnings, we are bound by the doctrine of *stare decisis* to adhere to the published opinions of this court. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010); *Doe v. Lutheran High Sch. of Greater Minneapolis*, 702 N.W.2d 322, 330 (Minn. App. 2005), *review denied* (Minn. Oct. 26, 2005). Furthermore, Officer Hall's sanitized affidavit does not rely solely on the odor of marijuana; the sanitized affidavit also is based on Hoel's involvement in another marijuana-growing operation and the suspicious circumstances observed at Hoel's home.

Thus, Officer Hall's sanitized warrant application contains a substantial basis for a conclusion that there was a fair probability that marijuana would be found in Hoel's home.

**B.**

The second question is "whether [the tainted] information prompted law enforcement officials to seek the warrant." *Lieberg*, 553 N.W.2d at 55. A district court must conduct this factual inquiry and make appropriate findings. *Id.* If the district court

has not made any findings on this issue, "a reviewing court must remand for additional findings." *Id.*

In this case, the district court found that the officers decided to seek a search warrant after speaking with J.S. at the front door and before they entered the home to conduct the protective sweep. This finding is supported by the record of the omnibus hearing. After speaking with J.S. and before the protective sweep, Officer Hall called his supervisor and informed him that he "felt [he] had enough to get a search warrant." Officer Hall's supervisor agreed that Officer Hall should seek a warrant. Officer Hall then told the two other officers that he was going to leave the scene to prepare a search warrant application. The three officers then jointly decided that they should perform a protective sweep before Officer Hall left. Thus, the district court's findings and the evidentiary record make clear that the information obtained during the protective sweep of Hoel's home did not prompt the officers to seek a search warrant.

Because both requirements of the independent-source doctrine are satisfied, we conclude that the evidence obtained during the search of Hoel's home is admissible. In light of this conclusion, we need not address the parties' other arguments. In sum, the district court did not err by denying Hoel's motion to suppress evidence.

**Affirmed.**