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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1032**

State of Minnesota,
Respondent,

vs.

Brenda Kay Olson,
Appellant.

**Filed April 3, 2017
Affirmed
Randall, Judge***

Clay County District Court
File No. 14-CR-14-2650

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

Brian J. Melton, Clay County Attorney, Lori H. Conroy, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Mark J. Miller, Mark J. Miller, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Randall,
Judge.

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

UNPUBLISHED OPINION

RANDALL, Judge

Appellant challenges her controlled-substance-crime conviction. She argues that the district court erred by denying her motion to suppress evidence based on her claim that the search warrant was deficient. We affirm.

FACTS

On August 8, 2014, Drug Enforcement Administration (DEA) Special Agent Charles Connelly executed a search warrant at a hotel room in Williston, North Dakota. During the search of the hotel room, DEA agents located approximately \$5,500 in cash, cellphones, drug paraphernalia, and approximately 3/4 pound of methamphetamine. The suspect associated with the hotel room, R.S., agreed to speak with DEA agents. R.S. told agents that he had been receiving pound quantities of methamphetamine. R.S. stated that he met an individual who lived in the Moorhead, Minnesota area named D.N. R.S. told agents that he paid a \$7,000 drug debt that D.N. owed and that D.N. introduced him to appellant Brenda Kay Olson. R.S. stated that Olson lived in a trailer park located behind JL Beers in Moorhead on U.S. Highway 10, that Olson was “in her 40s, skinny and ha[d] blonde hair.” R.S. also told officers that he provided Olson with methamphetamine on a few occasions.

On August 11, Detective Adam Torgerson of the Moorhead Police Department identified Olson as Brenda Kay Olson with a date of birth of September 14, 1969. According to utility records, Olson had been paying utilities at a trailer, located in the Regal Estates Mobile Home Community in Moorhead, just north of JL Beers, since 2012.

Records Detective Torgerson obtained from the Fargo/Moorhead police computer database at the time listed Olson as being “44 years of age, 5’4” tall and 125 pounds with blonde hair.”

On August 12, Detective Torgerson arrived at Olson’s trailer. Detective Torgerson saw that a city-issued trash canister had been placed on the curb outside the address for sanitation collection. Detective Torgerson collected two white tied-off trash bags and a pizza box from the trash canister. During an examination of the refuse, Detective Torgerson located a pizza box, a plastic hypodermic syringe cap, two clear plastic sandwich baggies with cutout corners, and a wireless prepaid phone card. The label on the pizza box showed that the pizza was delivered to Olson’s trailer and listed “Olson” as the last name of the customer who ordered it. Detective Torgerson conducted a field test on residue found inside the plastic baggies. The residue tested positive for methamphetamine.

After examining the garbage, Detective Torgerson obtained a warrant to search Olson’s residence. On August 13, officers executed the search warrant. Officers found 12.87 grams of methamphetamine, a glass pipe, bags containing methamphetamine residue, a small amount of marijuana, a prescription bottle with Olson’s name on the label containing multiple different prescription pills, and several other prescription bottles which did not have Olson’s name on their labels containing prescription pills.

On August 14, respondent State of Minnesota charged Olson with one count of first-degree controlled-substance sale and one count of third-degree controlled-substance possession. Olson moved to suppress the evidence obtained from the search of her residence on the basis that the search warrant lacked probable cause. Following a hearing,

the district court denied Olson’s motion. The state then filed an amended complaint, adding a count of second-degree controlled-substance crime. The case was tried to a jury over three days. On the last day of trial, the state dismissed the third-degree controlled-substance-crime count. The jury found Olson guilty of the remaining two counts. The district court sentenced Olson to 84 months in prison on the first-degree controlled-substance-crime count.¹ Olson appeals.

DECISION

Olson argues that the search warrant in this case “fails for lack of probable cause.” 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. “A search warrant may be issued only upon a finding of probable cause by a neutral and detached magistrate.” *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999); *see* Minn. Stat. § 626.08 (2014). “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). When reviewing a decision to issue a search warrant, we limit our review to whether the judge issuing the warrant had a substantial basis for concluding that probable cause existed. *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014).

¹ The district court did not sentence Olson on the second-degree controlled-substance-crime count because it “involve[d] the same behavioral incident” as the first-degree controlled substance-crime count and thus was a lesser-included offense. *See* Minn. Stat. § 609.04 (2014).

To determine whether the issuing judge had a substantial basis for finding probable cause, this court looks to the “totality of the circumstances.” *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985).

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.

Id. (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). “Although police officers may rely on training and experience to draw inferences and make deductions, mere suspicion does not equal probable cause.” *State v. Richardson*, 514 N.W.2d 573, 579 (Minn. App. 1994). “In reviewing the sufficiency of an affidavit under the totality of the circumstances test, courts must be careful not to review each component of the affidavit in isolation.” *Wiley*, 366 N.W.2d at 268. “[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). “[T]he resolution of doubtful or marginal cases should be ‘largely determined by the preference to be accorded to warrants.’” *State v. McCloskey*, 453 N.W.2d 700, 704 (Minn. 1990) (quoting *United States v. Ventresca*, 380 U.S. 102, 109, 85 S. Ct. 741, 746 (1965)).

Olson contends that the “contraband pulled from the garbage receptacle outside of [her residence] . . . failed to provide a substantial basis for a probable cause determination.” Olson acknowledges that this court previously held that contraband seized from garbage left for collection can provide an independent and substantial basis for a probable cause

determination in *State v. McGrath*, 706 N.W.2d at 543, and *State v. Papadakis*, 643 N.W.2d 349, 356 (Minn. App. 2002). However, she argues that *Papadakis* is distinguishable from this case because the spoon with burn marks and plastic bag containing cocaine residue found in the garbage pull in that case “were only sufficient to establish probable cause for the search because the affidavit also contained (1) observations of large amounts of short-term traffic at the defendant’s residence, (2) the existence of previous police contact with the defendant; and (3) the defendant was previously arrested at the residence.”

Olson is correct that the affidavit at issue in *Papadakis* contained supporting information not present here. But the court expressly stated in that case that “the trash can search provided an independent and substantial basis for the district court’s probable cause determination.” 643 N.W.2d at 356. Thus, the other information included in the affidavit in *Papadakis* was not necessary to establish a substantial basis for the issuing magistrate’s probable cause determination; the trash can search alone provided a substantial basis for that determination. This court applied that rule again in *McGrath*, holding that “[n]otwithstanding reckless misrepresentations of fact by the affiant in a search-warrant application, plastic bags containing marijuana residue obtained through a legal garbage search can establish an independent and substantial basis for probable cause to issue a search warrant for a residence.” 706 N.W.2d at 536. Thus, a garbage search (meaning garbage out in the open in the “public domain”), which results in the discovery of controlled-substance residue, can establish a substantial basis for probable cause even when a search-warrant application is otherwise deficient.

Olson then argues that Detective Torgerson never observed “[Olson] anywhere or doing anything” or observed “anyone put the bags or pizza box in the unsecured garbage receptacle or observe anyone bringing the receptacle out for collection.” Olson claims the pizza box was located outside of the sealed bags, and the sealed bags did not contain any material connecting them to her residence. Olson does not cite to any caselaw requiring an officer to observe an individual placing garbage bags in a garbage receptacle before a search of those bags can establish a basis for probable cause. Neither *Papadakis* nor *McGrath* impose such a requirement. The plastic baggies with cutout corners containing residue that field-tested positive for methamphetamine obtained from the garbage search, coupled with the evidence linking Olson and her address by name, provided an independent basis for the issuing judge’s probable cause determination.

Olson argues that the information contained in the affidavit attached to the search-warrant application is “stale, vague and uncertain.” She points out that Detective Torgerson’s affidavit only states that “[R.S.] stated he provided Olson with methamphetamine on a few occasions” and does not specify when or where these transactions occurred. “[T]he probable cause to search cannot be established by stale information.” *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *review denied* (Minn. Jan. 14, 1985). “Factors relating to staleness include whether there is any indication of ongoing criminal activity, whether the articles sought are innocuous or incriminating, whether the property sought is easily disposable or transferable, and whether the items sought are of enduring utility.” *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998).

We do not have the issue, but R.S.'s statements regarding his transactions with Olson, her physical appearance, and where she resides might not have been enough by themselves to establish probable cause for the search warrant. However, Detective Torgerson took steps to verify that the information R.S. provided was current. Namely, Detective Torgerson confirmed that Olson lived in a trailer park behind JL Beers in Moorhead, examined garbage bags placed on the curb outside her residence, and discovered the plastic baggies containing residue that field-tested positive for methamphetamine and the pizza box containing Olson's last name and address. Taking all the circumstances together as we must, the district court properly found a substantial basis for the search warrant.

Olson argues that the information in the affidavit "was obtained from an unreliable informant" and therefore "it could not be presumed reliable without corroboration." The veracity and basis of knowledge of persons supplying information are relevant to an issuing judge's review of the totality of the circumstances when making a probable cause determination. *Wiley*, 366 N.W.2d at 268. The discovery of drug residue in a search of garbage associated with a residence can independently confirm an officer's suspicion based on other evidence that contraband might be found at that residence. *Papadakis*, 643 N.W.2d at 356. We need not determine whether the information R.S. provided was reliable in isolation because the evidence obtained from the garbage search independently confirmed Detective Torgerson's suspicion that contraband might be found at Olson's residence.

Olson contends that the “affidavit fails to establish a nexus between alleged drug activities and [Olson’s] residence.” Minnesota courts require “a direct connection, or nexus, between the alleged crime and the particular place to be searched, particularly in cases involving the search of a residence for evidence of drug activity.” *Souto*, 578 N.W.2d at 747-48. Olson relies on *State v. Secord*, 614 N.W.2d 227 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000), and *State v. Kahn*, 555 N.W.2d 15 (Minn. App. 1996), in support of her argument. Both cases are distinguishable.

In *Secord*, a mechanic saw “what he thought was a box of child pornography videotapes, as well as some soft-cover child pornography books” in a vehicle while it was being serviced. 614 N.W.2d at 228. The mechanic’s manager reported these observations to police and police used them as a basis to obtain a search warrant to search the defendant’s vehicle and residence. *Id.* This court held that the warrant was not supported by probable cause because the affidavit supporting the warrant-application did not establish a nexus to the defendant’s residence. *Id.* at 228, 231. This court reasoned (1) that there was no basis for finding that the defendant would view the tapes at his residence as opposed to some other location; (2) that because there were not “any facts to indicate that the pornography seen in [the defendant’s] car was part of a larger supply, there was no reasonable basis to infer that more pornography would be found at [the defendant’s] home;” and (3) that there was no basis for finding that the defendant was using the car to transport the pornography to his residence rather than to somewhere else. *Id.* at 230-31.

In *Kahn*, officers stopped the defendant and found cocaine on his person during a search of his vehicle and its occupants. 555 N.W.2d at 17. Police used this information and the affiant's knowledge through training and experience that the amount of cocaine found on the defendant was considered more than that for personal use to obtain a search warrant to search the defendant's residence. *Id.* at 17. This court held that the search warrant was not supported by probable cause because the affidavit supporting the warrant-application did not contain "evidence linking [the defendant's] alleged possession in Minneapolis and the likelihood of evidence or contraband being found at his residence 75 to 85 miles away." *Id.* at 19.

Unlike the affidavits in *Secord* and *Kahn*, the affidavit in this case included evidence linking the alleged criminal activity to Olson's residence that was covered by the warrant. Detective Torgerson collected and examined garbage found in a trash receptacle placed outside Olson's residence and found a pizza box with Olson's name and address on it. The box contained plastic baggies with cutout corners containing residue that field-tested positive for methamphetamine, and a plastic hypodermic syringe cap and phone card. In sum, the issuing judge properly found that probable cause existed to issue the search warrant based on the totality of the circumstances.

Affirmed.