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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0328**

State of Minnesota,
Respondent,

vs.

Jamar Charles Young,
Appellant.

**Filed April 1, 2019
Affirmed
Stauber, Judge***

Hennepin County District Court
File No. 27-CR-16-31577

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Slieter, Judge; and Stauber,
Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

Appellant challenges the district court's denial of his motion for a *Franks* hearing to challenge alleged misrepresentations in a search-warrant application, and the denial of his motion to suppress evidence seized pursuant to a no-knock provision in the warrant. We affirm.

FACTS

On December 1, 2016, a detective with the Edina Police Department applied for, and received, a warrant to search the residence of appellant Jamar Charles Young, located in Minneapolis. The warrant included authorization for an unannounced (no-knock) entry.

In his affidavit supporting the application, the detective stated that he met with a concerned citizen (CC) within the previous month who reported being at that Minneapolis residence. The CC reported observing a large amount of cocaine—approximately two kilograms—and money, and provided a description of the person residing there. The CC later identified Young as the person in the residence. The affidavit also included a recitation of Young's criminal history, which includes numerous arrests and convictions for drug and weapon-possession offenses. The affidavit states, without factual support, that Young is a confirmed member of the Vice-Lord gang.

The affidavit states that in the 72 hours preceding the application for the warrant, the detective performed a search of the residence's trash. He found two dealer tear-offs and two heat-seal bags. He also found mail addressed to Young at the address and a prescription receipt in his name. The items collected from the garbage were ion scanned

and alerted to the presence of cocaine. Through the course of discovery, it was revealed that the mailer found in the garbage was addressed to Young, but bore a different address than the residence searched, and the prescription receipt, while bearing the Minneapolis address, was in the name of Ramaj Young (Jamar spelled backwards). Furthermore, the affidavit did not disclose that the searched trash can was shared with another unit of the duplex.

On December 6, 2016, officers executed a no-knock warrant to search the residence. Among the items they recovered were: 189.19 grams of cocaine; 23.79 kilograms of marijuana; 10 tabs of LSD; 72.5 Ecstasy pills; nearly \$22,000 in cash; and a .25 caliber handgun. The state charged Young with nine drug-related offenses and one count of prohibited person in possession of a firearm.

Young moved to suppress the evidence due to an improperly authorized no-knock provision in the search warrant, and for a *Franks*¹ hearing to challenge asserted misrepresentations contained in the application for the search warrant. The district court denied both motions.

Pursuant to Minn. R. Crim. P. 26.01, subd. 4, Young waived his right to a court trial and stipulated to the prosecution's evidence, due to the parties' agreement that appellate review of the denial of Young's pretrial motions would be dispositive. On January 4, 2018, the district court found Young guilty of a first-degree aggravated controlled-substance

¹ If a defendant makes a preliminary showing that an affidavit supporting a search warrant contains intentional false statements necessary to the finding of probable cause, then the Fourth Amendment requires a hearing be held at the defendant's request to challenge the affidavit. *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676 (1978).

crime with two aggravating factors, Minn. Stat. § 152.021, subd. 2(b)(2) (2016), and prohibited person in possession of a firearm, Minn. Stat. § 624.713, subd. 1(2) (2016). The district court sentenced Young to 135 months in prison for the controlled-substance crime conviction, and to a concurrent 60 months in prison for the firearm conviction. This appeal followed.

D E C I S I O N

Franks Hearing

Young argues that the district court erred in denying his motion for a *Franks* hearing to challenge alleged misrepresentations in the warrant application. The district court determined that the misrepresentations were not material because even if the alleged misrepresentations were removed from the warrant application and the omission supplied, probable cause still existed to support issuance of the warrant.

In order to invalidate a search warrant on the basis of asserted misrepresentations, Young must show that: “(1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination.” *See State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (quotation omitted). “[I]f, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required.” *Franks*, 438 U.S. at 171-172, 98 S. Ct. at 2684. A misrepresentation or omission is material if probable cause to issue the search warrant no longer exists once the misrepresentation is omitted or the omission is supplied. *Andersen*, 784 N.W.2d at 327.

“A warrant is supported by probable cause if, on the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015) (quotation omitted). This court reviews de novo whether an alleged misrepresentation or omission is material to a probable-cause determination. *Andersen*, 784 N.W.2d at 327.

Young asserts that the detective’s misrepresentations² regarding the items recovered from the trash, and the failure to disclose the fact that the trash can was shared between both units of a duplex, undermine the probable cause supporting the warrant. In his affidavit, the detective stated that he found in his search of the trash for the Minneapolis address, “a mailing with [that] address in Mpls, addressed to Jamar Young. And a prescription receipt addressed Jamar Charles Young 10/02/75 at [that] address in Mpls.” The affidavit makes no reference to the trash can being shared with another unit. The mailing is addressed to “Jamar Young,” but bears a different address. The prescription receipt includes the Minneapolis address, but is in the name: “Young, Ramaj” with a date of birth of “[undecipherable] 03-96.”

The district court based its finding of probable cause, independent of the asserted misrepresentations and including the omission, upon: (1) the CC’s report of observing a large amount of cocaine and money at the residence; (2) the CC’s identification of Young as the person observed in the home; (3) a mailer in the shared trash bearing Young’s name;

² Because the district court treated the inaccuracies in the warrant application as “misrepresentations” without making a finding under the first prong in *Franks*, this opinion refers to them as “misrepresentations” for the purpose of the materiality analysis only.

(4) the prescription receipt in the shared trash with the correct address bearing the name Ramaj (Jamar backwards) Young; and (5) the heat-seal bags and dealer tear-offs found in the shared trash that alerted for the presence of cocaine. The district court concluded that the items in the trash corroborated the CC's information, even if they could theoretically have belonged to the residents in the other unit of the duplex.

Probable cause exists if, based upon the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in Young's residence. *See Holland*, 865 N.W.2d at 673. As the district court concluded, the information provided by the CC, along with the items recovered in the trash, all combine to provide a fair probability, based upon the totality of the circumstances, that a search of Young's home would yield evidence of drug trafficking.

Because the totality of the circumstances support the probable-cause determination independent of the misrepresentations and omission, the misrepresentations and omission are not material to that determination. *See State v. Mems*, 708 N.W.2d 526, 532 (Minn. 2006) ("Misrepresentations invalidate a warrant when they are . . . material to establishing probable cause, meaning probable cause could likely not be established without them." (quotation omitted)). As probable cause existed independent of the misrepresentations and the omission, the district court properly denied Young's motion for a *Franks* hearing.

No-Knock Warrant

Young argues that the evidence seized from his home should be suppressed because there was insufficient factual support to justify the no-knock provision in the search warrant. Authorization for an unannounced entry must be supported by a reasonable

suspicion that announcing their entry will be dangerous to the officers executing the warrant, or will result in the destruction of evidence. *State v. Goodwin*, 686 N.W.2d 40, 43 (Minn. App. 2004), *review denied* (Minn. Dec. 14, 2004). Reasonable suspicion is “something more than an unarticulated hunch . . . [an] officer must be able to point to something that objectively supports the suspicion at issue.” *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000). When the material facts are not in dispute, the reviewing court independently determines whether the evidence obtained during execution of a no-knock warrant should be suppressed. *Goodwin*, 686 N.W.2d at 43.

Here, the district court determined that the warrant application lacked a reasonable suspicion to support the no-knock authorization, but nevertheless declined to suppress the evidence because the officers executed the no-knock search in accordance with a judicially authorized procedure. The district court relied on *State v. Botelho* for the proposition that “when an officer complies with established procedure and obtains judicial pre-approval for an unannounced entry, this weighs against excluding the evidence seized.” 638 N.W.2d 770, 778 (Minn. App. 2002) (quotation omitted). *Botelho* relied on *Wasson*, wherein our supreme court stated: “in the unannounced search context, we 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.” 615 N.W.2d at 321. However, the supreme court in *Wasson* explicitly stated that it did not need to decide whether to adopt a good-faith exception to the knock-and-announce rule. *Id.*

Young argues that in deciding that the search was executed in accordance with judicial authorization, the district court relied on a good-faith exception to the requirement

of reasonable suspicion that is unauthorized either by caselaw³ or statute. See *Garza v. State*, 632 N.W.2d 633, 640 (Minn. 2001) (“The good faith of the police cannot cure the absence of particularized circumstances in the warrant application justifying an unannounced entry.”). In *Botelho*, this court held that the evidence must be suppressed because “the unannounced entry was not supported by reasonable suspicion.” 638 N.W.2d at 781.

On appeal, the state argues that the district court’s denial of the motion was proper because the no-knock request was supported by a reasonable suspicion of a threat to officer safety. “A respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted.” *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003). Furthermore, when the material facts are undisputed, as is the case here, we independently determine whether a no-knock entry was justified. See *Goodwin*, 686 N.W.2d at 43. Therefore, we review the warrant application to determine whether a no-knock entry was justified based upon a reasonable suspicion of a threat to officer safety.

³ The state relies on *State v. Lindquist*, for the proposition that suppression is not warranted when the police “have acted in good-faith reliance on a judicial determination,” but *Lindquist* is not applicable to the present matter. 869 N.W.2d 863, 871 (Minn. 2015) The court in *Lindquist* noted the “narrowness of [its] holding.” *Id.* at 876. The court explained that “the good-faith exception adopted here applies only when law enforcement officers act pursuant to binding appellate precedent.” *Id.* There is no binding precedent authorizing a good-faith exception to the requirement of reasonable suspicion supporting a no-knock authorization.

The United States Supreme Court has made clear that boilerplate allegations of drug dealing are insufficient to justify authorization of a no-knock search. See *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1421 (1997) (“[T]he fact that felony drug investigations may frequently present circumstances warranting a no-knock entry cannot remove from the neutral scrutiny of a reviewing court the reasonableness of the police decision not to knock and announce in a particular case.”). “In order to justify a ‘no-knock’ entry, the police must have a reasonable suspicion that knocking and announcing their presence . . . would be dangerous or futile, or . . . allow[] the destruction of evidence . . . This showing is not high.” *Id.* at 395, 1422. In *Wasson*, our supreme court clarified the low showing an officer must make: “the officer could point to a particular fact about this particular residence . . . that led him to suspect that officer safety might be jeopardized. We think that is all *Richards* requires.” 615 N.W.2d at 321.

Here, the detective’s affidavit contains sufficient particularized facts to support a finding of reasonable suspicion of a threat to his safety. The affidavit recites that Young has a history of weapons charges: on April 20, 1997, he was convicted of carrying a handgun; on July 31, 1998, he was arrested for weapons possession and a silencer; on January 7, 2003, officers recovered a shotgun and bulletproof vest following Young’s narcotics arrest; on April 9, 2003, officers recovered a handgun from Young while executing a search warrant; and on June 15, 2006, officers recovered a .40 caliber shell that matched a hole in the floor while searching Young’s residence. The detective states that Young is a confirmed member of the Vice-Lord gang, and the CC identified Young as the

person he observed in the Minneapolis residence with approximately two kilograms of cocaine and money.

These factual recitations are sufficient to support a finding of reasonable suspicion of a threat to officer safety justifying a no-knock entry. In *Botelho*, this court held that the warrant application failed to make a particularized showing of dangerousness when it relied on unspecified prior offenses committed by unspecified visitors to the home to be searched, such that “[t]here [were] no specific allegations of when, or under what circumstances, these offenses occurred.” 638 N.W.2d at 779. Here, however, the warrant application details specific dates of Young’s prior conviction and arrests for multiple weapon-based offenses, along with the CC’s identification of Young and the detective’s statement that Young is a gang member. These recitations set forth a particularized showing of a threat to officer safety connected to the particular place to be searched.

The determination that Young’s prior weapons-offense history satisfies the particularity requirement is consistent with *State v. Barnes*, wherein this court held that a warrant application that showed that the defendant “had a prior criminal record and that the level of drug trafficking was very high. . . . did not rely on the simple generalization, rejected in *Richards*, that all drug dealing involves weapons.” 618 N.W.2d 805, 812 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001).

The detective’s affidavit provides particular facts about Young’s criminal record, and his connection to the residence, to satisfy the particularity requirement for a showing of reasonable suspicion that knocking and announcing their presence would endanger the officers’ safety. The district court’s denial of Young’s motion to suppress is therefore

affirmed, not upon the district court's reliance on *Botelho*, but instead upon the alternative theory raised by the state that reasonable suspicion existed to support the no-knock authorization.

Affirmed.