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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0709**

State of Minnesota,
Respondent,

vs.

Marcus Charles Gbala,
Appellant.

**Filed March 18, 2019
Affirmed
Larkin, Judge**

Hubbard County District Court
File No. 29-CR-17-881

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

Jonathan Frieden, Hubbard County Attorney, Erika C.H. Randall, Assistant County Attorney, Park Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of third-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress the drug evidence supporting his conviction. We affirm.

FACTS

Respondent State of Minnesota charged appellant Marcus Charles Gbala with third-degree possession of a controlled substance. The complaint alleged that police executed a search warrant at Gbala's residence on August 1, 2017, and found 13.6 grams of cocaine in the home. The complaint further alleged that Gbala admitted the cocaine belonged to him.

Gbala moved to suppress the drugs, arguing that the search warrant "on its face lacked probable cause" because it failed to establish that information from a confidential reliable informant (CRI) was reliable and because it contained many conclusory statements that were not supported by detailed information. The district court reviewed the search-warrant affidavit, concluded that it established probable cause to search Gbala's residence, and denied his motion to suppress.

Gbala stipulated to the prosecution's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court's ruling on his motion to suppress. The district court found Gbala guilty as charged, entered judgment of conviction, and sentenced him to a stayed 27-month prison term. This appeal follows.

DECISION

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, a search is lawful only if it is executed pursuant to a valid search warrant issued by a neutral and detached magistrate after a finding of probable cause. *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). No warrant shall issue absent a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. When determining whether a search warrant is supported by probable cause, appellate courts do not engage in de novo review. *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Instead, “great deference must be given to the issuing [magistrate’s] determination of probable cause.” *State v. Valento*, 405 N.W.2d 914, 918 (Minn. App. 1987). When reviewing a decision to issue a search warrant, an appellate court limits its review to whether the issuing magistrate had a substantial basis for concluding that probable cause existed. *Yarbrough*, 841 N.W.2d at 622. In doing so, appellate courts consider 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)).

In reviewing the sufficiency of a search-warrant affidavit under the totality-of-the-circumstances test, “courts must be careful not to review each component of the affidavit

in isolation.” *Id.* “[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). “Furthermore, the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded warrants.” *Wiley*, 366 N.W.2d at 268 (quotation omitted).

In this case, the circumstances set forth in the search-warrant affidavit are as follows. On July 28, 2017, police were searching for K.M., who had escaped from the Beltrami County Jail. Police received information that K.M. was using a particular cell phone after his escape and tracked that phone to a location in Bemidji where C.O., a close friend of K.M., lived. Special Agent Daniel Seaberg of the Bemidji Police Department went to that location and observed K.M. enter a vehicle. Agent Seaberg pursued K.M. but was unable to apprehend him.

The vehicle was later located east of Lake George. Agent Seaberg knew that C.O. had a recent law-enforcement contact at a residence in Lake George. Agent Seaberg also knew that Gbala, C.O.’s cousin and an ex-boyfriend of K.M.’s mother, lived at the Lake George residence. Police went to that residence and spoke with D.W., who stated that K.M. was not there. D.W. refused to allow the police to search the residence.

Later that day, police received information that K.M. had used a second cell phone after he fled from Agent Seaberg. The police tracked the phone to an area near Gbala’s residence, returned to that residence, and D.W. consented to a search. Neither Gbala nor K.M. were at the residence.

On July 30, 2017, Agent Seaberg received information from a CRI who had spoken with one of K.M.'s family members. The CRI reported that the family member said that Gbala was assisting K.M. to hide from law enforcement. That same day, police spoke with Gbala, who denied having contact with K.M. after his escape from jail. Gbala told police, "If I had helped [K.M.] I wouldn't be keeping him at my house."

On July 31, 2017, police subpoenaed records for Gbala's cell phone, as well as the cell phones they believed K.M. had been using. The records indicated that one of the phones linked to K.M. had made two calls to Gbala's phone on July 28, 2017, the day K.M. escaped. The first call was made at approximately 3:30 a.m., shortly after K.M. escaped, and the second call was made at approximately 10:45 a.m., while K.M. was fleeing from Agent Seaberg.

The search-warrant affidavit further stated that, based on his training and experience, Agent Seaberg was "aware that criminals will use multiple phones in an attempt to conceal their criminal activity and location from law enforcement." The warrant requested authorization to search Gbala's person, residence, and vehicles located at the residence for cell phones and cell-phone data, "including but not limited to: deleted data, contact lists, text messages, call logs, social media applications, emails, and photographs."

Gbala argues that the warrant was not supported by probable cause because "[t]he warrant application did not establish that the confidential informant was reliable." When a search-warrant application includes information from an informant, the supporting affidavit "must provide the magistrate with adequate information from which he can personally assess the informant's credibility." *State v. Siegfried*, 274 N.W.2d 113, 114

(Minn. 1978). “[A]n informant’s reliability can be established if the police can corroborate the information.” *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004), *review denied* (Minn. June 15, 2004). “Even corroboration of minor details lends credence to an informant’s tip and is relevant to the probable-cause determination.” *State v. Holiday*, 749 N.W.2d 833, 841 (Minn. App. 2008).

Before the police received information from the CRI, they were already investigating Gbala’s possible concealment of K.M. because K.M. had been observed outside of C.O.’s residence, police knew that Gbala was C.O.’s cousin and the ex-boyfriend of K.M.’s mother, and a phone linked to K.M. had been traced to an area near Gbala’s residence. After receiving the CRI’s information, police learned that two phone calls had been made to Gbala’s cell phone from a cell phone linked to K.M., after K.M. escaped from jail. These details corroborated the CRI’s statement that Gbala was helping K.M. avoid arrest because they established that Gbala and K.M. had a personal connection and that Gbala and K.M. were in contact with each other not long after K.M.’s escape.

The district court reasoned that although there was “no specific information regarding the CRI’s past veracity,” the CRI’s report was not, “in light of the whole application, critical or at all necessary to the application and subsequent search warrant.” The district court’s reasoning is sound given that the CRI did not provide the information that triggered the initial investigation of Gbala’s involvement. Instead, the CRI’s information corroborated current suspicions regarding Gbala’s involvement, which had developed during the ongoing investigation.

Gbala also argues that “the search warrant application, taken as a whole, does not contain a sufficient evidentiary basis from which a reasonable person could infer that evidence of a crime or criminal activity would be discovered.”

Probable cause not only requires that the evidence sought likely exists, but also that there is a fair probability that the evidence will be found at the specific site to be searched. A sufficient “nexus” must be established between the evidence sought and the place to be searched. However, direct observation of evidence of a crime at the place to be searched is not required. A nexus may be inferred from the totality of the circumstances.

Yarbrough, 841 N.W.2d at 622 (citations omitted). Among the circumstances considered are “the type of crime involved, the nature of the items sought, the extent of an opportunity for concealment, and reasonable assumptions about where a suspect would likely keep that evidence.” *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

The search-warrant affidavit described cell-phone records showing two calls to Gbala’s cell phone from a cell phone linked to K.M. the day that K.M. escaped; the use of a cell phone linked to K.M. near Gbala’s residence not long after K.M. escaped; the discovery, near the town where Gbala lived, of the vehicle in which K.M. had fled Agent Seaberg; information from a CRI that Gbala was helping K.M. avoid arrest; and Gbala’s prior relationship with K.M.’s mother. In sum, the police established a personal connection between Gbala and K.M. and had evidence of cell-phone contact between Gbala and K.M. Based on the totality of the circumstances, it was reasonable to infer that Gbala was helping K.M. to avoid capture and that a search of his cell phones would reveal evidence of this

criminal activity. See Minn. Stat. § 609.495, subd. 1(a) (2016) (“Whoever harbors, conceals, aids, or assists by word or acts another whom the actor knows or has reason to know has committed a crime . . . with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment” is guilty of aiding an offender).

Gbala complains that because there was “no information that [K.M.] was the person calling” Gbala’s phone and “the affidavit contains no basis for how or why the police knew [K.M.] was using certain phone numbers,” the related statements in the affidavit are conclusory and do not establish “probable cause that [his] cell phone contained evidence of criminal activity to justify the search warrant.” Gbala does not cite authority stating that conclusory statements may not be considered when assessing probable cause. Instead, he cites *State v. Doyle*, which stated that the value of a conclusory statement was “lessened” because it did not “provide a clue as to the source of the information or the manner in which the information was obtained.” 336 N.W.2d 247, 251 (Minn. 1983).

Although the affidavit does not explain how the police knew that K.M. was using certain cell phones, that information was corroborated by other statements in the affidavit, including that the police tracked one of the cell phones to C.O.’s home, went to C.O.’s home, and observed K.M. outside of the home. Given that corroboration, the conclusory statements regarding K.M.’s use of certain cell phones had value and were appropriately considered by the issuing magistrate.

Applying the deferential standard that is required, we hold that the issuing magistrate had a substantial basis to conclude that probable cause existed. Any doubt regarding that conclusion is resolved in accordance with “the preference to be accorded

warrants,” *Wiley*, 366 N.W.2d at 268 (quotation omitted), so as “not to deter police officers from obtaining warrants,” *State v. Nolting*, 254 N.W.2d 340, 345 n.7 (Minn. 1977). We therefore affirm the district court’s denial of Gbala’s motion to suppress.

Affirmed.