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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1106**

State of Minnesota,
Respondent,

vs.

Brady Ray Veselka,
Appellant.

**Filed May 6, 2019
Affirmed
Ross, Judge**

Marshall County District Court
File No. 45-CR-17-165

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

Donald J. Aandal, Marshall County Attorney, Warren, Minnesota (for respondent)

Rory Patrick Durkin, Giancola-Durkin, P.A., Anoka, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Police executed a no-knock search warrant on Brady Veselka's house after a confidential reliable informant told a BCA agent that he saw methamphetamine and drug

paraphernalia inside. Because the informant's tip provided the district court probable cause to issue the warrant and reasonable suspicion to authorize a no-knock entry, we affirm.

FACTS

According to a search-warrant application, on May 3, 2017, a confidential reliable informant (CRI) told Minnesota Bureau of Criminal Apprehension Special Agent Ron Woolever that the CRI saw both methamphetamine and methamphetamine paraphernalia inside Brady Veselka's house. The CRI also purportedly believed that Veselka possibly manufactured methamphetamine "on occasion." Marshall County Deputy Cody Gillund told Agent Woolever that Veselka was suspected of manufacturing methamphetamine and that he possibly possessed a handgun. The agent obtained a report of Veselka's criminal history, which included an assault conviction and two firearm-possession convictions.

Agent Woolever applied for a "no-knock" warrant to search Veselka's home and person. A district court judge issued the warrant on May 5 and police executed it on May 10. The home search yielded items that were consistent with methamphetamine manufacturing, including cold-medication tablets, rubber tubing, lye, and plastic gas cans. Officers also found a .357 caliber bullet, hypodermic needles, and other drug paraphernalia. Police took Veselka into custody.

The state charged Veselka with first-degree methamphetamine manufacturing, possession of ammunition as a convicted felon, and possession of methamphetamine precursors with the intent to manufacture. Veselka moved to dismiss the charges on the grounds that the search warrant was not based on probable cause and moved to invalidate the warrant because it impermissibly authorized a no-knock entry. The district court

denied the motions. Veselka agreed to a stipulated-evidence bench trial under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. The district court found Veselka guilty of possession of methamphetamine precursors with the intent to manufacture.

Veselka appeals.

DECISION

Veselka makes two arguments on appeal. He argues that the district court erroneously issued the search warrant unsupported by probable cause. He argues alternatively that the district court erroneously authorized a no-knock entry. Both arguments fail.

I

We reject Veselka's argument that the district court lacked probable cause to issue the search warrant. Whether probable cause exists rests on the totality of the circumstances. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). We afford great deference to a judge's determination of probable cause, examining the record only to "ensure that the issuing judge had a substantial basis for concluding that probable cause existed." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). Despite very weak components in the warrant application, it contains sufficient information to survive our deferential review.

Veselka reasonably questions the strength of Agent Woolever's affidavit submitted as his warrant application. Vague and conclusory statements without sufficient information for a judge to independently evaluate the conclusions do not support a finding of probable cause. See *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998). According to the affidavit, Agent Woolever's confidential reliable informant "*believes that Veselka possibl[y]*

manufactures methamphetamine *on occasion*.” (Emphasis added.) The affidavit does not disclose how the informant came to believe what is represented, and the informant’s supposed belief—merely that it is *possible* that Veselka manufactures methamphetamine *on occasion*—is, at most, tissue thin. Likewise void of any evidentiary weight is the affidavit’s conclusory declaration that “Deputy Gillund stated that Veselka has been suspected of manufacturing methamphetamine in the recent past thr[ough] other ongoing investigations being conducted by Deputy Gillund.” That declaration provides more questions than answers: “Has been suspected” by whom? On what *factual* basis? To what degree? And how recently? The affidavit goes on to declare that “Deputy Gillund also stated that Brady Veselka is possibl[y] in possession of a handgun.” That declaration has two flaws rendering it useless as support for the search warrant: first, the subject is whether it is probable, not merely possible, that a search will reveal evidence of a crime; and second, the issuing judge must be informed of the circumstances supporting the probability, not merely of the hearsay statement by one officer of another’s naked belief. These vague and conclusory representations lack any probative information and, considered separately or taken as a whole, they fall far short of providing probable cause for the search warrant.

The affidavit does, however, include one statement of sufficient evidentiary quality: “The CRI stated that the CRI while at the Brady Veselka residence and within the past 72 hours has observed a quantity of methamphetamine and paraphernalia items used to ingest methamphetamine.” Probable cause justifying a search warrant exists when the issuing judge, considering the supporting affidavit as a whole, can reasonably conclude that “there is a fair probability that contraband or evidence of a crime will be found in a

particular place.” *Souto*, 578 N.W.2d at 747 (quotation omitted). That the CRI personally observed methamphetamine and ingestion paraphernalia in Veselka’s home within the previous three days provided a substantial basis of a fair probability that a search would reveal illegal drugs or drug paraphernalia.

Veselka says that the CRI was unreliable. Applying some of the six common considerations for testing an informant’s reliability satisfies us that the district court acted within its discretion by issuing the warrant: (1) whether the informant is a civilian unassociated with criminal activity; (2) whether the informant has previously given correct information to the police; (3) whether the police sufficiently corroborated the informant’s tip; (4) whether the informant came forward voluntarily; (5) whether a controlled purchase was made; and (6) whether the informant made a statement against interest. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). The affidavit declared that the CRI had “provided true and accurate information” to the BCA previously and that the CRI had made at least one controlled buy under Agent Woolever’s oversight. The agent corroborated information from the CRI’s tip, including Veselka’s address, a detailed description of the outside of his house, and a description of Veselka personally. These circumstances support the CRI’s reliability, and we see nothing that would call the CRI’s reliability into doubt.

Veselka challenges the notion that the affidavit established the CRI’s reliability, citing *Wiley*, 366 N.W.2d at 268, for the notion that more is required. The *Wiley* court did opine a preference for specific language describing an informant’s accuracy, but we are guided by *Wiley*’s holding, which is that an affiant’s statement that “the informant ha[d] been used over several years successfully” was sufficient for the judge “to credit the

informant's story." 366 N.W.2d at 269. The district court judge here had similar support to credit the CRI's tip. Veselka also maintains that the information corroborated by the agent was not enough to support the CRI's reliability, but corroboration of part of a tip can suggest the reliability of the tip as a whole. *State v. Siegfried*, 274 N.W.2d 113, 115 (Minn. 1978). This applies even to corroboration of minor details, like the identification of the defendant's name, residence, and vehicle. *See Wiley*, 366 N.W.2d at 269.

Veselka argues finally that the information in the affidavit was too stale to support the warrant by the time the agent executed it. Probable cause cannot rest on stale information and exists only if items related to criminal activity may likely be found at the time of the search. *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *review denied* (Minn. Jan. 14, 1985). We are persuaded that the warrant was executed in a sufficiently timely fashion to overcome Veselka's staleness challenge.

Whether the warrant-supporting information was stale by the time of the warrant's execution depends on the circumstances as evaluated with "flexibility and common sense." *Id.* The affidavit asserts that the agent learned on May 3 that the CRI saw drugs and drug paraphernalia inside Veselka's house at some point within the previous three days. The agent then received the warrant on May 5 and executed it on May 10, so the span between the CRI's observation and the agent's search was at most ten days. A key factor in considering staleness is "whether the property sought is easily disposable or transferable." *State v. DeWald*, 463 N.W.2d 741, 746 (Minn. 1990). But even stolen items that are "easily transferable" may be "of enduring utility to their taker" such that he might keep "one of the items for personal use." *State v. Flom*, 285 N.W.2d 476, 477 (Minn. 1979).

Under this reasoning, Minnesota courts have, for example, declined to invalidate searches based on staleness in various circumstances: a gap of about four weeks between the observation of stolen traffic signs and the home search did not render the observation stale in *Gerdes v. State*, 319 N.W.2d 710, 712–13 (Minn. 1982); a gap of two years between the observation of photographs, books, and magazines depicting child pornography and the home search did not render the observation stale in *Jannetta*, 355 N.W.2d at 194; a gap of six days between the information that the defendant had marijuana in his home and the home search did not render the information stale in *State v. Yaritz*, 287 N.W.2d 13, 17 (Minn. 1979); and a gap of six weeks between the information that the defendant was growing marijuana in his home and the home search did not render the information stale in *State v. Velishek*, 410 N.W.2d 893, 896 (Minn. App. 1987). Guided by this caselaw, we similarly will not invalidate the search here on staleness grounds. Drug-ingestion paraphernalia is the sort of multiple-use, nonperishable property that the district court might reasonably infer will remain on the person of a methamphetamine user or in his home, or both, for a period of ten days.

II

Veselka also challenges the no-knock authorization in the search warrant. To justify a no-knock entry, the warrant affidavit must establish the officer's reasonable suspicion that an announced entry would lead to the destruction of evidence or risk harm to the entering officers. *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000). If the circumstances do not warrant a no-knock entry, evidence seized during the search should be suppressed. *Id.* We review de novo whether the circumstances warranted a no-knock entry when the

material facts are not in dispute. *Id.* The facts here are not disputed, so we consider Veselka's challenge de novo.

The circumstances justified the no-knock component of the warrant. We consider whether the affidavit identified objective support for an officer's reasonable suspicion justifying a no-knock entry. *Id.* The affidavit declared that Veselka was convicted of assault in 2016 and has two convictions for possessing firearms illegally, the latest occurring in 2015. Every reasonable officer anticipates that a resident will resent officers entering his home and invading his privacy by rifling through his personal possessions without his consent. When the officer learns that, additionally, the resident has a relatively recent history of criminal assault and illegal-firearm possession, the officer has reason to suspect that announcing the entry would substantially increase his risk of harm. The threat here was sufficiently particularized to support a no-knock entry.

Affirmed.