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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1252**

State of Minnesota,
Respondent,

vs.

Michael Lashaun Thompson,
Appellant.

**Filed July 22, 2019
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-17-16035

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

JESSON, Judge

Based upon information received from a confidential reliable informant (CRI), police officers obtained search warrants for appellant Michael Lashaun Thompson's

residence, a Pontiac Bonneville, and a Chrysler Town & Country minivan. On appeal, Thompson challenges the district court's denial of his motion to disclose the identity of the CRI. He further challenges the district court's determination that the search warrants were supported by probable cause. Because we conclude that the CRI was not a material witness and that probable cause supported the three search warrants, we affirm.

FACTS

In June 2017, Minneapolis police officer Jeffrey Imming, who is also an investigator with the FBI Violent Gang Safe Streets Task Force, applied for and received search warrants for a Pontiac Bonneville and a residence located at 3708 Third Avenue South, Minneapolis.¹

Officer Imming's affidavit stated that a CRI informed him about a drug dealer, going by the name "Divine," who was selling crack cocaine and heroin in Minneapolis. The CRI described "Divine" as a "black male, short haircut, light trimmed beard, approximately 30 years old and 5'9 with a stocky build." According to the CRI, "Divine" gave him a phone number to call when he wanted to buy drugs. And the CRI informed Officer Imming that the CRI "ha[d] seen 'Divine' in possession of narcotics and that 'Divine' commonly drives different rental cars in order to avoid detection [including] a black Pontiac Bonneville with MN plate 519VMH." Based upon this information, Officer Imming opened a narcotics investigation.

¹ The applications for both search warrants contained the same information in the affidavits.

Officer Imming then met with the CRI to set up a controlled buy. The CRI called “Divine,” who agreed to meet the CRI at a predetermined location to sell the CRI drugs. Officer Imming and other members of the Safe Streets Task Force went to the area of the controlled buy to conduct surveillance. After some waiting, officers observed a person matching the description of “Divine” get out of a gray Toyota Camry and meet with the CRI. “Divine” gave the CRI crack cocaine in exchange for the prerecorded buy money. The suspected crack cocaine was field tested, returning a positive result for cocaine. During the controlled buy, officers ran the Camry’s license plates and discovered the car was registered to Enterprise Rental.

After the buy was completed, “Divine” returned to his car and left. Officers followed the car to a residence located at 3708 Third Avenue South in Minneapolis. “Divine” parked the car in front of the residence and entered through the front door. Officers conducted surveillance on the residence and the car “for a while,” but “Divine” never left the house. While conducting surveillance, officers located the black Pontiac Bonneville—the vehicle described by the CRI—parked in front of the same address. Over the next four days, officers used GPS surveillance to monitor the Pontiac Bonneville associated with “Divine” and found that the car would routinely park at the residence “for the night.”

Based on his training and experience, Officer Imming identified “Divine” as appellant Michael Lashaun Thompson. Officer Imming showed Thompson’s driver’s license photo to the CRI, who positively identified Thompson as the drug dealer known as Divine. After conducting computer searches, Officer Imming learned that Thompson was

born in Illinois, had several drug-related arrests, and “was documented as a Gangster Disciple Gang Member.” Thompson had also been arrested for narcotics in Wisconsin and previously went to prison for narcotics.

In coordination with Officer Imming, the CRI arranged another controlled buy with Thompson. The CRI called the phone number and was given a predetermined meet location. Before the controlled buy, the black Pontiac Bonneville was parked on the side street near the 3708 Third Avenue South residence.² The car, driven by Thompson, left the residence and went to the predetermined location, where the CRI met with Thompson and bought drugs with prerecorded buy money. Thompson then left.

After the second controlled buy, Officer Imming conducted a field test on the narcotics, which was positive for cocaine. During this time, the officers followed Thompson back to 3708 Third Avenue South, where he parked the car on the nearby side street, and entered the residence through the front door.

Based on this information, Officer Imming applied for and received two search warrants—one for the residence and one for the black Pontiac Bonneville. Officers then executed the search warrants. At the residence, officers found 0.2 grams of heroin, 2.5 grams of cocaine, and an empty handgun holster. And the officers found 0.2 grams of cocaine in the Pontiac Bonneville.

² On the day of the second buy, officers conducted surveillance at the residence. Prior to conducting surveillance, the officers were provided with a photo of Thompson.

After executing the search warrants for Thompson's residence and the Pontiac Bonneville, Officer Imming applied for and received a search warrant for a white 1997 Chrysler Town & Country minivan that was parked near the 3708 Third Avenue South residence. The sworn affidavit Officer Imming submitted contained the same information that was provided for the search warrants for 3708 Third Avenue South and the Pontiac Bonneville. Additionally, Officer Imming included information about the contraband found from the execution of the first two search warrants.

In his affidavit, Officer Imming further stated that during the investigation, officers spoke with a "cooperating defendant,"³ who told them that Thompson used a vehicle parked near the residence to store illegal drugs and weapons. The cooperating defendant said the vehicle was a white Chrysler Town & Country minivan with the license plate MN 928EPV. Further, the cooperating defendant stated that the minivan was parked around the corner from the residence. Officers then located the minivan, which was parked where Thompson normally parked the Pontiac Bonneville.

Upon executing the search warrant, officers found a food-packaging device with possible cocaine residue on it, mail with Thompson's name on it, a firearm, several money gram receipts and 97.7 grams of suspected heroin.

³ Although the application for the search warrant regarding the minivan refers to a "cooperating defendant," the prosecutor explained it was a typographical error and it should have read "CRI." Although Thompson briefly states in a footnote that this error is relevant to whether the CRI's identity should have been disclosed, he provides no argument or caselaw to substantiate this assertion.

Based on the evidence found during the execution of the search warrants, Thompson was charged with first-degree controlled substance possession, first-degree sale of controlled substance, and being an ineligible person in possession of a firearm.⁴

Thompson moved to compel the disclosure of the CRI's identity and to suppress all evidence obtained during the execution of the search warrants. During a pretrial hearing, the district court denied Thompson's motions. After a four-day jury trial, Thompson was found guilty of both first-degree drug offenses, but acquitted of the gun charge. Thompson appeals.

DECISION

Thompson raises two challenges on appeal. First, Thompson argues that the identity of the CRI should have been disclosed. Second, Thompson asserts that the district court erred by denying his motion to suppress evidence because the search warrants for his residence and vehicles lacked sufficient facts to establish probable cause. We address each argument in turn.

I. The district court did not abuse its discretion when it denied Thompson's motion to compel disclosure of the identity of the CRI.

This court reviews a district court's decision regarding the disclosure of a confidential informant's identity for an abuse of discretion. *State v. Rambahal*, 751 N.W.2d 84, 90 (Minn. 2008). Minnesota law recognizes a privilege to withhold the identity of a CRI because of the state's interest in protecting the identity of CRIs who provide

⁴ In violation of Minn. Stat. §§ 152.021, subds. 1(3) (sale of 10 grams or more of heroin), 2(a)(3) (possession of 25 grams or more of heroin), 624.713, subd. 1(2) (ineligible person in possession of a firearm) (2016).

information to law enforcement. *Id.*; see *Roviaro v. United States*, 353 U.S. 53, 59, 77 S. Ct. 623, 627 (1957) (“The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement.”). But when the disclosure of a CRI’s identity or the contents of the information provided is relevant and helpful to the defense’s case, the state’s privilege gives way, and it is the defendant’s burden to establish the need for disclosure. *Rambahal*, 751 N.W.2d at 90.

When determining whether to order the disclosure of a confidential informant’s identity, the district court considers four factors, including (1) whether the CRI was a material witness, (2) whether the CRI’s testimony will be material to the issue of guilt, (3) whether the testimony of officers is suspect, and (4) whether the testimony of the CRI might disclose entrapment. *Id.* But ultimately, when deciding whether to disclose the informant’s identity, the district court balances the defendant’s right to prepare his defense and the “public’s interest in effective law enforcement.” *Id.*

The first two factors essentially turn on whether the CRI was a *material* witness.⁵ We conclude that the CRI here was not for two reasons. First, the CRI was not present when the search warrants were executed. While the CRI provided Officer Imming with information about Thompson and participated in two controlled drug buys, when the search warrants were carried out, the CRI was not there. Second, Thompson’s interactions with the CRI were not the basis for the criminal charges. Rather, the two first-degree

⁵ Because Thompson challenges only the first and second factors, and does not dispute the district court’s determination on the third and fourth factors, we will only address the first two factors.

controlled-substance charges arose out of the 97.7 grams of heroin found in the minivan, and the gun charge resulted from the gun found in the minivan. And because the CRI was not present when any of these items were located, the CRI's testimony would not be helpful in overcoming the charges.

Still, Thompson asserts that the CRI was a material witness because the CRI's involvement in the controlled buys makes the CRI more than a tipster because he was a participant in the transaction. Thompson's argument is unavailing. Here, the CRI participated in controlled buys, but the controlled buys were not the basis for Thompson's charges. Accordingly, the CRI was not a material witness. *See Roviato*, 353 U.S. at 64, 77 S. Ct. at 629 (concluding that the confidential informant was the only other participant in the drug transaction on which the defendant's charges were based, making the confidential informant's testimony highly relevant and possibly helpful to the defense). And when a trustworthy CRI is only a "transmitter of information and not a competent witness to the crime itself," the identity of the CRI need not be disclosed. *State v. Purdy*, 153 N.W.2d 254, 262 (Minn. 1967).⁶

Because the CRI was not a material witness, Thompson's need for disclosure does not outweigh the state's interest in protecting the identity of confidential informants. *See*

⁶ Thompson also contends that because the CRI never knew "Divine's" true identity, only identified "Divine" as Thompson after being presented with a photograph, and that nothing in the record shows that the CRI made a current identification of Thompson, the CRI should have been required to testify as to Thompson's identity. And that if the CRI was incorrect in identifying Thompson, no connection would exist between the minivan and Thompson. But Thompson provides no authority as to why this makes the CRI a material witness.

Rambahal, 751 N.W.2d at 90. As such, the district court did not abuse its discretion when it denied Thompson’s motion to compel the disclosure of the CRI’s identity.

II. The district court did not err when it denied Thompson’s motions to suppress the evidence obtained as a result of the search warrants for his residence and vehicles.

The United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures, providing that no warrant shall be issued without a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Probable cause exists when “there is a fair probability that contraband or evidence of a crime will be found.” *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)).

We review a judge’s decision to issue a search warrant for whether the judge had a substantial basis for determining that probable cause existed. *State v. Fawcett*, 884 N.W.2d 380, 384 (Minn. 2016). When reviewing the search warrant application and affidavit, we consider the totality of the circumstances alleged, and we defer to the issuing judge “recognizing that doubtful or marginal cases should be largely determined by the preference to be accorded to warrants.” *Id.* at 384-85 (quotations omitted). The task of the issuing judge is to make a decision based on common sense. *Yarbrough*, 841 N.W.2d at 622.

Thompson challenges the district court’s ruling that probable cause existed for the three search warrants, because, he asserts, a nexus between himself, the alleged criminal activity, and the property and vehicles to be searched did not exist. And therefore, he

argues, there was insufficient probable cause to issue any of the search warrants, and the district court erred in denying his motions. We address each search warrant in turn.

Search Warrant for 3708 Third Avenue South

The relevant circumstances set out in the warrant included that Thompson was observed leaving the controlled-buy location, driving to 3708 Third Avenue South, parking nearby, and entering the residence. The car he drove would remain parked outside the residence for periods of time, including overnight. During another controlled buy, officers observed Thompson driving the car away from the residence and to the location of the controlled buy. Considering the totality of the circumstances, we conclude that the facts asserted in the search warrant application create a substantial basis for the issuing judge to find a fair probability that controlled substances would be found at this residence.

But Thompson argues that the “evidence is not substantial enough under the totality of the circumstances to constitute a substantial connection between [Thompson] and the home.” To support his argument, Thompson draws this court’s attention to *State v. Gail*, 713 N.W.2d 851, 859 (Minn. 2006) and *State v. Yaritz*, 287 N.W.2d 13, 15 (Minn. 1979). In *Gail*, the supreme court determined that a sufficient nexus existed between the defendant and an apartment because he placed a phone call using the apartment’s phone, and after the police were called, the defendant was still found at the apartment, though some time had passed. 713 N.W.2d at 859. Here, like *Gail*, Thompson spent time at the residence and did not leave, as observed by officers conducting surveillance. Surveillance indicated that Thompson would drive to that address, enter, and the car stayed there overnight.

And in *Yaritz*, a case also cited by the state, the affiant police officer explained that an informant told him that the defendant was selling drugs and would meet customers at prearranged locations for drug deals. 287 N.W.2d at 14 n.1. The informant also gave police the address of the defendant's St. Paul home. *Id.* The officer arranged for the informant to make two controlled buys from the defendant at a prearranged location. *Id.* A police surveillance team observed the defendant leave his St. Paul residence and go directly to the controlled-buy location. *Id.* The informant met with the defendant, bought the drugs, and then met with police and turned over the controlled substances. *Id.* The supreme court held that probable cause supported the search warrant for the home in part because when the controlled purchases were arranged, the police had the defendant's house under surveillance, and the officers observed the defendant go straight from his house to where the sale took place. *Id.* at 15.

Here, similar to *Yaritz*, a CRI informed Officer Imming that Thompson was selling drugs. While the CRI did not initially know Thompson's actual identity, he provided an accurate description and positively identified him as the drug dealer "Divine." Officer Imming then arranged for the CRI to make two controlled buys. After the controlled buys, officers followed Thompson back to the residence and watched him enter through the front door. And when Thompson left the residence for the second controlled buy, officers observed the car leave the residence and saw Thompson driving. Even though the officers did not witness Thompson leave the house, they witnessed him drive away in the car that was parked next to the residence and drive directly to the predetermined location to sell drugs to the CRI.

Under Minnesota caselaw, these facts demonstrate a sufficient nexus between Thompson, the criminal activity, and the residence. Accordingly, the supporting affidavit demonstrated a sufficient nexus between the evidence sought and the residence.

Search Warrant for the Pontiac Bonneville

Next, we turn to the relevant circumstances set forth in the warrant application for the Pontiac Bonneville. These circumstances included that the CRI provided information that Thompson dealt narcotics from the Pontiac Bonneville. And that the vehicle was parked at the residence where Thompson was seen entering, while he was under surveillance. The Pontiac Bonneville remained parked at the residence, overnight. Thompson was then positively identified as driving the vehicle to the predetermined meet location for the controlled buy. And the vehicle was identified by the CRI by make, model, and license-plate number. Accordingly, considering the totality of the circumstances, we conclude that the facts established in the search warrant application create a substantial basis for the issuing judge to find a fair probability that controlled substances would be located in the Pontiac Bonneville.

But Thompson argues that the district court erred in denying his motion to suppress the evidence found in relation to this search warrant because there was not a sufficient nexus connecting him to the Pontiac Bonneville. Thompson's argument is unpersuasive. Here, the CRI specifically identified the Pontiac Bonneville, and corresponding license-plate number, as a car from which Thompson deals drugs. Thompson then drove that car to the second controlled buy with the CRI, and sold the CRI cocaine. Further, the Pontiac Bonneville was frequently seen outside the residence that Thompson returned to

following the two controlled buys, including overnight. Accordingly, the evidence articulated in the supporting affidavit clearly establishes a sufficient nexus between Thompson, the criminal activity, and the Pontiac Bonneville.

Search Warrant for the Chrysler Town & Country Minivan

Finally, we consider the relevant circumstances set forth in the search warrant application for the Chrysler Town & Country minivan. Here, the CRI identified the Chrysler Town & Country minivan as a vehicle that Thompson uses to store weapons and illegal drugs. The CRI identified the minivan by make, model, and license plate number. Further, the CRI accurately described where the minivan would be parked—near the residence, on a side street—where Thompson routinely parked the Pontiac Bonneville. And prior to applying for the search warrant for the minivan, officers had located drugs in both the Pontiac Bonneville and the residence. Based on the totality of the circumstances, we conclude that the facts in the search warrant application created a substantial basis for the issuing judge to find a fair probability that controlled substances would be located in the minivan.

Still, Thompson argues that the search warrant was invalidated because the police did nothing to independently corroborate the CRI's information. But the information provided by the CRI was extremely detailed. The minivan was described as a 1997 Chrysler Town & Country minivan, with license plate MN 928EPV, parked around the corner from the residence where Thompson normally parks the Pontiac Bonneville. And Officer Imming knew through his training and experience as an officer, and from previous cases, that drug dealers commonly park away from their address in order to avoid detection

and will use different vehicles and methods in order to hide and conceal illegal contraband. Also, the CRI's information regarding the minivan was received after an extensive investigation occurred, which linked Thompson to drug activity.

Thompson further contends that no evidence was presented to link the minivan to the alleged criminal activity. Thompson relies on several cases to support his argument that while in some cases, contraband found at another location may warrant probable cause, that is not the case here, where no direct connection was established between Thompson and the minivan, other than the CRI's information. But these cases are not as helpful as Thompson urges us to conclude. In *State v. Ruoho*, this court determined that, despite the lack of direct observation of criminal activity in a residence, the information contained in the affidavit was sufficient to establish probable cause to search the residence. 685 N.W.2d 451, 458 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). And in *State v. Bynum*, this court concluded that although there were no direct observations of the defendant leaving his residence, the search-warrant affidavit supported the district court's determination of probable cause. 579 N.W.2d 485, 487 (Minn. App. 1998), *review denied* (Minn. Aug. 18, 1998). Finally, in *Novak v. State*, the supreme court determined that the search-warrant affidavit supported the inference that marijuana would be found in defendant's residence following a sale that did not take place at that house. 349 N.W.2d 830, 832-33 (Minn. 1984). Like these cases—where a connection existed between the defendants and the residences, despite the lack of direct observations—there is a direct connection between Thompson and the minivan.

Based on the totality of the circumstances alleged in the affidavit, a direct connection was established between the evidence sought and the minivan.

In sum, the three search warrants were supported by probable cause, and as such, the district court did not err when it denied Thompson's motions to suppress evidence obtained as a result of the search warrants. And because the CRI was not a material witness, the district court did not abuse its discretion when it denied Thompson's motion to disclose the identity of the CRI.

Affirmed.