

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2088**

State of Minnesota,
Respondent,

vs.

Isiah Kente Shivers,
Appellant.

**Filed August 26, 2019
Affirmed
Cleary, Chief Judge**

Dakota County District Court
File No. 19HA-CR-17-3632

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

James C. Backstrom, Dakota County Attorney, Evan W. Frazier, Assistant County
Attorney, Hastings, Minnesota (for respondent)

Kristian L. Oyen, Savage, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Reilly, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

CLEARY, Chief Judge

Appellant Isiah Kente Shivers challenges his convictions for third-degree
possession of a controlled substance and child endangerment, arguing that the search

warrant authorizing a search of his residence was not supported by probable cause. We affirm.

FACTS

On August 31, 2017, Officer John Mott of the Burnsville Police Department applied for, and received, a search warrant to search Shivers's residence for controlled substances, items related to the manufacture and distribution of controlled substances, currency, firearms, and items of identification.

In his supporting affidavit, Officer Mott explained that a United States postal inspector contacted him that day regarding three suspicious packages. The postal inspector informed Officer Mott that the packages were addressed to "Joshua Shavers" at "15251 Greenhaven Drive Apartment #247" in Burnsville. In determining that the packages were suspicious, the postal inspector relayed that the parcels were sent via priority mail from California, the names of the listed recipient and sender were not associated with the recipient or sender addresses, respectively, and each of the packages weighed more than 10 pounds.

After receiving this information, an officer spoke with management for the apartment complex listed on the package. Management informed the officer that they have witnessed frequent "short term traffic" to and from the listed apartment; management also described suspicious people leaving the unit and "carrying duffle bags."

Officer Mott requested that the Dakota County Drug Task Force conduct a narcotics sniff of the three packages. A drug-task-force officer and his canine partner, a trained narcotics-detection dog, checked the packages for the presence of a narcotic odor; the dog

positively alerted to the presence of a narcotic odor in each of the three packages. In his application for the search warrant, Officer Mott requested to search the listed apartment “[i]f anyone in the residence accepts the packages addressed to Joshua Shavers.” A Dakota County District Court judge signed the search warrant at 1:32 p.m. that afternoon.

Later that afternoon, the Dakota County Drug Task Force conducted a controlled delivery of the three packages. Shivers retrieved the packages and brought them back to his apartment unit—the same unit listed on the packages. Agents then executed the search warrant. Upon entering the unit, agents smelled an extremely strong odor of raw marijuana and observed Shivers flee the apartment through a stairwell toward the parking garage. As he fled, one of the packages fell out of his backpack. Awaiting agents apprehended Shivers.

During the search of the residence, agents discovered a large amount of marijuana and THC substances in edible, leaf, and oil form. The search also yielded drug paraphernalia and packaging items, a firearm and ammunition, multiple cell phones, and \$5,720. The street value of the THC items was estimated to be approximately \$17,000.

Respondent State of Minnesota charged Shivers with second-degree sale of a controlled-substance, third-degree possession of a controlled substance, child endangerment, and ineligible possession of a firearm. Prior to trial, Shivers moved to suppress evidence, asserting that the search warrant for his home was not supported by probable cause. The district court denied Shivers’s motion.

The parties agreed that the pretrial suppression order was dispositive of the case and stipulated to facts, pursuant to Minn. R. Crim. P. 26.01, subd. 4, to preserve the issue for appellate review. Based on the stipulated facts, the district court found Shivers guilty of

third-degree possession of a controlled substance and child endangerment. The district court convicted Shivers and sentenced him to a 30-month term on the controlled-substance offense, with a concurrent 365-day term on the child-endangerment offense. This appeal follows.

DECISION

Shivers argues that the search warrant authorizing a search of his residence was not supported by probable cause. The United States and Minnesota Constitutions protect the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. A search warrant may be issued by a neutral and detached magistrate only upon a finding of probable cause. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). When determining whether probable cause supports the issuance of a search warrant, we 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, our “only consideration is whether the issuing judge had a substantial basis for concluding that probable cause existed.” *State v. Fawcett*, 884 N.W.2d 380, 384 (Minn. 2016) (quotation omitted). A substantial basis in this context means a “fair probability,” given the totality of the circumstances, “that contraband or evidence of a crime will be found in a particular place.” *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). We afford great deference to the issuing judge’s finding of probable cause. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985).

Our review “is limited to the information presented in the warrant application and supporting affidavit.” *Fawcett*, 884 N.W.2d at 384-85. “[Appellate courts] must consider

the totality of the circumstances alleged in the supporting affidavit and must be careful not to review each component of the affidavit in isolation.” *Id.* at 385 (quotation omitted). “[T]he critical question is whether the totality of facts and circumstances described in the affidavit would justify a person of reasonable caution in believing that the items sought were located at the place to be searched.” *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

Based on its review of the affidavit, the district court concluded that the issuing judge correctly determined that probable cause supported the warrant. In reaching this conclusion, the district court noted that the narcotics sniff of the three packages corroborated the suspicions of the postal inspector. The district court further reasoned that police had knowledge of short-term traffic at the residence where the packages were to be delivered. Given these facts, the district court determined that the search-warrant affidavit supplied a direct connection between the crime alleged, the possession and sale of illegal drugs, and the place to be searched, Shivers’s residence.

Shivers argues that the warrant was not supported by probable cause because the application “lacks certain details, and expresses generalities which make it less than facially valid.” Specifically, Shivers points to four facts contained in the affidavit that he asserts are too vague to support a finding of probable cause: (1) that the sender used priority-service shipping for the packages; (2) that the packages were sent from California; (3) that the sender and recipient of the packages were not associated with either the sender or recipient addresses; and (4) that each of the three packages weighed over 10 pounds.

While each circumstance listed by Shivers, viewed in isolation, may be insufficient to establish probable cause, “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). Moreover, in addition to listing the four facts outlined by Shivers, the affidavit also included information that the packages smelled like raw marijuana. And during the narcotics sniff, the narcotics-detection dog alerted to the presence of narcotics in all three packages, supporting a belief that the packages contained evidence of the possession and distribution of narcotics. Finally, following the controlled delivery, officers observed Shivers retrieve the three packages from the apartment complex’s package area and take them back to his apartment—the listed recipient address.

Although Shivers does not explicitly argue that the search warrant failed to establish a nexus between drug activity and his residence, he does suggest this case is similar to *State v. Souto*, 578 N.W.2d 744 (Minn. 1998). *Souto* involved a search-warrant application to search a residence, and the affidavit sought to establish that Souto was a drug trafficker and therefore likely to have drugs or information pertaining to drug deals in her residence, based in part on information that a package containing drugs was mailed to her from California ten months prior, although she never received the package. *Id.* As in this case, the warrant application in *Souto* did not state whether Souto lived at or frequented the residence to be searched. *Id.* at 747. However, the court did not focus on this failure in its decision. Instead, the court explained that the search warrant application failed to establish a nexus between Souto’s alleged drug activity and her residence. *Id.* at 745.

In this case, the affidavit established a nexus between the criminal activity and the residence to be searched. Officer Mott's affidavit stated that management had frequently observed "short term traffic" at the listed apartment and further described suspicious people leaving the apartment and "carrying duffle bags." In addition, the search-warrant application here only sought authorization to execute a narcotics search warrant should anyone from the listed apartment unit accept the packages addressed to "Joshua Shavers." And after officers conducted a controlled delivery of the packages to the apartment complex, Shivers retrieved the packages and brought them back to his apartment. Although the warrant application could have been more precisely drafted, considering the totality of the circumstances and the deferential standard of review, the issuing judge had a substantial basis to conclude that the suspicious packages would be found at the listed recipient address. The district court did not err in denying Shivers's motion to suppress.

Affirmed.