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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0843**

State of Minnesota,
Respondent,

vs.

Shawn James Donovan,
Appellant.

**Filed April 13, 2020
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-18-5843

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, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions of first-degree sale of methamphetamine and unlawful possession of a firearm, arguing that the district court erred by denying his motion to suppress evidence obtained during a warranted search of his residence. We affirm.

FACTS

On January 3, 2018, Minneapolis Police Sergeant Jeffrey Carter applied for a warrant to search the residence of appellant Shawn Donovan for controlled substances, items related to the packaging and sale of controlled substances, and firearms. Sergeant Carter averred in his warrant application that he received information from a confidential informant that Donovan was selling methamphetamine. The informant also reported that he saw Donovan with a large quantity of methamphetamine and a semi-automatic handgun, and that Donovan lived in the upper unit of a particular duplex. To corroborate the informant's report, Sergeant Carter surveilled the duplex on January 3. He observed Donovan coming and going from the duplex and retrieved the garbage bag placed out for collection, which held mail addressed to Donovan and a plastic baggie containing .96 grams of methamphetamine. Sergeant Carter also searched public records, which indicated that Donovan resided at the duplex, unit "#2," as recently as July 3, 2017, and that Donovan was convicted of drug offenses in 2008 and 2013 (sale). Sergeant Carter requested authorization for an unannounced entry "to prevent the loss, destruction, or removal of the objects of the search." The district court issued the warrant for the upper unit.

The following day, Sergeant Carter and three other officers executed the warrant. The officers saw Donovan leave the duplex and start two vehicles to warn them, leading them to believe another person was in his residence. Sergeant Carter approached Donovan, searched him, and placed him in the squad car. The officers then entered the duplex and knocked on the upper unit's door. They spoke with the residents and "realized right away" that it was not the correct unit. The residents told the officers that Donovan lived downstairs.

Sergeant Carter knocked on the lower unit's door, and it "popped open." Through the open door, he saw a woman looking out the window. He was concerned that she had seen officers detaining Donovan and would destroy evidence. The officers entered the unit to look for other people and freeze the scene to preserve evidence while obtaining a warrant to search the lower unit. They found one more person and permitted him to leave the premises. As they passed through the unit, the officers observed in plain view methamphetamine, two methamphetamine pipes, and a digital scale.

While other officers remained in Donovan's residence, Officer Cole Peterson applied for the search warrant at issue in this appeal. His application contained the information presented in connection with the upper-unit warrant and also referenced the methamphetamine and paraphernalia observed during the protective sweep of Donovan's residence. The district court issued the warrant; the search yielded approximately 52 grams of methamphetamine and a .45 caliber pistol.

Donovan was charged with first-degree sale of methamphetamine, first-degree possession of methamphetamine, and unlawful possession of a firearm. He moved to

suppress the evidence seized during the search of his residence, arguing that the officers unlawfully entered his residence before obtaining a warrant and relied on their observations within the residence to obtain the warrant, rendering the warrant invalid. The district court denied the motion, reasoning that the sweep of Donovan's residence was justified and, even if it was not, the warrant was supported by independent probable cause. Donovan waived a jury trial and submitted the matter to the district court on stipulated evidence under Minn. R. Crim. P. 26.01, subd. 4. The district court found Donovan guilty and convicted him of the sale and firearm offenses. Donovan appeals.

DECISION

The United States and Minnesota Constitutions require that warrants be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "When determining whether a search warrant is supported by probable cause, we do not engage in a de novo review." *State v. Holiday*, 749 N.W.2d 833, 839 (Minn. App. 2008) (quotation omitted). Our role is limited to deciding whether the issuing judge had a substantial basis for concluding that probable cause existed. *State v. Rochefort*, 631 N.W.2d 802, 804-05 (Minn. 2001). In doing so, we defer to the district court's factual findings unless they are clearly erroneous. *State v. Jenkins*, 782 N.W.2d 211, 223 (Minn. 2010).

A search warrant is supported by probable cause if, considering 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. Fort*, 768 N.W.2d 335, 342 (Minn. 2009). Elements that bear on a probable-cause determination include "information establishing a nexus between the crime, objects to be seized[,] and the place to be searched," but we consider

the warrant application as a whole, rather than individual components “in isolation.” *Jenkins*, 782 N.W.2d at 223 (quotation omitted). In marginal cases, we will uphold the warrant. *State v. Papadakis*, 643 N.W.2d 349, 355 (Minn. App. 2002) (stating that “doubtful cases should be resolved by the preference for warrants”).

Donovan argues that the warrant to search his residence is invalid because it relies on evidence obtained during the initial warrantless entry. But even if the warrantless entry was unlawful, a warrant based on information obtained during the search is invalid only if (1) “the decision of the issuing magistrate was ‘affected’ by the tainted information,” and (2) the information “prompted law enforcement officials to seek the warrant.” *State v. Lieberg*, 553 N.W.2d 51, 55 (Minn. App. 1996) (quoting *Murray v. United States*, 487 U.S. 533, 536-37, 108 S. Ct. 2529, 2533 (1988)). Donovan acknowledges that the officers’ observations during the sweep of his residence did not prompt them to seek the warrant. Accordingly, we first consider whether the warrant application would establish probable cause if “sanitized” by the removal of the information Donovan claims was unlawfully obtained. *Id.* at 55-57.

The application fully restates the basis on which the first warrant was issued. It indicates that an informant notified police that Donovan was selling methamphetamine, the informant observed Donovan with a large quantity of methamphetamine and a firearm, and Donovan lived in the upper unit of the duplex. And the application explains that police corroborated multiple aspects of the informant’s report, demonstrating its reliability. See *Holiday*, 749 N.W.2d at 840-41 (stating that corroboration of “even minor facts” can make drug tip reliable). Sergeant Carter corroborated Donovan’s connection to the duplex by

observing him and his garbage there and obtaining records tying him to the address. He corroborated the information about drug sales by discovering that Donovan has multiple prior drug convictions, including one for drug sales. *See id.* at 844 (permitting consideration of an individual's criminal history in assessing probable cause). And he recovered methamphetamine residue from Donovan's garbage the previous day, which not only further corroborated the informant's report that Donovan was involved in drug sales but provided "an independent and substantial basis" for believing Donovan possessed more drugs or other evidence of criminal activity in the duplex. *State v. McGrath*, 706 N.W.2d 532, 543-44 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006); *see also State v. Cavegn*, 356 N.W.2d 671, 673-74 (Minn. 1984) (comparing time-sensitive evidence of mere drug possession to more enduring evidence of ongoing drug sales); *State v. Ruoho*, 685 N.W.2d 451, 457 (Minn. App. 2004) (reasoning that people who sell drugs likely would maintain evidence of the crime in their residence), *review denied* (Minn. Nov. 16, 2004).

The warrant application also acknowledges that the informant erred in reporting that Donovan lived in the upper unit. But contrary to Donovan's suggestion, that error did not fatally undermine the informant's credibility. Sergeant Carter extensively corroborated both Donovan's connection to the duplex and his involvement with drugs before he executed the first warrant. The police again confirmed Donovan's connection to the duplex by observing him there when they arrived to search the upper unit. They learned that the outer door they had observed Donovan using provided access to both units. And the residents of the upper unit were familiar with Donovan and told the officers he lived in the

lower unit. Based on all of these circumstances, the police were justified in believing that Donovan resided in the lower unit, and that contraband would be found there, despite the informant's mistaken belief that Donovan resided upstairs.

In sum, the “sanitized” warrant application establishes a substantial basis for believing that Donovan resided in the lower unit of the duplex and that his methamphetamine supply, materials related to ongoing drug sales, and the reported firearm would be found there. The district court did not err by denying Donovan's motion to suppress the evidence obtained during the warranted search of his residence.

Moreover, we are not persuaded that the law required the issuing judge to disregard the drug evidence officers observed in plain sight while freezing Donovan's residence. Police officers may conduct a limited sweep of a residence to preserve evidence while they obtain a warrant, when they have reason to believe there is evidence inside and it is in imminent danger of destruction. *State v. Alayon*, 459 N.W.2d 325, 329-30 (Minn. 1990). As discussed above, the officers had probable cause to believe that there was drug evidence inside Donovan's residence—the lower unit of the duplex. And the officers suspected, based on watching Donovan start two vehicles, that at least one other person was inside the lower unit. The officers required no additional justification to approach and knock on the door of the lower unit. *Florida v. Jardines*, 569 U.S. 1, 8, 133 S. Ct. 1409, 1415-16 (2013); *see also State v. Milton*, 821 N.W.2d 789, 799-801 (Minn. 2012) (stating that shared areas of multi-family dwellings are not curtilage and police may lawfully enter without a warrant).

When Sergeant Carter knocked, the door to Donovan's residence "popped open" and he looked through the opening. Donovan asserts that the officer acted unlawfully by "peer[ing] through the crack in the door to see if anyone was inside." But officers generally may rely on observations made from a lawful viewpoint. *See Milton*, 821 N.W.2d at 799 (discussing plain-view doctrine). And Donovan cites no authority precluding application of this principle to Sergeant Carter's act of looking through the open door as he stood upon the threshold. From that vantage, he saw a woman looking out the front window to where Donovan had been detained, causing him concern that she would destroy the drug evidence. On this record, the warrantless intrusion was justified, and the officers' observation of drugs and drug paraphernalia during the sweep further established probable cause to search Donovan's residence.

Affirmed.