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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0892**

State of Minnesota,
Appellant,

vs.

Dalicious Juanita Shawtey Elmore,
Respondent.

**Filed December 16, 2019
Reversed and remanded
Smith, John, Judge***

Hennepin County District Court
File No. 27-CR-19-2841

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

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Mary F. Moriarty, Fourth District Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Smith, John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse and remand the district court's pretrial order suppressing evidence obtained as a result of a search warrant executed at respondent Dalicious Juanita Shawtey Elmore's residence because the search warrant application and accompanying affidavit established probable cause.

FACTS

In late January 2019, a confidential reliable informant (CRI) informed a Minneapolis police officer that a male was selling crack cocaine "in and around" Minneapolis. The officer identified the male as J.R. The officer assisted the CRI in arranging a controlled buy with J.R. At the arranged buy location, J.R. arrived in the passenger seat of a vehicle that was registered to him. J.R. gave the CRI a substance that field-tested positive for crack cocaine in exchange for pre-recorded buy funds. After the sale, the officer, along with additional officers, followed J.R. from Minneapolis to Elmore's residence located in Brooklyn Park. J.R. reported this address to the authorities as his residence until March 8, 2021.

A few days later, the officer applied for a warrant to search the Brooklyn Park residence. The search warrant application included the information stated above and the following relevant information: (1) "Your affiant has had many interactions with [J.R.] including arrests and undercover crack cocaine buys from [J.R.]"; (2) "[J.R.] is currently on U.S. [p]robation and on [s]upervised [r]elease"; (3) "[J.R.] is known through this investigation to utilize a driver because he has a Minnesota [i]dentification only that is in

a status of Cancelled Inimical to Public Safety”; (4) “Your [a]ffiant and assisting [o]fficers followed [J.R.] as he drove from the [c]ity of Minneapolis to his home located [in Brooklyn Park, MN].”

On January 30, the district court issued a warrant for officers to execute that night at the Brooklyn Park residence. While executing the search warrant, officers discovered two children alone at the residence. Officers found papers identifying both Elmore and J.R., who both returned to the residence during the search. In the house, officers recovered 39.18 grams of field-tested crack cocaine in a closet accessible to children, 73.89 grams of field-tested marijuana, 43.42 grams of field-tested cocaine, and \$6,128 in cash.

Elmore was charged with aiding and abetting first-degree drug sale, aiding and abetting first-degree drug possession, and child endangerment. Elmore moved for suppression of the evidence obtained as a result of the search warrant and dismissal for lack of probable cause. Elmore argued that the warrant application failed to establish a sufficient nexus between the residence and J.R.’s drug activity. Elmore also argued the affidavit lacked evidence that J.R. sold large quantities of drugs or was a “drug wholesaler,” that he was not observed leaving his residence before he arrived at the controlled buy, and that the CRI indicated a male was selling “in and around” Minneapolis, but the residence is in Brooklyn Park.

The state argued the search warrant affidavit established J.R. was a “repeat drug dealer” because the search warrant affidavit stated the officer had previous undercover buys with J.R., a CRI purchased crack cocaine from J.R., and J.R. was observed returning directly to the residence after the sale.

The district court determined that the search warrant application and affidavit did not support a probable cause determination and ordered suppression of all evidence seized as a result of the search. The court stated the application and affidavit did not demonstrate J.R. was a “drug wholesaler,” permitting the court to presume a nexus between his residence and the drug activity. The district court also determined that the CRI reported J.R. was selling in Minneapolis, but did not name Brooklyn Park. The officers did not observe J.R. leave the residence and travel to the controlled-buy location, and the application and affidavit “did not describe any other indicators of narcotics activity observed by the officers.”

D E C I S I O N

The state argues that the district court erred when it determined there was not a sufficient nexus between drug activity and the Brooklyn Park residence. Because the state appealed, this court must determine whether the state demonstrated that the suppression of the evidence “will have a critical impact on the outcome of the trial.” Minn. R. Crim. P. 28.04, subd. 2(2). Because Elmore’s charges are based solely on the evidence found at her residence, the district court’s order had a critical impact on the outcome of the trial. *See id.*

Our review of a pretrial suppression order is limited to whether “the issuing judge had a substantial basis for concluding that probable cause existed.” *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). A substantial basis 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). A sufficient nexus between the alleged criminal activity and the

place to be searched is required, “particularly in cases involving the search of a residence for evidence of drug activity.” *State v. Souto*, 578 N.W.2d 744, 747-48 (Minn. 1998). We must give “great deference” to an “issuing judge’s determination of probable cause.” *State v. Valento*, 405 N.W.2d 914, 918 (Minn. App. 1987). Review is limited to the search warrant application and accompanying affidavit. *State v. Fawcett*, 884 N.W.2d 380, 384-85 (Minn. 2016).

The search warrant application and accompanying affidavit established a sufficient nexus between drug activity and the Brooklyn Park residence. The affidavit stated J.R. had prior arrests, had sold drugs in past “undercover crack cocaine buys,” and is on federal probation. The affidavit stated J.R. sold crack cocaine to the CRI in a controlled buy, arrived and left the buy in his vehicle, and officers followed his vehicle from Minneapolis to the Brooklyn Park residence after the buy. A substantial basis for probable cause is strengthened by the fact that J.R. was observed returning to the residence from the controlled buy because there would be a fair probability that the pre-recorded buy funds—evidence of the drug sale—were in J.R.’s possession when he returned home.

The state argues the district court erred when it determined that the affidavit failed to establish that J.R. was a “drug wholesaler.” The Minnesota Supreme Court has created a distinction between a casual drug user and a “drug wholesaler.” See *Novak v. State*, 349 N.W.2d 830, 832-33 (Minn. 1984). When assessing the facts in a search warrant affidavit, the district court can infer a nexus between selling drugs and an individual’s residence if the individual is a “drug wholesaler,” but cannot presume the same inference, without more information, if the offender is a casual drug user. See *Souto*, 578 N.W.2d at 751 (“[T]here

was no evidence that Souto was a ‘drug wholesaler’ such that a nexus to her residence could be presumed.”). Elmore points out that the warrant affidavit did not elaborate on the prior arrests and undercover buys between J.R. and the officer, it did not state why J.R. was on probation, and it did not indicate the quantity of crack cocaine J.R. sold to the CRI in the controlled buy.

The warrant affidavit does not establish J.R. was a “drug wholesaler,” so the issuing judge could not have inferred a nexus between the drug activity and the residence without more information. But here, there was more information that created a sufficient nexus between J.R.’s drug activity and the residence. *See id.* The search warrant application and accompanying affidavit established a substantial basis for concluding that probable cause existed.

We conclude the warrant application and affidavit established probable cause and the district court erred by granting Elmore’s suppression motion. Further, we conclude that the suppression will have a critical impact on the outcome of the trial and remand for further proceedings. *See* Minn. R. Crim. P. 28.04, subd 2(2).

Reversed and remanded.