

*This opinion will be unpublished and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
A19-0962**

State of Minnesota,
Respondent,

vs.

Wiltavius Roberte Hinton,
Appellant.

**Filed June 1, 2020
Affirmed
Johnson, Judge**

St. Louis County District Court
File No. 69VI-CR-16-1510

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

Mark S. Rubin, St. Louis County Attorney, Karl G. Sundquist, Assistant County Attorney,
Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

JOHNSON, Judge

A St. Louis County jury found Wiltavius Roberte Hinton guilty of a controlled-
substance crime and child endangerment based on evidence that drugs were found in his

home during the execution of a search warrant. We conclude that the search-warrant application was supported by probable cause. Therefore, we affirm.

FACTS

On October 19, 2016, Officer Kral and Deputy Richter, members of the Boundary Waters Drug and Violent Crime Task Force, searched a community dumpster that was located behind a home occupied by Hinton and his girlfriend, L.K. The officers removed two trash bags from the dumpster and searched their contents. In one trash bag, Deputy Richter found a receipt for a prescription for L.K. and various items associated with illegal drugs, including baggies with corners missing, tied-off baggie corners, and tin foil. Residue found on a baggie corner tested positive for heroin.

Later that day, Officer Kral applied for a warrant to search Hinton's and L.K.'s persons, their home, and Hinton's vehicle. The application stated that Hinton had recently told another law-enforcement officer that he was dating L.K. and that they lived at the home in question. The application described the search of the trash bags found in the dumpster. The application also stated that Officer Kral had "observed high amounts of foot and vehicle traffic to and from the residence" of Hinton and L.K., including visits by other persons whom law enforcement had investigated for drug-related offenses. The application further stated that officers have observed Hinton "frequenting residences of other targets of narcotics investigations." The application stated further that Officer Kral had received information from a concerned citizen that a person matching Hinton's description had briefly visited a different home, which the officer said was "the target of

an ongoing narcotics investigation.” The application also described Hinton’s criminal history, which includes prior felony convictions for drug-related offenses.

A district court judge approved the application and issued the search warrant. Officers executed the search warrant that afternoon and found heroin and marijuana in the home. Officers also found evidence that L.K.’s 13-year-old son lived in the home.

The state charged Hinton with third-degree controlled-substance crime, in violation of Minn. Stat. § 152.023, subd. 2(a)(2) (2016), based on his alleged possession of heroin; fifth-degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subd. 2(1) (2016), based on his alleged possession of marijuana; and child endangerment, in violation of Minn. Stat. § 609.378, subd. 1(b)(2) (2016).

Before trial, Hinton moved to suppress the evidence obtained in the execution of the search warrant. He argued that the search-warrant application did not establish that there was probable cause to search his home. The district court denied Hinton’s motion to suppress.

The case was tried to a jury on one day in February 2019. At the outset of trial, the state voluntarily dismissed the fifth-degree controlled-substance charge. The state called three witnesses. Hinton did not present any evidence. The jury found Hinton guilty of both of the remaining charges. The district court sentenced Hinton to 39 months of imprisonment on the third-degree controlled-substance conviction and one year in jail on the child-endangerment conviction. Hinton appeals.

DECISION

Hinton argues that the district court erred by denying his motion to suppress evidence. He renews his argument that there was a lack of probable cause to support the search-warrant application.

The Fourth Amendment to the United States Constitution guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and states that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. “Probable cause exists if the judge issuing a warrant determines that ‘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)). Whether probable cause exists is a “practical, common-sense decision” based on the totality of the circumstances. *Id.* at 622-23. In reviewing the issuing judge’s probable-cause determination, this court gives the issuing judge “great deference” and seeks to determine whether there was “a substantial basis for concluding that probable cause existed.” *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001).

In denying Hinton’s motion to suppress evidence, the district court noted that the search-warrant application stated numerous facts that collectively indicated “a probability that heroin would be found in” Hinton’s home. In its order and memorandum, the district court highlighted the following facts:

(1) a high amount of foot and vehicle traffic to and from the Residence, (2) Defendant being reported to, and observed, frequenting other houses under investigation by the Task Force, (3) a garbage search uncovering heroin residue in garbage bag identified as coming from the Residence, and (4) Defendant having previous criminal convictions for drug sales and possession.

The district court noted that these facts were quite similar to the facts of *State v. Papadakis*, 643 N.W.2d 349 (Minn. App. 2002). In that case, this court concluded that a search-warrant application was supported by probable cause because

the supporting affidavit contained the following information: (1) a large amount of short-term traffic was observed at appellant's residence; (2) there was previous police contact with appellant and the last contact was [six months before the warrant application]; (3) appellant was previously arrested at the residence; and (4) a garbage search uncovered cocaine residue and drug paraphernalia.

Id. at 356.

On appeal, Hinton contends that, for several reasons, the facts of this case can be distinguished from the facts of *Papadakis*. First, he contends that the application does not identify the source of Officer Kral's information about frequent visitors at Hinton's home and does not state whether the source is credible. This argument is unpersuasive because the application states both that Officer Kral received reports from others of heavy foot traffic and also states that she herself observed heavy foot and vehicle traffic. The application states, "Your Affiant has conducted surveillance of the residence and ha[s] observed high amounts of foot and vehicle traffic to and from the residence." In light of Officer Kral's personal observations, the credibility of the source of other reports is of marginal or no relevance. In any event, Officer Kral corroborated the reports she received

from others with her personal observations. *See State v. McCloskey*, 453 N.W.2d 700, 702, 704 (Minn. 1990).

Second, Hinton contends that the application does not state exactly when Officer Kral received the information concerning Hinton's visits to other persons' homes and, thus, does not indicate that such information was not stale. Similarly, he contends that the application does not state whether the two trash bags were taken from the top or bottom of the dumpster, which might indicate whether the information found in the trash bags is or is not stale. A search-warrant application must state "'facts so closely related to the time of the issu[ance] of the warrant as to justify a finding of probable cause at that time.'" *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998) (quoting *Sgro v. United States*, 287 U.S. 206, 210, 53 S. Ct. 138, 140 (1932)). Whether information in a search-warrant application is stale is a common-sense, flexible concept that depends on the circumstances of each case, with no rigid time limit. *State v. King*, 690 N.W.2d 397, 401 (Minn. App. 2005), *review denied* (Minn. Mar. 29, 2005). In the context of an investigation into drug-dealing, the passage of several weeks does not make information stale. *See State v. Cavegn*, 356 N.W.2d 671, 673-74 (Minn. 1984).

In this case, the application states that Officer Kral received information about Hinton's suspicious activities "over the past several months." The application also states that a person matching Hinton's description had been seen visiting a home that "is . . . the target of an ongoing narcotics investigation." The use of the present tense and the "ongoing" nature of an investigation indicates that the information is sufficiently recent.

See *Souto*, 578 N.W.2d at 750. Similarly, it is common knowledge that dumpsters are emptied on a regular basis.

Third, Hinton contends that the information concerning his prior convictions is stale because he was sentenced in prior cases approximately one or two years before the search-warrant application was submitted and because the conduct underlying those convictions occurred months before sentencing. A person's criminal history cannot establish probable cause on its own, but it may be considered as part of the totality of the circumstances. *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996). Hinton does not cite any caselaw stating that prior convictions cannot play a role in the probable-cause analysis after a certain period of time, and we are not aware of any such caselaw. In general, prior convictions may be relevant to probable cause if there is similarity between the suspected crime and the prior crime. See *State v. Hochstein*, 623 N.W.2d 617, 623 (Minn. App. 2001); *Lieberg*, 553 N.W.2d at 56. Thus, Hinton's prior controlled-substance convictions in 2015 and 2016, for conduct occurring in 2014 and 2015, are pertinent to the probable-cause determination in this case, which was made in October 2016.

Fourth and finally, Hinton contends that the information concerning his visits to other persons' homes does not tend to show that drugs would be present at his own home. We construe this contention to be a challenge to the "nexus" requirement, *i.e.*, the requirement that there is "a fair probability that the evidence will be found at the specific site to be searched." *Yarbrough*, 841 N.W.2d at 622. A sufficient nexus may be inferred from the totality of the circumstances, including "the type of crime, the nature of the items sought, . . . and the normal inferences as to where the defendant would usually keep the

items.” *Id.* at 622-23. “It may be reasonable to infer that drug wholesalers keep drugs at their residences” *Id.* at 623. Such an inference is reasonable in this case. The search-warrant application states that officers suspected Hinton was involved in dealing drugs and that they had observed other persons make numerous short visits to Hinton’s home. That information supports the issuing judge’s determination that there was a fair probability that drugs would be found at Hinton’s home.

To conclude, the district court properly reasoned that the facts stated in the application for a warrant to search Hinton’s home are similar to the facts of *Papadakis*. Indeed, the search-warrant application in this case arguably provided *more* information to support a finding of probable cause than the application in *Papadakis*. Hinton’s arguments on appeal do not undermine the district court’s analysis. After considering the totality of the circumstances, we conclude that the issuing judge had a substantial basis on which to find “that there is a fair probability that contraband or evidence of a crime [would] be found” at Hinton’s home. *See Yarbrough*, 841 N.W.2d at 622 (quotation omitted).

In sum, the district court did not err by denying Hinton’s motion to suppress evidence.

Affirmed.