STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0213

State of Minnesota,
Respondent,

vs.

Shana Renee Petersen,
Appellant.

Filed February 6, 2023
Affirmed
Cochran, Judge

Crow Wing County District Court
File No. 18-CR-20-800

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

Donald F. Ryan, Crow Wing County Attorney, Lindsey Lindstrom, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges her conviction of two counts of fifth-degree possession of a controlled substance. Appellant argues that the district court erred by denying her motion to suppress evidence seized when police executed a search warrant for her residence as

well as evidence seized when police subsequently conducted a warrantless search of her person. Because the information in the search-warrant application established probable cause to search appellant's residence and the subsequent search of appellant's person met an exception to the warrant requirement, we conclude that the district court properly denied the motion to suppress. We therefore affirm.

FACTS

In March 2019, the Crow Wing County Sheriff's Office began an investigation into allegations that individuals were involved in selling methamphetamine at the Riverton residence of appellant Shana Renee Petersen. A narcotics investigator with the Crow Wing County Sheriff's Office applied for a warrant to search Petersen's residence for controlled substances, drug paraphernalia, and other related items.

The search-warrant application was supported by the following information, as attested to by the narcotics investigator. On March 4, an individual was arrested in Aitkin County with approximately 13 grams of suspected methamphetamine. The individual provided information to the arresting officer indicating that he purchased the methamphetamine in the city of Riverton. The next day, the narcotics investigator went to the Aitkin County jail to speak with the individual, who agreed to cooperate with the investigation (cooperating defendant).

The cooperating defendant told the investigator that he had purchased methamphetamine from M.S. at a house in Riverton and gave the exact address. The address was that of Petersen's residence. The cooperating defendant also told the investigator that M.S. was living or staying at the residence. The cooperating defendant

indicated that he had purchased methamphetamine from M.S. at the same residence approximately two months earlier. The cooperating defendant also stated that, when he was at the residence most recently to buy drugs, he observed a van in the driveway and a woman in the home. The cooperating defendant indicated that he believed that M.S. drove a van. The cooperating defendant also stated that during the most recent purchase, he observed that M.S. had additional methamphetamine in a plastic bag. He described the quantity of the remaining methamphetamine to the investigator, which the investigator estimated to be one to two ounces.

After meeting with the cooperating defendant, the investigator drove by Petersen's residence on several occasions for observation. On one occasion, he observed several vehicles at the address including a vehicle registered to Petersen as well as a van registered to another individual. Several days later, he again observed a vehicle registered to Petersen. He also saw a young child playing in front of the house. On a third occasion, he observed a trash bin located on the side of the road near the residence that appeared ready for collection. The investigator and two other officers collected three bags of trash, which they later searched. Their search revealed: a small plastic bag containing about 0.13 grams of marijuana; another plastic bag containing suspected marijuana and methamphetamine residue; items belonging to small children; and a large number of quart-sized and smaller plastic bags, two of which tested positive for methamphetamine residue. The search of the trash also revealed "significant indicia of occupancy showing Petersen to be residing at that residence."

In addition to the above information, the search-warrant application noted that the focus of the investigation was on three individuals who were residing at or visiting the residence—Petersen, her adult daughter, and M.S. The application indicated that all three individuals had previous felony-level, drug-related arrests.

On March 18, 2019, a judge approved the application and issued a search warrant. The next day, the investigator and other officers executed a search of the residence. Petersen was at work when the search took place, but her adult daughter was at the residence. Petersen's daughter pointed the officers to Petersen's bedroom. Officers searched the bedroom and found mail belonging to Petersen along with methamphetamine and drug paraphernalia. Methamphetamine and drug paraphernalia were also found in the kitchen and other areas of the home.

Officers then drove to Petersen's work. One officer went inside to find Petersen and asked if she would step outside to speak with him about the investigation. Petersen agreed and they walked toward the officer's unmarked vehicle. Before entering the vehicle, the officer said that he would like to search Petersen for weapons. He made the request for safety reasons. Petersen responded, "go ahead" and then pulled her arms away from her body. When conducting the pat down, the officer felt what he believed to be a methamphetamine pipe. The officer asked Petersen if she had a methamphetamine pipe and she responded that she did. The officer removed the pipe and a bag containing approximately 0.7 grams of methamphetamine from Petersen's pocket. Petersen was not arrested at that time.

In February 2020, the state charged Petersen with two counts of fifth-degree drug possession. Petersen brought a motion to suppress the evidence obtained from her residence, arguing that the warrant was not supported by probable cause, that the warrant failed to specify the areas to be searched, and that her bedroom was outside the scope of the search warrant. Petersen also moved to suppress the evidence found as a result of the search of her person, arguing that the search was not lawful.

The district court held a hearing on Petersen's motion. The investigator who submitted the search-warrant application testified about his investigation leading up to the filing of the application and the search of the residence after the warrant was issued. He also testified about the subsequent search of Petersen's person.

Following the hearing, the district court denied Petersen's motion to suppress. The district court determined that the information in the search warrant application provided probable cause to issue the warrant and that the scope of the search warrant was reasonable. The district court also concluded that the search of Petersen's person was justified because Petersen provided consent to search her person and, in any event, the discovery of drug evidence at her residence provided probable cause to arrest Petersen.

After the district court denied the motion, Petersen proceeded pursuant to Minn. R. Crim. P. 26.01, subd. 4, whereby Petersen stipulated to the state's evidence and waived her right to a jury trial in order to obtain review of the district court's dispositive pretrial ruling on her motion to suppress. The district court found Petersen guilty of both counts of fifth-degree drug possession. The district court sentenced Petersen to 13 months, stayed for five years. This appeal follows.

DECISION

Petersen challenges the denial of her motion to suppress evidence. She first argues that the district court erred by concluding that probable cause supported issuing the warrant to search her residence. Petersen next argues that the district court erred by concluding that the warrantless search of her person was justified as a consensual search or search incident to arrest. We address each argument in turn.

I. The warrant to search Petersen's residence was supported by probable cause.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures and require that warrants be issued only for probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Before searching a residence, police usually must obtain a valid warrant issued by a neutral and detached magistrate." *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). Evidence obtained during a search of a residence without a valid warrant generally is not admissible. *See State v. Horst*, 880 N.W.2d 24, 36 (Minn. 2016).

A valid warrant is one supported by probable cause. *Yarbrough*, 841 N.W.2d at 622. "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.'" *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Whether probable cause exists is "a practical, common-sense decision" based on the totality of the circumstances. *Id.*

To establish probable cause to search a residence, the warrant application must demonstrate a nexus between the residence to be searched and the crime being investigated. *State v. Souto*, 578 N.W.2d 744, 747-48 (Minn. 1998). But direct observation of a crime

at the place to be searched is not required. *Yarbrough*, 841 N.W.2d at 622. "A nexus may be inferred from the totality of the circumstances." *Id.*

When a party challenges the issuing court's determination of probable cause, this court's review is limited to the information in the warrant application. *Souto*, 578 N.W.2d at 747. This court "afford[s] the district court's determination great deference." *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). Rather than considering the issue de novo, we consider only "whether the issuing judge had a substantial basis for concluding that probable cause existed." *Id.* Because the issuing judge's determination should be based on the totality of the circumstances, we must be careful not to review each component of the application in isolation. *Massachusetts v. Upton*, 466 U.S. 727, 732-33 (1984). The resolution of doubtful or marginal cases "should be largely determined by the preference to be accorded to warrants." *Id.* at 734 (quoting *United States v. Ventresca*, 380 U.S. 102, 109 (1965)).

Here, the district court considered the information in the application when it determined whether to issue the search warrant, including the information provided by the cooperating defendant that he had recently purchased methamphetamine at the residence along with the officers' discovery of controlled substances in trash bags collected from a trash bin adjacent to the property. The district court determined that probable cause existed to issue a search warrant on the grounds that the possession of controlled substances constitutes a crime, and there was a fair probability that evidence of a drug crime would be found at the residence. The search warrant permitted the officers to seize evidence of controlled substances, drug paraphernalia, and related items.

Petersen argues that the warrant was not supported by probable cause because the search warrant application did not set forth a "sufficient nexus" between the alleged criminal activity and her residence. She contends that the warrant application focused on M.S. selling drugs to the cooperating defendant and that the warrant application failed to show that M.S. resided in or stayed at Petersen's residence. As a result, she argues that the information in the warrant application failed to establish probable cause to support issuance of a search warrant for her residence. We are not persuaded.

To establish probable cause, the warrant application needed to allege sufficient information to establish a nexus between the alleged crime and the particular place to be searched for drugs and related items. *Souto*, 578 N.W.2d at 747-48. The determination of whether a nexus exists is made by the issuing judge based on the totality of the circumstances set forth in the warrant application, not based on any specific circumstance—such as whether M.S. was living at the residence. *Id.* at 747 (stating that "[t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, *given all the circumstances set forth in the affidavit* . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place" (emphasis added) (quotation omitted)). And our review of the warrant application reveals that, based on the totality of the circumstances, the issuing judge had a substantial basis for concluding that the facts stated in the warrant application established the probable cause necessary for the issuance of the search warrant.

First, the cooperating defendant who spoke with the officer applying for the warrant stated that he purchased methamphetamine from M.S. at Petersen's residence on two

separate occasions—once shortly before the warrant application was filed and another time approximately two months earlier. When the cooperating defendant messaged M.S. about purchasing methamphetamine for the second time, M.S. told the cooperating defendant that he had approximately seven or eight "8 balls"—a term used to describe an eighth of an ounce of a controlled substance. While purchasing methamphetamine at Petersen's residence, the cooperating defendant observed additional methamphetamine in a plastic bag. This direct information about drug sales occurring at Petersen's residence as well as the information that M.S. had additional methamphetamine at the residence at the time of the most recent sale supports the district court's determination that a sufficient nexus existed between the alleged crime and the place to be searched. *See State v. Cavegn*, 356 N.W.2d 671, 674 (Minn. 1984) (stating that a clearer nexus can be established when there is direct information that a sale occurred at a specific residence).

Second, officers searched three trash bags found in a bin on the street adjacent to Petersen's residence and discovered evidence of drugs and drug-related items in the trash bags along with items showing that Petersen resided at the residence. The officers found "a large number of controlled substance related items." Specifically, one officer found "a large number of plastic bags" that were quart-sized or smaller and two of the plastic bags tested positive for the presence of methamphetamine. The officers also found a small bag containing 0.13 grams of marijuana.

Finally, the application stated that Petersen, her adult daughter, and M.S. all had a history of controlled-substance arrests, which is a factor the issuing magistrate may

consider when determining probable cause. *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005).

To support her argument that the warrant application was insufficient to establish probable cause, Petersen also points to the lack of certain details in the application. For example, she notes that the application indicates that the cooperating defendant observed a woman at the residence when purchasing methamphetamine in March, but the application did not provide a description of the woman. But, as noted above, the issuing judge's determination of probable cause when issuing a warrant must be based on the totality of the circumstances. *Souto*, 578 N.W.2d at 747. And, based on the totality of the circumstances, we conclude that the magistrate was justified in determining that the facts stated in the warrant application established probable cause to support issuing the warrant to search the residence for drugs and drug-related items. Therefore, the district court did not err by denying the motion to suppress evidence seized when officers searched Petersen's home pursuant to the warrant.

II. The district court did not clearly err by finding that Petersen consented to a search of her person.

Petersen next challenges the district court's denial of her motion to suppress the evidence found on her person. She argues that the warrantless search of her person was unlawful because the search did not meet any exception to the warrant requirement.

Warrantless searches and seizures are per se unreasonable subject to a few established exceptions. *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015). Any evidence obtained during a warrantless search is inadmissible unless an exception to the

warrant requirement applies. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). It is "well-settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." *State v. Hanley*, 363 N.W.2d 735, 738 (Minn. 1985). For the consent exception to the warrant requirement to apply, "the state must show by a preponderance of the evidence that consent was given freely and voluntarily." *Diede*, 795 N.W.2d at 846. We review the district court's finding of voluntary consent under the clearly erroneous standard. *Id.* "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *Id.* at 846-47.

Here, the district court found that Petersen consented to the search of her person when the investigator "asked [her] if he could search her person, before conducting a pat-down," and she responded "go ahead" and lifted her arms. In its order, the district court specifically noted that Petersen did not argue to the district court that the consent was involuntary. For that reason, the district court declined to address the issue of involuntariness.[1]

On appeal, Petersen contends that the record reflects that the investigator did not "ask" to search her person but instead stated that he would like to check her pockets for weapons. On this basis, she argues that the district court erred by finding that the officer

[1] The district court also concluded that, even if Petersen had not consented, the search was justified as a search incident to arrest. We do not address Petersen's challenge to this determination because, as discussed below, we agree with the district court's conclusion that the consent exception applies.

"asked" to search her person and by concluding that the search was justified as a consensual search.

Based on our review of the entire record, we conclude that the district court did not clearly err in finding that Petersen consented to the search of her person. The officer who conducted the pat down testified that he went to Petersen's workplace in plain clothes. The officer identified himself and then asked Petersen if she would step outside to speak with him. Petersen agreed and they walked outside toward a police vehicle. Before entering the vehicle, the officer decided that he wanted to check Petersen's pockets for weapons to ensure "officer safety." The officer testified that he "asked" Petersen if she would allow him to do so. He further testified that he asked by saying to Petersen, in a friendly manner, "I would like to check your pockets to make sure that you don't have any weapons." She responded, "go ahead" in a "light way." She then pulled her arms away from her body. The officer proceeded to pat the outside of her clothes to "ensure that there were no large bulges or anything." While patting her pockets, he felt what he believed to be a methamphetamine pipe. He testified that he asked her, "[d]o you got a meth pipe?" and she responded, "yep." He then seized the item.

While the officer's testimony suggests that the officer did not specifically phrase his request to search Petersen as a question, the circumstances surrounding the search do not raise concerns of coercion or intimidation or otherwise suggest that consent was not given voluntarily. *See State v. Harris*, 590 N.W.2d 90, 103 (Minn. 1999) (concluding that voluntary consent was given based, in part, on the fact that appellant responded to the request to search "promptly" and "unequivocally"); *State v. Dezso*, 512 N.W.2d 877,

880-81 (Minn. 1994) (concluding that the defendant did not voluntarily consent to a search of his wallet based, in part, on the officer's official and persistent questioning). Instead, the totality of the circumstances reveal that Petersen freely consented to a search of her person. The district court did not clearly err when it found that Petersen consented to the search.

In sum, because the district court had a substantial basis for concluding that the warrant application was supported by probable cause and the record supports its finding that Petersen consented to the search of her person, the district court did not err by denying Petersen's motion to suppress the evidence found in her home and on her person.

Affirmed.