

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1672**

State of Minnesota,
Respondent,

vs.

Julianna K. Gutierrez,
Appellant.

**Filed September 18, 2023
Affirmed
Worke, Judge**

Nicollet County District Court
File No. 52-CR-21-427

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

Michelle M. Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges her conviction for deprivation of parental rights, arguing that the district court erred in denying her motion to suppress evidence obtained during a search of her home because the warrant application lacked probable cause, included misrepresentations, and had omissions that voided the warrant. We affirm.

FACTS

In November 2020, a mother, C.R., reported her teenage son (juvenile) missing. On October 27, 2021, Crime Stoppers of Minnesota received an anonymous tip:

A caller heard the [juvenile] is missing from Sacramento, CA. The caller heard [the juvenile] is with Julianne Gutierrez 28 [years old] at her moms' . . . blue duplex home address unknown behind the Brewery in Montgomery, MN 56069. The female just had a baby boy on Friday 22nd at a hospital address unknown. They are in a white Hyundai [license plate number] unknown. The caller had no further information.

The tip described the juvenile as a Hispanic male of small weight and height, and brown eyes.

The tip was forwarded to local law enforcement and they began an investigation. They requested the missing-persons report from law enforcement in California. And they contacted C.R. They discovered that the vehicle described in the tip had been involved in two traffic-related incidents. Officers believed that the juvenile was driving the vehicle during the first incident and was a passenger in the vehicle during the second incident.

Officers then applied for and executed a search warrant at the home of appellant Julianna K. Gutierrez. Gutierrez, the juvenile, a two-week-old baby, and another young child were in the residence. The baby shares the same last name as the juvenile.

Respondent State of Minnesota charged Gutierrez with six counts of criminal-sexual conduct and four counts of deprivation of parental rights. Gutierrez moved to suppress the evidence and dismiss the charges, challenging the search warrant.

At the contested omnibus hearing, an investigator testified that the missing-persons report included that the juvenile “may be with” Gutierrez. The investigator also testified about the two law-enforcement contacts with the vehicle. He explained that during the first traffic stop, a warning was “written out to a young Hispanic male . . . in September . . . to a Juan Gutierrez, [who] gave a Lafayette address.” In reviewing the citation prior to the hearing, the investigator knew that “it was [the juvenile] driving the car, giving a false name . . . a false date of birth . . . [a]nd at least a false street address.”

The district court denied Gutierrez’s motion to suppress evidence obtained as a result of the search, rejecting Gutierrez’s claims that the search-warrant application lacked probable cause and included misleading information that voided the search warrant.

The state amended the complaint, charging Gutierrez with four counts of deprivation of parental rights. Gutierrez agreed to a stipulated-evidence proceeding under Minn. R. Crim. P. 26.01, subd. 4, as to one count of deprivation of parental rights, in order to preserve review of the suppression ruling on appeal. The district court found Gutierrez guilty and sentenced her to one year and one day in prison, stayed for four years. This appeal followed.

DECISION

Gutierrez challenges the district court's denial of her suppression motion, claiming that the warrant application lacked probable cause and included "reckless and material" misrepresentations that voided the warrant.

No warrant shall be issued unless supported by probable cause describing the place to be searched and the items to be seized. U.S. Const. amend. IV; 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) (quotation omitted). Whether probable cause exists is a "practical, common-sense decision" based on the totality of the circumstances. *Id.*

In reviewing a challenge to an issuing court's determination of probable cause, this court is limited to the information in the search-warrant application. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). We "afford the district court's [probable-cause] determination great deference" and consider only "whether the issuing judge had a substantial basis for concluding that probable cause existed." *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). This court looks for "a direct connection, or nexus, between the alleged crime and the particular place to be searched." *Souto*, 578 N.W.2d at 747.

Gutierrez first claims that the warrant application lacked probable cause because it depended on an anonymous "tipster whose veracity was not established and who had no credible basis of knowledge." The warrant application to search Gutierrez's home for the juvenile provided:

The tip was anonymous and indicated that the missing juvenile's mother . . . believed her son was with JULIANA GUTIERREZ.

....

The [tip] . . . reported that . . . Gutierrez just had a baby boy on Friday, October 22 at an unknown hospital. There are concerns that the baby may belong to [the juvenile] as the two have been together for approximately one year.

The tip indicates that a Hispanic male . . . (. . . age 15) is believed to be in Montgomery, Minnesota in a blue duplex which is located behind the brewery. The tip also stated the [juvenile] is from Sacramento, California and that he is with Juliana Gutierrez (28 years old). [Law enforcement] . . . locate[d] the vehicle in Montgomery, Minnesota. This vehicle is a white Hyundai Sonata, bearing California license . . . plates.

[Law enforcement] . . . believed that this female may also be tied to Nicollet County. After reviewing the information . . . provided, [officers] opened an investigation and . . . locate[d] an address [where] [i]t appears that [Gutierrez] has only been [for] a few months and has recently enrolled for benefits through Nicollet County . . . using that address.

[Law enforcement] [learned] that a traffic stop was conducted in Sibley County [i]n . . . September 2021 with . . . Gutierrez's vehicle. An individual named Juan Gutierrez with a date of birth of September 18, 2003 was issued a citation for driving without a license and then released.

The vehicle was also stopped on November 4, 2021 Gutierrez was driving the vehicle and a young Hispanic male was with her, along with two small children in car seats in the back seat. The driver was issued a citation for no Minnesota driver's license. They were driving the white 2011 Hyundai Sonata with California [plates].

[Law enforcement believed] . . . that the traffic stop conducted in Sibley County was also probably [the juvenile] who gave a false name and date of birth.

On November 10, 2021 [law enforcement received from law enforcement in California] reports regarding [the juvenile] . . . [being] reported missing on November 23, 2020 . . . by [C.R.] who is the mother of [the juvenile].

The address Juliana Gutierrez provided law enforcement and used in both citations, is the address in Lafayette, Minnesota. The information is current and should be accurate as a traffic stop only took place a week ago in Nicollet County. Juliana Gutierrez also provided this address in her application for benefits.

On 11/11/2021, [law enforcement] contacted . . . [C.R.] . . . [She] indicated that she had received a picture from her son . . . yesterday, 11/10/2021. [C.R.] indicated the picture was of her son outside doing some type of yard work. The phone number the picture was received from . . . [is] list[ed] to a caller named ‘Julia Gutierrez.[’]

On 11/11/2021, [law enforcement] contacted Redwood Investments . . . [and] spoke with [the] property manager [who] verified JULIANA is . . . the sole renter of apartment 1.

The search-warrant application sets forth objective facts that under the circumstances would cause a person of ordinary care and prudence to entertain an honest and strong suspicion that a crime (deprivation of parental rights) has been committed and that evidence of the crime (the juvenile) will be found in the place to be searched (Gutierrez’s home). *See State v. Ward*, 580 N.W.2d 67, 70 (Minn. App. 1998). As stated, Minnesota courts require “a direct connection, or nexus, between the alleged crime and the particular place to be searched.” *See Souto*, 578 N.W.2d at 747. And “there must be specific facts to establish a direct connection between the alleged criminal activity and the site to be searched.” *Id.* at 749.

Here, facts in the search-warrant application established a direct connection between the juvenile and Gutierrez's home. The tip provided that (1) the caller heard that the juvenile was missing from Sacramento and is with 28-year-old Gutierrez; (2) Gutierrez and the juvenile have a white Hyundai; and (3) the juvenile is a Hispanic male of small weight and height, and brown eyes. Officers corroborated that the juvenile was missing by contacting law enforcement in the Sacramento area and learning that the juvenile was "reported missing on November 23, 2020 . . . by [his mother, C.R.]" They also corroborated the tip that the juvenile was likely with Gutierrez at her home by contacting C.R. who stated that she received a picture from her son the previous day in which he was doing yard work. The phone number the picture was received from is listed to "Julia Gutierrez."

Officers also corroborated the tip's reference to a specific vehicle. Officers learned that Gutierrez was stopped in this type of vehicle and "a young Hispanic male was with her." The traffic citation showed that Gutierrez provided an address in Lafayette. Law enforcement learned that Gutierrez recently enrolled for benefits using that address. Law enforcement then verified with the property manager that Gutierrez rents an apartment at that address. The whole of this information shows a direct connection between the crime of depriving C.R. of her parental rights to the juvenile and Gutierrez's home.

Gutierrez claims that the veracity of the tip was not established, but an anonymous tip that is corroborated by other information in the affidavit, as was done here, supports a determination of probable cause. *See State v. Eling*, 355 N.W.2d 286, 291 (Minn. 1984). And an affidavit supporting a search-warrant application must be "viewed as a whole," not

in isolation. See *State v. Anderson*, 439 N.W.2d 422, 425 (Minn. App. 1989) (quotation omitted), *rev. denied* (Minn. June 21, 1989). Based on the entirety of the information in the search-warrant application, the district court correctly determined that probable cause existed to support the search warrant.

Gutierrez next argues that “[t]he warrant was voided by reckless and material misrepresentations in, and omissions from, the warrant application.” The first misrepresentation is: “Juan Gutierrez (who police thought was actually [the juvenile]) had given Julianna Gutierrez’[s] address [at the first traffic stop] as his own. That was not true; he had given a different address.” The second misrepresentation is: “[T]he tip reported [that the juvenile]’s mother believed her son was with [Gutierrez].”

“A search warrant is void, and the fruits of the search must be excluded, if the application includes intentional or reckless misrepresentations of fact material to the findings of probable cause.” *State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989). When a defendant seeks to invalidate a warrant, the *Franks*¹ test requires a defendant to show that (1) the affiant “deliberately made a statement that was false or in reckless disregard of the truth,” and (2) “the statement was material to the probable cause determination.” *State v. McDonough*, 631 N.W.2d 373, 390 (Minn. 2001). A misrepresentation or omission is material if, when the misrepresentation is set aside or the omission supplied, probable cause to issue the search warrant no longer exists. *State v. Mems*, 708 N.W.2d 526, 532 (Minn. 2006).

¹*Franks v. Delaware*, 438 U.S. 154, 171-72 (1978).

Here, the record supports Gutierrez's claim that the search-warrant affidavit included the claimed misrepresentations. However, the misrepresentations were not deliberate, reckless, or material to the probable-cause determination.

Gutierrez first challenges the misrepresentation related to addresses provided at the two traffic stops. The search-warrant application provides: "The address Juliana Gutierrez provided law enforcement *and used in both citations*, is the address in Lafayette, Minnesota." (Emphasis added.) The investigator testified that during the first traffic stop, the juvenile had actually given all false information, including a false name, date of birth, and street address. This shows that the address the juvenile provided during the first traffic stop was not the same address Gutierrez provided in the second traffic stop, and the statement in the search-warrant application that the address was "used in both citations" is a misrepresentation.

But there is no indication in the record that the misrepresentation was deliberate or material to the probable-cause determination. First, the investigator testified that the juvenile provided mainly false information during the first stop. Second, both addresses provided at the traffic stops were in Lafayette, Minnesota. Third, the address Gutierrez provided during the second stop, in which the juvenile was a passenger and that occurred a week before the search, was the address searched. Fourth, the address that Gutierrez provided during the second stop was the address she provided in her application for benefits and law enforcement verified with the property manager that Gutierrez is a renter at this address. Finally, the search-warrant application included only one address, which was the

address verified to be connected to Gutierrez. Probable cause existed despite this misrepresentation.

Additionally, although Gutierrez is correct—that *the tip* did not include the information that the juvenile’s mother believed that he was with Gutierrez—the search-warrant application indicated law enforcement contacted the juvenile’s mother and she indicated that she received a photo from the juvenile and the phone number from which it was received is listed to “Julia Gutierrez.” Despite the tip not including the information that C.R. believed that the juvenile was with Gutierrez, this misrepresentation was not material to the probable-cause determination because, based on C.R.’s comment about the source of the photo, probable cause existed to believe that the juvenile was with Gutierrez. The district court appropriately denied Gutierrez’s suppression motion because the search warrant was supported by probable cause.

Affirmed.