

*This opinion is nonprecedential except as provided by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
A23-0713**

State of Minnesota,
Respondent,

vs.

Jimmie Lee Campbell,
Appellant.

**Filed March 4, 2024
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-21-4141

Keith Ellison, Attorney General, Thomas R. Ragatz, Assistant Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Joseph G. Vaccaro, The Law Office of Joseph G. Vaccaro, PLLC, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the denial of his motion to suppress evidence resulting from execution of a search warrant on appellant and his vehicle because the application for that

warrant contained the same information as the application for a warrant issued two weeks earlier, and that information was therefore stale. We affirm.

FACTS

A video from April 28, 2021, showed a suspected drug sale between appellant Jimmie Lee Campbell and T.K. T.K. and his girlfriend were in a 2006 Hyundai Sonata in a gas station parking lot when appellant arrived in a 2011 Hyundai Veracruz registered to appellant's girlfriend, C.G. T.K. walked over to the Veracruz, got into it, and left after 13 seconds. Both cars then left the gas station. The video supported an application for a search warrant of appellant and the cars signed by District Court Judge L.C. on June 30, 2021.

On June 24, 2021, law enforcement observed a Sonata parked outside a St. Paul address registered to C.G.'s daughter. Appellant drove the Sonata, met with another car that had been circling the area, back-tracked, parked without anyone leaving the car, used back alleys, and circled the area. On July 15, 2021, District Court Judge P.Y. signed the application for another search warrant. Except for the second application stating that law enforcement had made a great but unsuccessful effort to locate appellant and that T.K. had died from the toxic effect of heroin and fentanyl, the applications for the two warrants were identical.

On July 21, 2021, appellant was located in the Sonata and pulled over. A search of appellant pursuant to the second search warrant produced 29 bindles of suspected heroin and a baggie of suspected cocaine; a search of the vehicle he was driving produced a second baggie of suspected cocaine, multiple tablets of suspected narcotics, drug paraphernalia,

multiple cell phones, and nearly \$1,700 in cash. The 29 bindles totaled nearly 24 grams, or over 200 doses, of heroin; the cocaine weighed roughly 2.1 grams; and the tablets were counterfeit doses of buprenorphine hydrochloride and oxycodone. Appellant was charged with first-degree sale of drugs, second-degree possession of drugs, and fifth-degree possession of drugs.

Appellant filed a motion to suppress the evidence obtained as a result of the search. The motion was denied. Appellant waived his right to a jury trial under Minn. R. Crim. P. 26.01, subd. 4, and submitted the case on stipulated facts, preserving his right to challenge the denial of his motion to suppress. The parties agreed that the district court's findings could be based on the complaint; on exhibit 1, investigative reports and photographs; and on exhibit 2, the July 15 search warrant and application.

Appellant was found guilty on all counts. He challenges his convictions, arguing that the district court erred in denying his motion to suppress the evidence obtained when the warrant was executed because the facts in the second warrant application, having been used two weeks earlier in the first warrant application, were stale.

DECISION

1. Interpretation of Minn. Stat. § 626.15(a)(2022)

This court will “review questions of statutory interpretation de novo.” *State v. Defatte*, 928 N.W.2d 338, 340 (Minn. 2019).

“[A] search warrant must be executed and returned to the court which issued it within ten days after its date. After the expiration of this time, the warrant is void unless previously executed.” Minn. Stat. § 626.15(a). Appellant argues that this “ten-day rule

requires not only that a warrant be reapplied for after ten days, but that the subsequent warrant application must allege new facts relevant to finding probable cause.” Appellant provides no legal or rational basis for arguing that, unless a defendant can be apprehended and a warrant can be executed within ten days, the facts supporting that warrant become too stale to support a second warrant.

In effect, appellant is asking this court to add language to a statute. But an appellate court “cannot supply that which the legislature purposely omits or inadvertently overlooks.” *State v. Christensen*, 901 N.W.2d 648, 653 (Minn. App. 2017). The fact that the legislature did not choose to say that a prior warrant invalidates a second warrant based on the same facts means that this court cannot say it either.

To support his motion to suppress in the district court, appellant relied extensively on a nonprecedential decision of this court, *State v. Meyers*, No. A03-1267, 2004 WL 377003 (Minn. App. Mar. 2, 2004) (concluding that a second warrant had to allege new facts to be valid). The district court effectively distinguished *Meyers*.

The *Meyers* court determined that the second affidavit did not contain information from which a judge could make an independent determination as to probable cause, as the only difference between the two affidavits was the conclusory statements. [Appellant] asks the Court to come to the same conclusion in this case—that once a warrant expires under the ten-day rule, new facts must be alleged to obtain a subsequent warrant.

Importantly, however, the *Meyers* court did not stop its analysis there. While it reasoned that the conclusory statements of the second warrant application could not provide probable cause, the court also looked to the overall contents of the warrant to determine staleness. . . . Factors to be considered in determining staleness include whether there is any indication of ongoing criminal activity, whether the articles

sought are innocuous or incriminating, whether the property sought is easily disposable or transferable, and whether the items sought are of enduring utility.

In its analysis of staleness, the *Meyers* court's reasoning exposes the contradiction between the interpretation of the ten-day rule advocated by [appellant], and the longstanding rules for determining staleness recognized by Minnesota courts. . . . The *Meyers* court acknowledges that there are types of evidence sought whereby probable cause does not expire for months If there are situations where probable cause can endure for months on the same set of facts, it stands to reason investigators do not necessarily need to provide new information every ten days to reapply for a warrant.

The essence of the ten-day rule is to have warrants be consistently re-evaluated for staleness. The rule does not exist as a way to invalidate probable cause if investigators cannot come up with new facts every ten days.

In his reply brief, appellant claims *Meyers* is “[t]he only case on point.” But *Meyers* is not on point. In that case, “the information contained in the [second] search warrant application established only a general suspicion of ongoing criminal activity” that was “not sufficient to support a finding of probable cause.” *Meyers*, 2004 WL 333003, at *4. The information here was far more specific.

2. Validity of the Search Warrant

An appellate court's review of the validity of a search warrant “is limited, with great deference afforded to the issuing court.” *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998); *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001) (noting that, while a determination of whether probable cause existed to support a search warrant is reviewed de novo, this court gives “great deference” to the issuing magistrate's determination of probable cause at the time of the warrant's issue). “On review, we must determine whether there was a substantial basis to conclude that probable cause existed.” *State v. Holland*,

865 N.W.2d 666, 673 (Minn. 2015) (quotation omitted). A substantial basis in this context 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) (quotation omitted); *see also United States v. Garcia*, 179 F.3d 265, 268-69 (5th Cir. 1999) (“[F]air probability is something more than a bare suspicion, but need not reach the fifty percent mark.”).

Appellant argues that the district court erred in determining that the evidence presented in the application for the warrant was not stale, and relies on *Souto* (holding that “the information supporting the application was stale.”). *Souto*, 578 N.W.2d at 745. But *Souto* is distinguishable. In that case, “[a]t the time of the search warrant application, it had been over six months since [the defendant’s] reported purchase of less than an ounce of methamphetamine and since the last reported drug party” and “[a]pproximately 10 months had transpired since the attempted delivery of the package containing a controlled substance.” *Id.* at 750. Here, the application for the *second* warrant was made only 21 days after law enforcement’s observation of appellant’s suspected drug activity. The district court did not err in concluding that the information in the warrant application was not stale.

Affirmed.