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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0407**

State of Minnesota,
Respondent,

vs.

Beth Marie Coolbroth,
Appellant.

**Filed January 21, 2025
Affirmed
Johnson, Judge**

Swift County District Court
File No. 76-CR-23-24

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Danielle Olson, Swift County Attorney, Benson, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Swift County jury found Beth Marie Coolbroth guilty of controlled-substance crimes based on evidence that law-enforcement officers found methamphetamine in a search of her home conducted pursuant to a warrant. We conclude that the search-warrant

application was supported by probable cause and that the officer who applied for the warrant did not recklessly omit material facts from the warrant application. Therefore, we affirm.

FACTS

On January 16, 2023, Agent Hennes, a Swift County deputy sheriff, obtained and searched through garbage that had been left outside Coolbroth's residence as part of an investigation into the whereabouts of Coolbroth's adult daughter, S.H., who was the subject of outstanding arrest warrants. Agent Hennes arranged for a garbage-truck driver to pick up Coolbroth's garbage in the usual place at the usual day and time and give it to him. Agent Hennes searched through the garbage at the sheriff's office. In one tied-off garbage bag, Agent Hennes found a letter addressed to Coolbroth at the address of her residence and a baggie containing a substance that tested positive for methamphetamine. Agent Hennes also found additional drug-related items in Coolbroth's garbage, including a broken glass pipe that tested positive for methamphetamine residue, snort tubes, a melted baggie, and corner-cut baggies.

Later that day, Agent Hennes applied for a warrant to search Coolbroth's residence for controlled substances, drug paraphernalia, and other items associated with controlled substances. The application described the items found in the garbage bags that had been left outside Coolbroth's residence. The application also stated that S.H. had two active arrest warrants for drug-related offenses and that officers previously had contacted and arrested S.H. at Coolbroth's residence.

A district court judge approved the application and issued the warrant that same day. Officers executed the search warrant the next day and found four baggies containing a total of 49.79 grams of a substance that tested positive for methamphetamine. Officers also found and seized various other types of drug-related items, such as corner-cut baggies, packaging materials, and a drug ledger.

The state charged Coolbroth with (1) first-degree controlled-substance crime for possessing with intent to sell 17 or more grams of methamphetamine, in violation of Minn. Stat. § 152.021, subd. 1(1) (2022); (2) first-degree controlled-substance crime for possessing 50 or more grams of methamphetamine, in violation of Minn. Stat. § 152.021, subd. 2(a)(1); and (3) second-degree controlled-substance crime for possessing 25 or more grams of methamphetamine, in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2022). The state later dismissed count 2 after chemical testing revealed that the methamphetamine found in Coolbroth's residence weighed less than 50 grams.

Before trial, Coolbroth moved to suppress the evidence found during the execution of the search warrant. The district court conducted an omnibus hearing, at which the state introduced 168 exhibits and called Agent Hennes as a witness. The parties submitted post-hearing memoranda. The district court denied Coolbroth's motion.

The case was tried to a jury on one day in October 2023. The state called four witnesses. Coolbroth did not present any evidence. The jury found Coolbroth guilty of the two remaining charges. The district court imposed an executed sentence of 65 months of imprisonment on the first charge. Coolbroth appeals.

DECISION

Coolbroth argues that the district court erred by denying her motion to suppress evidence. Her argument has two parts. First, she argues that the warrant application does not state facts that support a finding of probable cause. Second, she argues that Agent Hennes recklessly omitted material information from the warrant application.

A. Probable Cause

Coolbroth first argues that the warrant application did not provide the issuing judge with a substantial basis for concluding that there was probable cause for a search of her home.¹

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 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,

¹The state initially responds by arguing that Coolbroth has forfeited this argument. A defendant may forfeit a challenge to the admissibility of the state’s evidence by not asserting an argument at an omnibus hearing and depriving the state of an opportunity to present relevant evidence. *See* Minn. R. Crim. P. 11.02(a), (b), (g); *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989); *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 14 (Minn. 1965); *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996). In this case, Coolbroth’s attorney stated at the omnibus hearing that Coolbroth was “challenging probable cause for the issuance of the search warrant.” The state introduced evidence relevant to the issue of probable cause. It is true that Coolbroth’s post-hearing memorandum focused on alleged omissions in Agent Hennes’s warrant application. But the state’s post-hearing memorandum focused on the issue of probable cause, and the district court concluded that the warrant application was supported by probable cause. Thus, Coolbroth has not forfeited her probable-cause challenge.

§ 10. “Probable cause exists if the judge issuing a warrant determines that ‘there is a fair possibility 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 (1983)). Whether probable cause exists is a “practical, common-sense decision” based on the totality of the circumstances. *Id.* at 622-23.

Upon a challenge to an issuing court’s determination of probable cause, a reviewing court is limited to the information contained in the warrant application. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). The reviewing court “should afford the district court’s determination great deference” and should 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). Because the issuing judge’s determination should be based on the “totality of the circumstances,” the reviewing court must be careful not to review each component of the application in isolation. *Massachusetts v. Upton*, 466 U.S. 727, 732-33 (1984); *see also State v. Harris*, 589 N.W.2d 782, 788 (Minn. 1999).

In this case, the district court concluded that the warrant application stated facts that established probable cause for a search of Coolbroth’s residence. The district court reasoned that the search of her garbage, which revealed both the presence of methamphetamine and a letter indicating that Coolbroth lived at the address where the garbage was collected, provided probable cause to search her residence. We apply a *de novo* standard of review to a district court’s determination that the issuing judge had a substantial basis for concluding that probable cause existed. *Rochefort*, 631 N.W.2d at 804.

Coolbroth first contends that the district court erred by relying solely on the existence of contraband in her garbage, without considering the totality of the circumstances. Coolbroth acknowledges caselaw in which the discovery of contraband in a garbage search supported a probable-cause determination. *See, e.g., State v. McGrath*, 706 N.W.2d 532, 543 (Minn. App. 2005), *rev. denied* (Minn. Feb. 22, 2006). But she contends that the results of a garbage search do not always and necessarily lead to a finding of probable cause. In this case, the warrant application includes more information than the results of Agent Hennes's garbage search. Regardless of the district court's reasoning, we will consider the totality of the circumstances in determining whether the warrant application provided the issuing judge with a substantial basis for a finding of probable cause. *See Rochefort*, 631 N.W.2d at 804; *Souto*, 578 N.W.2d at 747.

Agent Hennes's search of Coolbroth's garbage provides significant support for a finding of probable cause. When searching Coolbroth's garbage, Agent Hennes found plastic baggies that tested positive for methamphetamine as well as other drug-related items. Agent Hennes found methamphetamine residue in the same tied-off garbage bag in which he found a letter bearing Coolbroth's name and address. Agent Hennes found these items on the same day on which he submitted the search-warrant application. The presence of contraband in Coolbroth's garbage allows for a reasonable belief that the methamphetamine residue in Coolbroth's garbage very recently was in her residence, which supports a reasonable belief that methamphetamine might still be in Coolbroth's residence. Thus, the results of the garbage search indicate a fair possibility that a search of

Coolbroth's residence would produce evidence of controlled substances. *See McGrath*, 706 N.W.2d at 544; *State v. Papadakis*, 643 N.W.2d 349, 356 (Minn. App. 2002).

Other information in the warrant application provides additional support for a finding of probable cause. The warrant application states that Coolbroth's adult daughter, S.H., had two active arrest warrants for controlled-substance offenses. The application also states that law-enforcement officers previously had contacted S.H. at Coolbroth's residence and had arrested her there. This information allows for a reasonable belief that S.H. might again be present at Coolbroth's residence and might again be engaging in controlled-substance offenses. *See Papadakis*, 643 N.W.2d at 356 (reasoning that combination of defendant's prior arrest at residence and drug residue in garbage helped establish substantial basis for probable-cause determination).

Given the totality of the circumstances—the information in the warrant application about contraband in Coolbroth's garbage, S.H.'s outstanding drug-related arrest warrants, and S.H.'s previous presence at Coolbroth's residence—the issuing judge had a substantial basis for concluding that there was a fair possibility that contraband or evidence of a crime would be found in a search of Coolbroth's residence.

Coolbroth also contends that, even if there is probable cause to believe that drug-related crimes might be occurring, the warrant application did not establish a nexus between the suspected drug crimes and her residence. The Fourth Amendment's probable-cause requirement ensures not only that the evidence sought by a warrant application likely exists "but also 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. Accordingly, a warrant application must establish a “nexus” between “the evidence sought and the place to be searched.” *Id.*

Coolbroth cites *Yarbrough* for the proposition that it “may be reasonable to infer that drug wholesalers keep drugs at their residences, but such an inference, without more, is unwarranted for casual users.” *Id.* at 623 (quoting *Harris*, 589 N.W.2d at 789). Coolbroth contends that, because the warrant application does not indicate that she was a “drug wholesaler,” it is unreasonable to infer that she kept drugs at her residence. But Coolbroth’s reliance on *Yarbrough* is misplaced because there was no garbage search in that case. *See id.* at 621-22. In this case, it is unnecessary to draw an inference that Coolbroth kept drugs at her residence because the garbage search essentially confirmed, without the need for an inference, that methamphetamine very recently had been present inside her residence. Thus, the warrant application establishes a nexus between Coolbroth’s suspected drug crimes and her residence.

Coolbroth further contends that the warrant application’s references to S.H. are too vague and possibly stale. A warrant application must set forth “facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time.” *Souto*, 578 N.W.2d at 750 (quotation omitted). If information is too vague or stale, it does not contribute to a finding of probable cause. *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *rev. denied* (Minn. Jan. 14, 1985). In this case, the warrant application states that S.H. “had been arrested at Coolbroth’s residence in the past” and that the sheriff’s office “had contact with [S.H.] at Coolbroth’s property on other occasions as well.” These statements have less value than if they had established a specific timeframe

for S.H.'s prior conduct and presence at Coolbroth's residence. But the fact that two arrest warrants are active and outstanding sufficiently indicates that S.H. repeatedly had engaged in criminal conduct within a relatively recent time period and had not yet been prosecuted, incarcerated, or rehabilitated, which suggests that she might be continuing to engage in criminal conduct. The lack of specificity about the timing of S.H.'s prior conduct and presence at Coolbroth's residence does not significantly undermine the value of that information.

Thus, in light of the totality of the circumstances, the issuing judge had a substantial basis for concluding that the warrant application established probable cause to believe that evidence of a crime would be found in Coolbroth's residence.

B. Alleged Omissions

Coolbroth also argues that the search warrant is invalid on the ground that Agent Hennes recklessly omitted material facts from the warrant application.

In *Franks v. Delaware*, 438 U.S. 154 (1978), the United States Supreme Court stated that a search-warrant application is presumptively valid if, on its face, it provides probable cause to justify a search. *Id.* at 171-72. But *Franks* held that a defendant may seek to invalidate a search warrant by challenging the truthfulness of factual statements made in the warrant application. *Id.* at 171. If a defendant seeks to invalidate a search warrant under *Franks*, the defendant must 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. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (quotation omitted); *see also State v. Doyle*, 336 N.W.2d 247, 250 (Minn. 1983). To

establish the second *Franks* requirement, an appellant must show that if the omitted information had been included in the warrant application, the application would not have supported a finding of probable cause. *See Lieberg*, 553 N.W.2d at 54-55. This court applies a clear-error standard of review to a district court's findings with respect to the first requirement and a *de novo* standard of review to the district court's determination of the second requirement. *Andersen*, 784 N.W.2d at 327.

Coolbroth contends that there are three reckless omissions in the warrant application: first, Agent Hennes did not disclose the period of time in which S.H.'s active arrest warrants had been outstanding; second, Agent Hennes did not disclose that he did not continuously observe Coolbroth's garbage between the time when he first saw it and the time when the garbage-truck driver picked it up; and third, Agent Hennes did not disclose that he may not have instructed the garbage-truck driver to "cycle the hopper" before picking up Coolbroth's garbage bags.

The district court considered each of these alleged omissions and found that they were not "deliberately false or in reckless disregard of the truth." The district court also determined that the alleged omissions were not material to the issue of probable cause.

The record supports the district court's findings that Agent Hennes did not omit information in reckless disregard of the truth as well as the district court's determinations regarding materiality. With respect to the first alleged omission, the warrant application states that S.H. has two active warrants and that Agent Hennes "has been conducting a fugitive apprehension investigation." Agent Hennes testified at the omnibus hearing that S.H.'s arrest warrants had been outstanding for "a couple of years." Agent Hennes

explained that the sheriff's office is "always looking for people with warrants" and sometimes will "take a more focused look on a particular person." In light of this evidence, the district court did not clearly err by finding that Agent Hennes did not omit information about the age of S.H.'s warrants in reckless disregard of the truth. Furthermore, additional information about the age of the warrants is not material because, as discussed above, the warrants were still active. In addition, the existence of S.H.'s outstanding warrants is less significant than the implication that S.H. probably had committed controlled-substance crimes and previously had been present and arrested at Coolbroth's residence.

With respect to the second alleged omission, the warrant application states that Agent Hennes observed Coolbroth's garbage on the street at the usual date and time for pick-up and that Agent Hennes witnessed the garbage being picked up by a local sanitation company. Agent Hennes testified that, when he first saw Coolbroth's garbage on the edge of the street in front of her residence, he intended to remove the garbage himself, but he did not do so because he saw "a lot of activity" at Coolbroth's residence, including a person going in and out of the residence. Instead, Agent Hennes found a garbage truck in the area and asked the driver, with whom Agent Hennes had worked in the past, to pick up Coolbroth's garbage and give it to him. Agent Hennes watched from a nearby location as the driver picked up Coolbroth's garbage. Immediately thereafter, they met "around the corner," where the driver gave Coolbroth's garbage bags to Agent Hennes. The warrant application does not suggest that Agent Hennes continuously observed Coolbroth's garbage. Accordingly, the district court did not clearly err by finding that Agent Hennes did not omit information about his observation of Coolbroth's garbage in reckless disregard

of the truth. Furthermore, additional information about Agent Hennes's observation of Coolbroth's garbage is not material because the warrant application does not state that Agent Hennes saw Coolbroth or any other person carry garbage from the residence to the street. Thus, additional information that Agent Hennes's observation of the garbage was interrupted briefly while he found and spoke with the garbage-truck driver would not have diminished the reliability of the information provided. In addition, the warrant application states that Agent Hennes found a corner-cut baggie with methamphetamine residue in the same tied-off garbage bag as a letter with Coolbroth's name and address, which shows that Agent Hennes searched Coolbroth's garbage, not some other person's garbage.

With respect to the third alleged omission, the warrant application does not state whether Agent Hennes gave the garbage-truck driver any instructions. Agent Hennes testified that he typically instructs garbage-truck drivers to "cycle the hopper" before picking up specified garbage "so there's no other trash in the hopper." He testified that he probably did not give those instructions to the driver on this occasion "due to my working with him in the past and my understanding that he should have known the . . . process." Accordingly, the district court did not clearly err by finding that Agent Hennes did not omit information about this issue in reckless disregard of the truth. Furthermore, additional information about whether Agent Hennes gave instructions to the garbage-truck driver is not material because, if it had been included in the warrant application, it would have reinforced the impression that the garbage-truck driver gave Agent Hennes Coolbroth's garbage, not some other person's garbage. And again, the warrant application states that Agent Hennes found a corner-cut baggie with methamphetamine residue in the same tied-

off garbage bag as a letter with Coolbroth's name and address, which shows that Agent Hennes searched Coolbroth's garbage.

Thus, the district court did not clearly err in its findings that Agent Hennes did not recklessly omit information from the warrant application, and the district court also did not err in determining that any such omissions are not material.

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

Affirmed.