

*This opinion is nonprecedential except as provided by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
A24-0673**

State of Minnesota,
Appellant,

vs.

Breanna Rae Enno,
Respondent.

**Filed September 16, 2024
Reversed and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-23-26202

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Senior Assistant County Attorney, Merit Stewart, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Michael P. Berger, Fourth District Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and John P. Smith, Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Breanna Rae Enno is charged with a first-degree drug-possession crime based on evidence that she possessed several hundred fentanyl pills. She moved to suppress the evidence on the ground that a warrant authorizing a search of her home was not supported by probable cause. The district court granted her motion, and the state appeals. We conclude that the district court erred by granting Enno's motion because the search-warrant application established a nexus between Enno's drug-dealing and her home. Therefore, we reverse the district court's suppression order and remand for further proceedings.

FACTS

In July 2023, a confidential informant told law-enforcement officers that a woman was selling fentanyl throughout the Twin Cities metropolitan area by using a Facebook Messenger account with the profile name of Breanna Enno. Officers confirmed that a Facebook photograph of the woman matched Enno's government-issued identification card. Between September and December of 2023, the informant purchased fentanyl pills from Enno in a controlled buy that was coordinated by officers. Thereafter an undercover officer purchased fentanyl from Enno on two occasions. For one of those transactions with the undercover officer, Enno drove to and from the agreed-upon location in a silver Chevrolet Impala, which was registered to her.

Officers learned at some point that, in August 2023, Enno had started a two-year term of probation for a conviction of a felony-level drug-related crime. Officers also learned that Enno lived in a particular apartment at a particular address in northeast

Minneapolis. Officers spoke with the owner of the apartment building and learned that Enno was one of two renters who had signed a lease for the apartment. In October 2023, an officer saw Enno's vehicle parked at the apartment building. A detective applied for and obtained a warrant to place a GPS tracker on Enno's vehicle. The GPS tracker was installed and was monitored for several weeks, during which time the vehicle was parked at the apartment building "almost nightly." Twice in November 2023, a detective sought and obtained a warrant to swab the exterior of the door to Enno's apartment. Both swabs, gathered two weeks apart, indicated the presence of cocaine.

On December 6, 2023, a police detective applied for a warrant to search Enno's person, vehicle, and apartment. The warrant application recited the above-stated facts and the detective's belief that Enno was using her apartment "to store narcotics and/or narcotics proceeds" and his belief that "evidence of narcotics sales" were located in the apartment. The application sought a warrant authorizing the seizure of "fentanyl and all other controlled substances," drug paraphernalia, various types of records and documents, cell phones, electronic media and storage devices, and various other things. A district court judge approved the application and issued the warrant that same day.

Officers executed the search warrant at Enno's apartment the next morning, while she was present. Officers seized blue pills in six containers from three locations inside the apartment. Officers arrested Enno and transported her to a county jail. While at the jail, Enno admitted to officers that additional pills were hidden in her vaginal area. Under the supervision of female jail staff, Enno removed three plastic baggies, which contained 668

blue pills, weighing a total of 72.51 grams. Chemical testing confirmed that the pills contained fentanyl.

The state charged Enno with a first-degree controlled substance crime, in violation of Minn. Stat. § 152.021, subd. 2(a)(3) (Supp. 2023), based on an allegation that she possessed 25 or more grams, or 100 or more doses, of fentanyl. In March 2024, Enno moved to suppress evidence obtained in the execution of the search warrant. She argued, among other things, that the search warrant was not supported by probable cause with respect to her apartment because the warrant application did not establish a nexus between her suspected drug crime and her apartment. In April 2024, the district court filed an order in which it granted Enno’s motion. The district court suppressed “all evidence obtained through the search of Ms. Enno’s residence and discovered through the execution of the search warrant at her address.” The state appeals.

DECISION

The state argues that the district court erred by granting Enno’s motion to suppress evidence obtained as a result of the search of her apartment. Before the time for appellate briefing, Enno moved to dismiss the appeal on the ground that the state cannot show that the suppression order, if not reversed, would have a “critical impact on the outcome of the trial.” *See State v. Lugo*, 887 N.W.2d 476, 481 (Minn. 2016) (quotation omitted); *see also* Minn. R. Crim. P. 28.04, subds. 1(1), 2(2)(b). A special-term panel of this court denied Enno’s motion to dismiss the appeal. *State v. Enno*, No. A24-0673, 2024 WL 2765247, at *2 (Minn. App. May 28, 2024) (order).

A.

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 (1983)). Whether probable cause exists is a “practical, common-sense decision” based on the totality of the circumstances. *Id.* at 622-23. In reviewing an 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).

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.* To satisfy the nexus requirement, officers need not observe evidence of a crime at the place to be searched. *Id.* The required nexus “may be inferred from the totality of the circumstances.” *Id.* The relevant circumstances include “the type of crime, the nature of the items sought, the extent of the

defendant's opportunity for concealment, and the normal inferences as to where the defendant would usually keep the items." *Id.* at 623.

B.

We begin our analysis by considering the first circumstance identified in *Yarbrough*, "the type of crime." *See* 841 N.W.2d at 623. The warrant application clearly states that Enno was suspected of committing a drug crime. In drug cases, the supreme court has "drawn a distinction between a 'drug wholesaler' and a 'casual user.'" *Id.* at 623 (citing *State v. Harris*, 589 N.W.2d 782, 789 (Minn. 1999), and *Novak v. State*, 349 N.W.2d 830, 832-33 (Minn. 1984)). The supreme court has explained, "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.*

In *Yarbrough*, the supreme court characterized the appellant as a "drug wholesaler" for three reasons: he "previously had been arrested for possession of a controlled substance with intent to distribute," a confidential informant had reported that he "was a crack cocaine dealer," and he had possessed "a large amount of crack cocaine." *Id.* at 624. Those three facts "were enough to explain that Yarbrough was a drug wholesaler," which provided the issuing judge with "a substantial basis to conclude that there was a fair probability that drug evidence would be found at [his] apartment." *Id.*

In this case, the district court stated that "there is no evidence that Ms. Enno is a 'drug wholesaler.'" The district court reasoned that the warrant application did not describe the amount of fentanyl that the informant and undercover officer had purchased from Enno. The district court reasoned further that Enno's use of Facebook Messenger

“implies she is selling directly to users” but not “to other dealers who then sell to the ultimate consumer, the common definition of a wholesaler.”

The district court’s determination that Enno is not a drug wholesaler is in conflict with *Yarbrough*. In that case, the supreme court determined that the appellant was a drug wholesaler based on three statements in the warrant application that resemble the evidence in this case. *Id.* at 624. First, the warrant application in *Yarbrough* stated that the appellant “previously had been arrested for possession of a controlled substance with intent to distribute.” *Id.* By comparison, the warrant application in this case presents a stronger case for drug-wholesaler status because it states that Enno had been *convicted* (not merely arrested) of a felony-level drug-related crime. Second, in *Yarbrough*, a confidential informant had reported that the appellant “was a crack cocaine dealer.” *Id.* By comparison, the warrant application in this case presents a stronger case for drug-wholesaler status by stating that a confidential informant had reported that Enno was using social media to sell fentanyl throughout the Twin Cities metropolitan area, that the informant had purchased fentanyl from Enno in a controlled buy, and that an undercover officer had twice purchased fentanyl from Enno. Third, in *Yarbrough*, the warrant application stated that the appellant previously had possessed “a large amount of crack cocaine.” *Id.* The warrant application in this case provided equivalent information by stating that Enno was selling fentanyl throughout the Twin Cities metropolitan area, was using social media to do so, had sold fentanyl to a confidential informant once, and had sold fentanyl to an undercover officer twice. Those factual statements communicated, in essence, that Enno possessed or distributed a large quantity of fentanyl. In short, this case is very similar to *Yarbrough*,

which reflects a broad meaning of the term “drug wholesaler.” If the appellant in *Yarbrough* was a drug wholesaler, Enno also is a drug wholesaler. For that reason, “the issuing judge had a substantial basis to conclude that there was a fair probability that drug evidence would be found at [Enno’s] apartment.” *See id.*

C.

Even if Enno is not deemed a drug wholesaler, the required nexus “may be inferred from the totality of the circumstances,” which includes her significant drug-dealing activities and other facts stated in the warrant application. *See Yarbrough*, 841 N.W.2d at 622.

In addition to the facts described above, the warrant application states that Enno drove her vehicle to a pre-arranged location to sell fentanyl to an undercover officer. Meanwhile, Enno’s vehicle almost always was parked overnight at her apartment building in northeast Minneapolis. Those statements support an inference that Enno used her vehicle to transport fentanyl from her home to customers. Furthermore, the warrant application stated that forensic tests revealed the presence of cocaine on the door handle to Enno’s apartment. That information supports an inference that controlled substances would be found at Enno’s apartment.

The facts of this case resemble the facts of *State v. Bynum*, 579 N.W.2d 485 (Minn. App. 1998), *rev. denied* (Minn. Aug. 18, 1998), in which the warrant application stated that the appellant sold drugs, that he transported the drugs to a sale in a vehicle that was registered to him, and that the vehicle was parked overnight at his residence. *Id.* at 487. There was no evidence in *Bynum* that the appellant obtained drugs from another source or

stored drugs in another location. *Id.* We reasoned that the warrant application established the required nexus by stating facts that allowed the issuing judge to “reasonably infer that other drugs and drug proceeds would be found inside that residence.” *Id.*

We conclude by noting Enno’s reliance on two opinions in which the required nexus was not established. In the first opinion, *State v. Souto*, 578 N.W.2d 744 (Minn. 1998), the warrant application stated that the appellant had used drugs at parties, had purchased drugs, and had had numerous telephone calls with known drug dealers. *Id.* at 745-47. But the application “did not indicate that Souto ever arranged drug deals, sold, or distributed drugs, much less that she performed such acts from her home.” *Id.* at 748. In addition, the warrant application did not establish that the appellant actually resided at the home to be searched. *Id.* In the second opinion, *State v. Kahn*, 555 N.W.2d 15 (Minn. App. 1996), the appellant was arrested for possessing cocaine on his person when he was “75 to 85 miles away” from his home. *Id.* at 18-19. We reasoned that the warrant application did not establish the required nexus because there was no link between the appellant’s possession of drugs and his home. *Id.* at 19.

In contrast to *Souto* and *Kahn*, the warrant application in this case plainly stated that Enno had sold fentanyl on three occasions, that she was using social media to do so, that she resided at the place to be searched, that she had driven her vehicle to one sale, that she parked her vehicle at her apartment on a nightly basis, and that controlled substances were detected on her apartment door. Those facts provided the issuing judge with a “substantial basis to conclude that there was a fair probability that drug evidence would be found at the apartment.” *See Yarbrough*, 841 N.W.2d at 624.

Thus, the district court erred by granting Enno's motion to suppress evidence. Therefore, we reverse the order suppressing evidence and remand for further proceedings.

Reversed and remanded.