STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2084

State of Minnesota,
Respondent,

vs.

Paul Scott Seeman,
Appellant.

Filed January 11, 2021
Affirmed
Reilly, Judge

Rice County District Court
File No. 66-CR-14-1473

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

John Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney, Faribault, Minnesota (for respondent)

Daniel J. Koewler, Charles A. Ramsay, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Investigating officers executed a search warrant on appellant's property in May 2014 and discovered, among other things, a Harley-Davidson motorcycle that appellant had unlawfully kept hidden away after previously testifying that it had been repossessed.

In this appeal from his convictions relating to the stolen motorcycle, appellant challenges the district court's denial of his motion to suppress evidence obtained from the execution of the search warrant, and he also challenges the district court's denial of his requests to reopen the omnibus hearing. Because the search warrant was supported by sufficient probable cause, and because the district court did not abuse its discretion by denying his requests to reopen the omnibus hearing, we affirm.

FACTS

The state charged appellant Paul Scott Seeman in June 2014 with more than two dozen counts arising from his alleged involvement in a scheme of obtaining and reselling stolen vehicles. The state eventually amended the complaint to bring the total number of counts to 36. At Seeman's request, the parties agreed to sever the counts into three matters. Counts 2 and 3 were severed into "Matter 1," which included perjury and receiving stolen property related to a Harley-Davidson motorcycle; Count 24 was severed into "Matter 2," which involved receiving stolen property related to a Haulmark trailer; and the remaining counts were classified as "Matter 3." This appeal involves only Seeman's two convictions in Matter 1 regarding the Harley-Davidson motorcycle.

Search-warrant application

The state charged Seeman after investigating officers executed a search warrant on his property, where they discovered several stolen vehicles including a Harley-Davidson motorcycle that Seeman previously claimed had been repossessed. Investigator Paul LaRoche applied for the search warrant on May 5, 2014. In the supporting affidavit, Investigator LaRoche attested to these facts to support issuance of the search warrant.

On April 28, 2014, Seeman's son (the son) contacted the county sheriff's office. The son said that he had been living with his father for the past six months but that his father had just kicked him out of the house and was refusing to return his personal belongings. He asked to speak with an investigator about Seeman's involvement in suspected criminal activity. Investigator LaRoche and Sergeant Mark Hlady met with the son in person and the son provided more specific details. The son told the investigators that he had seen Seeman remove Vehicle Identification Number (VIN) plates from legitimate scrapped vehicles, put them on stolen vehicles, and resell the vehicles.

The son provided detailed information about two stolen vehicles in particular. He said that Seeman had arranged for another man (Seeman's co-conspirator) to go to Colorado, steal a black GMC truck, and bring it back to Minnesota. Seeman was keeping the GMC truck on his property, and the son saw Seeman remove the VIN plate from the truck and replace it with the VIN plate from a legitimate vehicle that Seeman had bought on Craigslist. The son also told the investigators that Seeman's co-conspirator had stolen a green Chevrolet from Montana and that Seeman had replaced the VIN plate on that vehicle in the same manner. Sergeant Hlady found stolen-vehicle reports from Colorado about a black GMC and from Montana about a green Chevrolet, which matched the information the son provided.

The son also reported to the investigators that he had seen a "brand new looking Harley Davidson motorcycle hidden under the stairway to the basement" at Seeman's residence. Seeman told the son not to tell anyone about the motorcycle. Investigator LaRoche stated that he was aware of a 2012 case in which Harley-Davidson Financial

Services, Inc. had tried to repossess a 2008 Harley-Davidson that Seeman had bought. Harley-Davidson Financial Services, Inc. had been issued an order of replevin, but at a 2012 hearing Seeman testified under oath that the motorcycle had been repossessed. Investigator LaRoche alleged that he believed that the motorcycle that the son had seen under Seeman's stairs was the 2008 Harley-Davidson. The affidavit requested that he be allowed to search for and seize the motorcycle, for possible charges of perjury and theft against Seeman in connection with the 2012 replevin case.

Finally, the affidavit reflected that on March 24, 2014, investigators installed a surveillance camera to monitor Seeman's property. Investigators installed the camera after they arrested Seeman's co-conspirator because they suspected that Seeman and the co-conspirator were involved in a stolen-vehicle scheme. Investigator LaRoche declared that he had reviewed the surveillance-camera footage and determined that "none of the aforementioned items requested to be searched for in this affidavit have appeared to have left the property."

The judge issued the search warrant and police officers executed the warrant the next day. Officers located the Harley-Davidson motorcycle under the staircase at Seeman's residence, in the place where the son said he saw it. The officers seized the motorcycle and determined that the VIN on the motorcycle matched the number from the 2012 replevin case. They also located and seized the other stolen vehicles identified in the search-warrant application.

During pretrial proceedings, Seeman filed multiple motions to suppress evidence seized during the execution of the May 5, 2014 search warrant. He argued, among other

things, that the search-warrant application lacked probable cause to search his property and that the warrantless surveillance of his property with a camera violated his Fourth Amendment right against unreasonable searches. The district court denied Seeman's motion to suppress. It reasoned that the search-warrant affidavit provided probable cause to believe that the motorcycle from the 2012 replevin action was on Seeman's property, based on the son's statement that he saw a motorcycle under the stairs at Seeman's home, Seeman's directing the son not to tell anyone about the motorcycle, and evidence of Seeman's hiding vehicles on his property. The district court also refused to suppress information obtained from the video surveillance.

Motion to reopen omnibus hearing

Seeman later moved to reopen the omnibus hearing. He alleged that he had newly discovered evidence that investigating officers had unlawfully searched his cell phone without a warrant before they applied for the May 5, 2014 search warrant. Seeman supported his motion with an expert affidavit opining, based on an analysis of Seeman's cell phone, that investigators had examined information on the device on April 26, 2014. Seeman argued that an omnibus hearing was necessary to determine whether information obtained from his cell phone should be suppressed.

The district court denied Seeman's motion. The district court construed Seeman's argument as an attack on the validity of the search-warrant application under *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674 (1978). It concluded that Seeman failed to make the requisite showing under *Franks* that the May 5, 2014 search-warrant affidavit contained deliberate falsehoods or reckless disregard for the truth. The district court reasoned that

Seeman's allegations that investigators had unlawfully searched his cell phone were insufficient because they did not show that the fruits of the allegedly illegal search formed the basis for the search warrant. Because there was no issue as to whether evidence should be suppressed as fruit of an unlawful search, the district court determined that there was no justification for reopening the omnibus proceedings.

Seeman again moved to reopen the omnibus hearing in February 2017, raising the same claims as before. The district court denied the motion, noting that its previous order was not intended to leave the matter open and determining that Seeman's additional factual allegations did not change its decision.

Trial, Verdict, and Appeal

The case proceeded to a jury trial on Matter 1. The jury found Seeman guilty of perjury and receiving stolen property in connection with the Harley-Davidson motorcycle. The district court imposed concurrent sentences of 15 months in prison on both counts but stayed execution of the sentences and imposed probationary conditions. Seeman appeals from his convictions.

DECISION

I. The district court did not err by denying Seeman's motion to suppress evidence obtained as a result of the search warrant.

Seeman challenges the district court's denial of his motion to suppress evidence obtained during the execution of the May 5, 2014 search warrant. When reviewing pretrial orders on a motion to suppress, we independently review the facts to determine whether the district court erred as a matter of law in its ruling. *State v. Bourke*, 718 N.W.2d 922,

927 (Minn. 2006). We review factual findings for clear error and legal determinations de novo. *Id.*

Seeman raises two arguments relating to the search warrant. First, he argues that the search-warrant affidavit did not provide sufficient probable cause to believe that the Harley-Davidson motorcycle would be found on his property. Second, he maintains that investigators' warrantless use of the pole camera to view his property was an unconstitutional search, implying that the evidence obtained as a result could not support probable cause to issue the search warrant. We examine each argument in turn.

A. The May 5, 2014 search-warrant affidavit established probable cause to search Seeman's property for the motorcycle.

Seeman argues that the search-warrant application lacked probable cause to search for the Harley-Davidson motorcycle. The United States and Minnesota Constitutions protect against unreasonable searches and seizures, and provide that warrants may not be issued except upon probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A judge issuing a search warrant may determine that probable cause exists if "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, 103 S. Ct. 2317, 2332 (1983)). The issuing judge must make a "practical, common-sense decision" on whether probable cause exists. *Id.* We afford "great deference to the issuing judge's finding of probable cause" and limit our review to determining whether "the issuing judge had a substantial basis for concluding that probable cause existed." *State v. Harris*, 589 N.W.2d 782, 787-88 (Minn. 1999) (quotations omitted).

Probable cause requires there to be a sufficient nexus between the evidence sought and the place to be searched, based on the totality of the circumstances. *Yarbrough*, 841 N.W.2d at 622. Circumstances that the issuing judge may consider in determining whether there is probable cause 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. Seeman argues that the May 5, 2014 search-warrant affidavit does not establish probable cause. We are not persuaded.

The search-warrant affidavit included the following information about the Harley-Davidson motorcycle. The affidavit relied heavily on statements made by Seeman's son to investigators. The son said that he had been living with Seeman for the previous six months and that his father had just kicked him out of the house. He told the investigators that his father was involved in a scheme of obtaining stolen vehicles, switching VIN plates from legitimate scrapped vehicles, and replacing the VIN plates on the stolen vehicles to resell them. The son reported seeing Seeman keep stolen vehicles on his property. The son also said that he had seen a Harley-Davidson motorcycle hidden underneath the stairway to Seeman's residence. Seeman told his son not to tell anyone about the motorcycle. Investigator LaRoche knew about a 2012 replevin case in which Harley-Davidson Financial Services, Inc. had unsuccessfully tried to repossess a motorcycle from Seeman, but Seeman had testified under oath that the motorcycle had been repossessed years earlier.

We conclude that this information in the affidavit provided the issuing court with a substantial basis to find that probable cause existed. The son told investigators detailed

information about Seeman's activities on his property, based on the son's firsthand observations from living with Seeman for the previous six months. By checking stolen-vehicle reports from other states, investigators corroborated the son's information that Seeman was keeping multiple stolen vehicles on his property. Seeman's storing of the motorcycle in a "hidden" location under the stairs, along with his asking the son not to tell others about it, gave rise to the inference that, like many of the other vehicles on his property, he did not lawfully possess the motorcycle.

Although the investigators could not definitively connect the motorcycle that the son observed with the Harley-Davidson from the 2012 replevin case, Investigator LaRoche did confirm that Harley-Davidson Financial Services, Inc. had never been able to recover the motorcycle, despite Seeman's testimony that the motorcycle had been repossessed. Seeman's practice of storing stolen vehicles on his property, coupled with the logical inference that a person ordinarily would keep stolen items on his property, *see State v. Flom*, 285 N.W.2d 476, 477 (Minn. 1979), suggests that Seeman was storing the 2008 Harley-Davidson on his property and that it was the same motorcycle that the son saw under the stairs. Considering the totality of the circumstances, the issuing judge could reach the practical, common-sense conclusion that the 2008 Harley-Davidson motorcycle would be on Seeman's property.

Seeman raises a few arguments about why the affidavit was insufficient to establish probable cause. He insists that the son's statements to investigators were unreliable. When a search-warrant affidavit relies on information supplied by an informant, the issuing court must consider the informant's veracity and basis of knowledge. *State v. Souto*, 578 N.W.2d

744, 750 (Minn. 1998) (citing *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332). Here, the information in the affidavit strongly supports the son's reliability as an informant. His personal observations of Seeman's activities over the six-month period they lived together supported his information. He provided very specific details regarding Seeman's stolen-vehicle scheme, including the color and model of two of the vehicles that were stolen. The investigators corroborated this information by confirming the types of vehicles stolen, the locations from which they had been stolen, and the timing of the thefts. *See State v. Ross*, 676 N.W.2d 301, 305 (Minn. App. 2004) (providing that police corroboration can establish an informant's reliability), *review denied* (Minn. June 15, 2004). That investigators corroborated the son's information about the other stolen vehicles bolsters the reliability of his statements about the motorcycle.

Seeman insists that the evidence suggests that the son did not come forward voluntarily and that he may have been offered incentives to speak with law enforcement. This allegation has no support in the affidavit. Our consideration of probable cause is limited to the information contained in the search-warrant affidavit. *Souto*, 578 N.W.2d at 747. The affidavit stated that the son contacted investigators and that he told them that Seeman had kicked him out of the house and was refusing to return his personal belongings. The logical inference is that the son's reason for reaching out to investigators was that he was upset with his father after they had a dispute. Moreover, even if Seeman's allegations were true that investigators had pressured the son to come forward, the level of specificity that the son provided and the corroboration by investigators still strongly suggest that the

information he told them was accurate. The affidavit provided an ample basis for the issuing court to conclude that the son's information was reliable.

Seeman also argues that the son's statements about the motorcycle were insufficient to establish probable cause because they were corroborated only by stale evidence. The concept of staleness requires that the search-warrant affidavit "supply proof of facts so closely related in time to the issuance of a search warrant as to justify a finding of probable cause at the time." *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Factors relevant to 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." *Souto*, 578 N.W.2d at 750. Seeman maintains that the affidavit's attempt to connect the motorcycle that the son observed in Seeman's basement to the 2012 replevin case was stale because the replevin case was more than two years old. We are not persuaded.

Seeman focuses only on the amount of time that passed between the 2012 replevin case and the son's observation of the motorcycle. The "time lapse between the events related in the affidavit and the search warrant application" is indeed a relevant consideration for staleness. *Id.* In *Souto*, for example, the supreme court held that the information in the search-warrant affidavit was too stale to support probable cause that drugs would be found at the defendant's home because six months had passed since the defendant had bought drugs and little evidence showed that she was part of an ongoing drug organization. *Id.* But the passage of time is only one factor that courts consider for

staleness. And when the defendant is engaging in activities "of an ongoing, protracted nature, the passage of time is less significant." *Id.* The search-warrant affidavit reflected that Seeman was engaged in a long-term scheme involving stolen vehicles, and the motorcycle was of the same nature because it was a vehicle that he did not lawfully possess. Motor vehicles are of much longer utility and less easily disposable than the drugs at issue in *Souto*. It is thus much more probable that a person may unlawfully keep a vehicle on his property for several years. The affidavit also stated that Harley-Davidson Financial Services, Inc. had never been able to recover the motorcycle, which cast doubt on Seeman's testimony at the 2012 hearing that the motorcycle had been repossessed. All these facts allow the issuing court to conclude that the motorcycle under the staircase at Seeman's residence was the same as the one from the 2012 case, despite the two-year gap in time. The information in the search-warrant affidavit was not stale.

For these reasons, the information in the May 5, 2014 search-warrant affidavit provided a substantial basis for the issuing court to conclude that probable cause existed to search Seeman's property for the Harley-Davidson motorcycle.

B. We do not reach the pole-camera issue because the search-warrant affidavit provides a substantial basis for probable cause even without the information obtained from the pole camera.

Seeman also argues that the search-warrant application was flawed because it relied on information obtained from the warrantless use of a pole camera to monitor his property. Investigator LaRoche arranged for the pole camera to be placed across the street from Seeman's property after police arrested and interviewed Seeman's co-conspirator, which led police to believe that the co-conspirator was stealing vehicles for Seeman. The camera

was attached to a utility pole located on public property and was pointed towards Seeman's shop and driveway. Seeman argues that the use of the pole camera constituted an unreasonable search in violation of the Fourth Amendment, while the state maintains that this was not an unconstitutional search. We need not reach this constitutional issue, however, because we conclude that the search-warrant affidavit provides sufficient probable cause even if we disregard the statements about the pole camera.

Courts have taken this approach in similar cases. In *State v. Hodges*, the supreme court held that police officers' warrantless entry into the defendant's warehouse violated the Fourth Amendment. 287 N.W.2d 413, 415 (Minn. 1979). Yet the supreme court determined that the search warrant, which officers applied for after their warrantless entry, was not defective because the information obtained from a lawful source, "by itself and without the information the police had obtained pursuant to their warrantless entry, would have justified the issuance of the warrant." *Id.* at 416. Likewise, in *State v. Lozar*, police officers opened the defendant's greenhouse door and saw marijuana inside, and then they obtained a search warrant that relied in part on the officers' observations. 458 N.W.2d 434, 437 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). The state did not dispute that the officers' opening of the greenhouse door constituted an unlawful search. *Id.* at 438. But this court determined that the search-warrant affidavit contained sufficient lawfully obtained information to establish probable cause. *Id.* at 439. This court concluded, "the affidavit supporting the instant warrant, redacted of tainted information, independently provides probable cause for the warrant's issuance." *Id.* *Hodges* and *Lozar* establish that, even when a search-warrant affidavit includes information obtained from an

unconstitutional search, the search warrant is not defective if the affidavit contains lawfully obtained information sufficient to establish probable cause.

We take the same approach here. The May 5, 2014 search-warrant affidavit limits its discussion of the pole camera to just one paragraph. It says that the camera had been in place since March 24, 2014, that Investigator LaRoche had reviewed the footage, and that "none of the aforementioned items requested to be searched for in this affidavit have appeared to have left the property." Investigator LaRoche confirmed at the omnibus hearing that this was the only information obtained from the pole camera relevant to the search warrant. We do not see how the fact that no allegedly stolen vehicles were seen leaving Seeman's property during the preceding month either supports or undermines a finding of probable cause that the Harley-Davidson motorcycle would be found hidden away at Seeman's residence. As explained above, probable cause was established based on the statements that Seeman's son made to investigators. And there is no reason to suspect that the use of the pole camera tainted the information that the son told investigators. Even if the single paragraph in the affidavit discussing the pole camera were redacted, the issuing court would still have had a substantial basis to determine that probable cause existed. It therefore is unnecessary for us to decide whether the warrantless use of the pole camera was an unconstitutional search.

II. The district court did not abuse its discretion by denying Seeman's requests to reopen the omnibus hearing.

Seeman also argues that the district court erred by denying his requests to reopen the omnibus hearing.[1] We review a district court's decision whether to reopen omnibus proceedings for an abuse of discretion. *See State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. App. 2002) (recognizing that the district court has discretion to grant or deny a party's motion to reconsider an omnibus ruling).

In his motion to reopen the omnibus hearing, Seeman alleged that new evidence had surfaced that investigators had conducted a warrantless search of his cell phone roughly two weeks before they obtained the May 5, 2014 search warrant. He argued that an omnibus hearing was necessary to determine whether investigators relied on information obtained from his cell phone when applying for the search warrant. Seeman argued before the district court that the evidence obtained from the search warrant must be suppressed because the search-warrant affidavit contained material misrepresentations or omissions in violation of *Franks v. Delaware*. The district court denied his motion, concluding that he failed to make the requisite showing under *Franks* and that there was no new issue to justify

[1] The state contends that this issue is not properly before this court because Seeman did not specify in his Notice of Appeal that he was challenging the district court's orders denying his requests to reopen the omnibus hearing. A criminal defendant's notice of appeal must specify the judgment or order from which the appeal was taken. Minn. R. Crim. P. 28.02, subd. 4(2)(c). "On appeal from a judgment, the court may review any order or ruling of the district court." *Id.*, subd. 11. Seeman's appeal is from his judgment of conviction. We therefore may properly consider his challenge to the district court's orders denying his requests to reopen the omnibus hearing.

reopening the omnibus hearing. We agree with the district court that Seeman failed to make the necessary showing.

A search warrant is invalid—therefore requiring suppression of the fruits of the search—"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) (citing *Franks*, 438 U.S. at 171-72, 98 S. Ct. at 2684-85). The two-prong *Franks* test requires the defendant to show (1) that "the affiant deliberately made a statement that was false or in reckless disregard of the truth"; and (2) that "the statement was material to the probable cause determination." *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (quotation omitted). A misrepresentation or omission is considered material if, when the misrepresentation is disregarded or the omission included, the affidavit no longer contains sufficient probable cause. *Id.* To warrant an evidentiary hearing to challenge the validity of a search-warrant application, the defendant must make "allegations of deliberate falsehood or of reckless disregard for the truth . . . accompanied by an offer of proof," "should point out specifically the portion of the warrant affidavit that is claimed to be false," and "should be accompanied by a statement of supporting reasons." *Franks*, 438 U.S. at 171, 98 S. Ct. at 2684.

The district court correctly determined that Seeman failed to meet his burden under *Franks*. Seeman alleges that the search-warrant affidavit omitted the fact that investigators failed to disclose that they had searched Seeman's cell phone without a warrant. Seeman submitted an expert affidavit opining, based on an analysis of Seeman's cell phone, that investigators had examined information on the device on April 26, 2014. But he fails to

explain how this alleged search of his cell phone renders the search warrant invalid. Our determination of whether there is probable cause for a search warrant is limited to the information in the affidavit, not the information actually possessed by police. *Souto*, 578 N.W.2d at 747. The May 5, 2014 affidavit contains no information that investigators would have obtained from a search of Seeman's cell phone. At oral argument, Seeman suggested that, based on police officers' search of the cell phone, we can infer that the officers discovered conversations between Seeman and his son and that they then contacted the son themselves, which contradicts the affidavit's assertion that the son reached out to police voluntarily, and which in turn casts doubt on the son's credibility as an informant. The argument is tenuous, but even taking Seeman's allegations as true, we do not believe that they undermine the existence of probable cause. As explained above, the son's reliability as an informant was adequately established by investigators' corroboration of the son's information. We therefore do not believe that the alleged search of Seeman's cell phone, if it had been included in the affidavit, would have rendered the son's information unreliable.

Because Seeman's allegations do not show that the search-warrant affidavit would have lacked probable cause if the alleged omission were included, Seeman failed to make the necessary showing under *Franks* to challenge the validity of the search warrant. For this reason, the district court did not abuse its discretion by denying Seeman's motions to reopen the omnibus hearing to litigate the cell-phone-search issue.

Affirmed.