FILED
MAY 26 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-092 / 92-1855

STATE OF IOWA,

Appellee,

vs.

EDDIE DENO COLLIER,

Appellant.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan and Glenn E. Pille, Judges.

Defendant appeals judgment and sentences, following jury trial, entered upon his convictions of two counts of possession of crack cocaine and one count of possession of marijuana. **AFFIRMED.**

Robert A. Wright, Sr., Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, Bridget Chambers, Assistant Attorney General, John Sarcone, County Attorney, and Jamie Bowers, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

PER CURIAM

On September 10, 1991, Eddie Collier was introduced to "Lisa" (Officer Jan Lannon). She was a purported cousin of Tammy and friend of Cat (two women Collier knew). Lannon accompanied Tammy to Collier's residence, observed the use of crack cocaine, and obtained a rock of crack in exchange for $100. On September 25, 1991, Lannon returned to Collier's house without Tammy, obtained a rock of crack, and gave Collier $50.

Lannon applied for a search warrant for Collier's residence. She indicated she had been introduced to Collier as confidential informant number 499's cousin and related the two previous encounters. The district court issued an anticipatory search warrant on conditions that: Lannon would arrange to meet with Collier on October 5 at his residence, she would meet with him, and she would be shown cocaine which was in Collier's possession and control.

On October 5, 1991, Lannon arranged to return to Collier's house. She went to the residence in the company of a fellow officer, posing as her boyfriend. Several other officers were in the vicinity. Lannon was wearing a wire and planned to signal the officers outside when she was shown the drug. Lannon entered the house, leaving her "boyfriend" in the vehicle to monitor the wire transmissions. Lannon was introduced to another person present in the house and then escorted to Collier's bedroom

where Lannon asked if she could get some crack for her boyfriend. Collier told her he only had enough for himself and her, indicating a small amount of crack on a plate.

Lannon went back out to her vehicle and discussed the situation with her partner. They decided Lannon would return to the house and when Collier was letting her in the door the officers would rush the premises to execute the search warrant. Lannon went back to the house. As Collier was letting her in he shouted "police" and ran toward his bedroom. Lannon and another officer tackled Collier on the bed and handcuffed him. The search of the residence revealed crack, marijuana, and drug paraphernalia. Collier was charged with delivery of crack on September 25, possession of crack with intent to deliver on October 5, and possession of marijuana, on October 5.

Collier made several motions for discovery and disclosure of the informant's whereabouts. Collier contended he knew the confidential informant was Tammy but he did not know where to locate her. He argued he had been entrapped by Tammy's friendship into allowing Lannon to enter his residence and he needed Tammy's testimony to support his defense. The district court concluded the confidential informant was not a witness to the charged offenses and Collier was thus not entitled to know her identity or whereabouts.

Collier moved to suppress the fruits of the search of his residence, alleging the warrant was executed without

the officers knocking and announcing as required by Iowa Code section 808.6. The district court found that officers had announced their presence by their attire and by yelling "police" as they entered the residence. The court also found Collier recognized the officers as police and ran from their approach. Under the circumstances, the court concluded knocking on Collier's open door was not necessary.

At trial, Collier testified about his introduction to "Lisa" and his belief they were developing a relationship. He also testified he offered to share his crack with her but did not sell her any. The jury was instructed on the defense of entrapment over the State's objections. Collier was convicted as charged in count III, possession of marijuana, and of the lesser-included offenses of possession of crack on counts I and II.

Collier appeals. He first contends he was deprived of due process under the law because he was precluded from calling the confidential informant to testify on his behalf. Defendant requested the State disclose the whereabouts of the confidential informant; however, the State refused. Secondly, defendant contends the trial court erred in refusing to suppress evidence seized pursuant to a search warrant because of violation of the "knock and announce rule".

We review de novo where a constitutional right is involved. When a defendant is alleging error involving a

constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975).

The burden for showing need for disclosure is on the defendant. Mere speculation an informer may be helpful is not enough to carry the burden and overcome the public interest in the protection of the informer. State v. Sheffey, 243 N.W.2d 555, 559 (Iowa 1976). Additionally, it is the general rule the prosecution cannot ordinarily be required to divulge the identity of an informant if the informant is not a witness to the event constituting the basis for the charge. State v. Todd, 468 N.W.2d 462, 467 (Iowa 1991). The United State Supreme Court in Rovario v. United States established a balancing test to determine whether to compel disclosure of the identity of an informant. The court set out the rule as follows:

> We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors.

Rovario v. United States, 353 U.S. 53, 62, 77 S. Ct. 623, 628-29, 1 L. Ed. 2d 639, 646 (1957). The Court in Rovario further stated a limitation on the applicability of the privilege arises from the fundamental requirement of

fairness. Where the disclosure of an informer's identity, or the contents of his communication, is relevant and helpful to the defense of the accused, or is essential to a fair determination of a cause, the privilege must give way. Id. at 60-61, 77 S. Ct. at 628, 1 L. Ed 2d at 645.

The court in State v. Sheffey also noted "where an informer is a witness-participant. disclosure will almost always be material to an accused's defense." State v. Sheffey, 243 N.W.2d 555, 558 (Iowa 1976). The court further stated although the informant's physical presence at the scene of the alleged crime is of significance, it is not sufficient, standing alone, to hold him a participant and thus affect the nondisclosure privilege. Id. at 559.

We determine the trial court did not err in refusing to compel the State to disclose the identity of the informant. The defendant failed to meet the burden of showing disclosure of the confidential informant was necessary. In this case, the informant was not a witness nor a participant in the crimes for which defendant was charged. Additionally, defendant testified he believed the confidential informant was a woman named "Tammy." He explained the situation surrounding his introduction to Officer Lannon and testified he had known Cat for approximately one year and "Tammy" for approximately four months. Defendant stated "Tammy" was only present for the initial introduction, and he met just with Officer Lannon on the next two occasions. The defendant provided the

court with no specific testimony he believed "Tammy" could provide but merely speculated she would be helpful to his defense. Additionally, defendant did not offer any evidence, through testimony, affidavits, or other proof, of any acts on the part of Officer Lannon, "Tammy," or anyone else which could be construed as entrapment. The decision of the trial court is affirmed.

Defendant next argues the trial court erred in refusing to suppress the fruits of a search warrant executed at defendant's home, on the ground the State violated the "knock and announce" rule of Iowa Code section 808.6 (1991). We review the record bearing on the constitutional issues de novo and determine the trial court did not err in refusing to sustain defendant's motion.

Iowa Code section 808.6 provides in relevant part:

> The officer may break into any structure or vehicle where reasonably necessary to execute the warrant if, after notice of this authority and purpose the officer's admittance has not been immediately authorized. The officer may use reasonable force to enter a structure or vehicle to execute a search warrant without notice of the officer's authority and purpose in the case of vacated or abandoned structures or vehicles.

Iowa Code § 808.6 (1991). Defendant claims the officers executing the warrant at his home violated this section of the code because they never intended to knock and announce and give notice of their authority.

Abundant authority exists in support of the proposition that exigent circumstances will excuse compliance with constitutional and statutory announcement requirements.

State v. Brown, 253 N.W.2d 601, 602 (Iowa 1977). Unannounced entry into a private home is permitted (1) where the persons within already know of the officer's authority and purpose; (2) where the officers are justified in the belief the persons within are in imminent peril of bodily harm; (3) where those within, made aware of the presence of someone outside, are engaged in activity which justifies the officers in the belief an escape or the destruction of evidence is being attempted. State v. Cohrs, 484 N.W.2d 223, 225 (Iowa App. 1992). Our supreme court has also determined entry by ruse does not violate the knock and announce rule. State v. Iverson, 272 N.W.2d 1, 6 (Iowa 1978). In this case, Officer Lannon did enter defendant's home by ruse. She was the first officer in defendant's home. She was invited and was present as defendant's guest. Defendant believed the officer was in his home to participate in drug and social activities. Once Officer Lannon was in the home, the other officers could enter without knocking and announcing. Additionally, at the time the officers did enter, defendant and Officer Lannon had been standing on the front porch. Defendant saw the other officers approaching his home, yelled "police," and ran back into the house. The defendant knew officers were present and had already allowed Officer Lannon into his home.

Once defendant ran back into his home, leaving the door open, officers were justified in entering due to exigent

circumstances. Defendant ran back to the room where the cocaine was kept, and it was reasonable for the officers to believe defendant was going to attempt to destroy the contraband. Defendant had already told Officer Lannon during one of their meetings if she was stopped by the police to swallow the drugs.

The officers' entry into defendant's home was reasonable and was not in violation of the knock and announce rule. The district court is affirmed.

AFFIRMED.