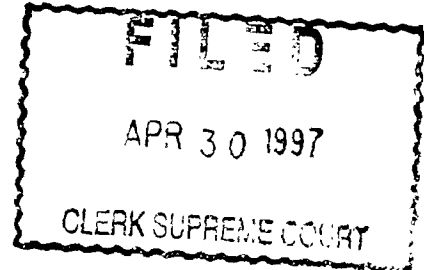


IN THE COURT OF APPEALS OF IOWA

No. 7-099 / 96-862

STATE OF IOWA,
Plaintiff-Appellant,
vs.
CARL ERVIN MYERS,
Defendant-Appellee.



STATE OF IOWA,
Plaintiff-Appellant,
vs.
SHARON BESSIE MYERS,
Defendant-Appellee

Appeal from the Iowa District Court for Hardin County, Timothy J. Finn,
Judge.

The State seeks review of a district court order suppressing evidence seized
pursuant to a search warrant of a defendant's residence. **REVERSED AND
REMANDED.**

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney
General, Richard N. Dunn, County Attorney, and James S. Scheetz, Assistant County
Attorney, for appellee.

Thomas J. O'Flaherty of O'Flaherty Law Firm, Swisher, for appellee-Carl
Myers.

Steven A. Kloberdanz of Pattie, Hinshaw, Danielson, & Kloberdanz P.C.,
Marshalltown, for appellee-Sharon Myers.

Heard by Sackett, P.J., Cady, and Vogel, JJ.

CADY, J.

The primary question we face in this appeal is whether the magistrate adequately documented the reliability of informant information in a search warrant application in determining the existence of probable cause to issue a search warrant. The district court excised the informant information and found no probable cause. We reverse the decision by the district court to suppress the evidence seized pursuant to the warrant and remand for new trial.

On March 28, 1995 deputy sheriff Rodney Stoner prepared an application for a warrant to search the residence of Carl Myers for drugs, drug paraphernalia and a padlock key. Myers lived with Sharon Myers in the residence. The written application indicated law enforcement officers had searched the residence of Gordon Steil earlier in the day and discovered a large quantity of marijuana, LSD and white powdery and rock substance in a locked wooden box, together with an envelope bearing Carl Myer's name. Myer's name was also found in various address books in the residence and a photograph was found picturing Meyers and Steil wearing clothing "~~which~~ adorned the marijuana leaf." No scales were found at the Steil residence. The application indicated Myer's had two prior convictions for drug-related offences.

The application also contained information derived from two confidential sources. One informant (informant no. 1) told an Eldora police officer prior to the search of Steil's residence a large amount of marijuana had been moved from Myer's

residence to Steil's residence while Myers was gone. The application indicated this information was verified by the subsequent discovery of the marijuana in the wooden box located in Steil's residence. A second source (informant no. 2) indicated Myers and another individual had been arrested in Colorado on a marijuana charge. There was no specific information explaining the reliability of the second source.

The application was presented to a magistrate. Deputy Stoner presented sworn testimony to the magistrate, which was summarized by the magistrate in the endorsement section of the form application. Much of the testimony was duplicative of the written information set forth in the application. The magistrate also summarized the information from the two confidential sources, and indicated the information "was confirmed by the officers."

Immediately following the written endorsement, the search warrant form gave the magistrate the option of selecting one of two reasons for finding the informant information credible. The first reason was the informant had "given reliable information on previous occasions." The second reason was the informant appeared "credible or the information appear[ed] credible for the following reasons." The magistrate placed a check in front of the first reason. The second warrant was issued.

The subsequent search of the Myers residence uncovered 248.1 grams of marijuana, hashish oil, and numerous items of drug paraphernalia.

Carl Myers and Sharon Myers were charged with possession of marijuana with intent to deliver. They moved to suppress the incriminating evidence seized from the

residence. The thrust of their motions was the magistrate failed to make a credibility finding for the confidential informants as required by statute because, contrary to the reason selected by the magistrate, the confidential sources had not “given reliable information on previous occasions.”

The district court determined the credibility finding relating to the confidential information failed to comply with the statutory requirement and granted the motions to suppress. It found the two informants had never been used in the past and had not provided reliable information on prior occasions. It held the language of the statute did not permit a credibility finding based on a single prior incident, of providing reliable information. Without a proper credibility finding, the district court determined probable cause was lacking. The State’s application for discretionary review was granted.

I. Standard of Review

The ruling entered by the district court was based primarily on the failure to comply with the statute governing confidential informants. To this extent, our review is for errors at law. *State v. Beckett*, 532 N.W.2d 751, 753 (Iowa 1995). To the extent the district court found probable cause lacking, our review is de novo. *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993).

II. Credibility of Informants

Before a search warrant may issue based upon information supplied by a confidential informant, the issuing magistrate must find the confidential information

credible based on one of two grounds. Iowa Code § 808.3 (1995); *Beckett*, 532 N.W.2d at 754. The information must be credible because: 1) the sworn testimony evidences the confidential informant has given reliable information on prior occasions; or 2) the confidential informant or information appears credible for reasons specified by the magistrate. Iowa Code § 803.3. The credibility findings are mandatory. *Beckett*, 532 N.W.2d at 754. Without such findings, a magistrate's probable cause determination must be measured without reference to the informant's information. *Id.*

We readily recognize the magistrate failed to make a credibility finding for informant no. 2. This informant provided information that Myers had been arrested in Colorado on a marijuana charge. There was no evidence this informant had ever provided information in the past. No reasons were expressed by the magistrate why this information or this informant was otherwise reliable. Thus, this information must be excluded in reviewing the probable cause determination. The fighting question is whether the magistrate made a sufficient finding of reliability for informant no. 1.

We begin our analysis by recognizing a specific credibility finding was made by the magistrate. The point of contention, however, is this finding was inaccurate or incomplete. Informant no. 1 had not in fact provided reliable information to law enforcement on "previous occasions." The evidence revealed this informant had only provided information on one prior occasion.

We adhere to the requirement that magistrates specifically explain the reason an informant or informant information appears credible. *Beckett*, 532 N.W.2d at 754. Moreover, magistrates must utilize the reasons articulated by our legislature in making this important determination. Iowa Code § 808.3. Nevertheless, we do not believe they must adopt the statutory reasons in a mechanical fashion. *See Beckett*, 532 N.W.2d at 754. Instead, we look to see if the reason documented by the magistrate substantially complies with the statutory reasons. *See Iowa Code § 808.3*.

Our governing statute sets forth one specific reason and one open-ended reason. The first statutory reason clearly requires the informant provide reliable information on more than one occasion. *Id.* Here, the undisputed evidence showed the informant only provided information on one prior occasion. This, we believe, falls short of substantial compliance with the first statutory reason. On the other hand, it does not necessarily require us to excise the confidential information from the warrant. Instead, we believe the reason specified by the magistrate must also be tested under the second open-ended reason. The statute provides for alternative findings of reliability, and a finding made by the magistrate should not be disregarded because it failed to satisfy one of the two grounds.

We are not confined by the mechanics of a form checklist in our search for the specific reasons made by the magistrate. We may properly look to other portions of the written abstract to find the complete reasoning for finding an informant to be reliable. *See State v. Sykes*, 412 N.W.2d 578, 582 (Iowa 1987) (magistrate adopted

credibility statements from an affidavit); *State v. Swaim*, 412 N.W.2d 568, 574 (Iowa 1987) (magistrate referred to affidavit and attachments).

A fair reading of the endorsement as a whole indicates the magistrate found informant no.1 reliable because he provided information concerning the existence of drugs in the Steil residence, which was verified by law enforcement officials after they executed a search warrant of the Steil residence and found drugs. The informant also indicated the drugs came from the Myers' residence. The search of the Steil residence revealed evidence of a possible drug connection to Myers.

Independent corroboration of an informant's information may serve as support for an informant's reliability. *Swain*, 412 N.W.2d at 574 . In this case, the search of the Steil residence not only corroborated the information about the presence of drugs in the residence but further tended to corroborate the information from the informant that the drugs were connected to Myers. We conclude the finding of reliability made by the magistrate substantially complied with the second alternative reason of section 808.3. Accordingly, the district court erred by excising the information provided by informant no. 1 in determining whether the search warrant was supported by probable cause.

III. Probable Cause

A search warrant can issue only upon probable cause. *Beckett*, 532 N.W.2d at 753. The test for determining probable cause is whether a reasonably prudent person would believe a crime was committed on the premises to be searched or

evidence of a crime would be located on the premises. *Id.* The determination is made based on the totality of the circumstances. *State v. Green*, 540 N.W.2d 649, 655 (Iowa 1995).

We recognize a preference for warrants and resolve close cases in favor of their validity. *State v. Godbersen*, 493 N.W.2d 852, 854-55 (Iowa 1992). We also recognize our job in reviewing a probable cause finding is not to make our own independent determination, but to determine whether the issuing magistrate had a substantial basis for finding probable cause. *Green*, 540 N.W.2d at 655.

Excluding the information provided by informant no.2, we find a substantial basis for the magistrate's determination of probable cause to search the Myers' residence. Drugs had been discovered in the Steil residence and the totality of the circumstances was sufficient to connect this crime to the Myers' residence. Myers had two prior drug convictions, his name was found in the box containing the drugs, and the informant's information tied Myers and his residence to the drugs.

We conclude the district court erred by excising all the informant information and in finding the warrant was issued without probable cause. Having considered all issues raised, we reverse the decision of the district court and remand the case for trial.

REVERSED AND REMANDED.