FILED
OCT 2 4 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-337 / 88-1436

651

STATE OF IOWA,

Plaintiff-Appellee,

vs.

MARLIN LEE JOHNSON,

Defendant-Appellant.

Appeal from the Iowa District Court for Sac County, Mark S. Cady, Judge.

Defendant appeals his conviction for possession of marijuana, contending evidence was obtained through an invalid search warrant. **AFFIRMED.**

Lon R. Tullar, Sac City, for defendant-appellant.

Thomas J. Miller, Attorney General; Christie J. Scase, Assistant Attorney General; and David P. Jennett, County Attorney, for plaintiff-appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J. 652

Defendant-appellant Marlin Lee Johnson appeals his conviction for possession of marijuana. He contends the trial court erred in failing to suppress evidence taken from his pickup and used to convict him. Defendant contends the evidence was obtained under the authority of an invalid search warrant because there was no probable cause for issuing the warrant, and the application for the warrant did not specifically list his truck as required by Iowa Code section 808.3 (1987). We affirm the trial court decision.

In August 1987 the Lake View, Iowa police placed a surveillance camera in the ceiling of a utility room in the Lakewood Ballroom. The owner of the business believed employees were stealing supplies and taking part in other illegal activities while at work.

Five days after the owner gave police permission to install the camera, defendant was seen in the utility room, bending over a countertop. His actions were recorded in black and white on videotape. While a viewer cannot see defendant's head or hands while he is bent over, the police believed he was inhaling a controlled substance through a short straw that can be seen in his hand before he bends over.

Two weeks later, the police presented a Sac County magistrate with an application for a search warrant. As part of their application, the police presented the

videotape and an unsworn informant's attachment. The magistrate viewed the tape and spoke with the informant, who gave sworn testimony regarding drug use by defendant and other employees at the ballroom.

The magistrate determined probable cause existed for searching defendant. He signed and dated a search warrant the police had already prepared. The warrant included a description of defendant's pickup as an item subject to the search. The application for the warrant, however, made no mention of the vehicle.

Later that same day, police officers searched defendant and his vehicle while he was working at the ballroom. Defendant was arrested when a small amount of marijuana and several items of drug paraphernalia were found in the glove box of his pickup.

Defendant first contends the magistrate had no probable cause to issue a warrant for the search of defendant or his vehicle. In reviewing the validity of the search warrant, we do not make our own independent determination of probable cause. State v. Bishop, 387 N.W.2d 554, 558 (Iowa 1986). Rather, we give great deference to the magistrate's prior determination of probable cause. Id.

We find the informant's statements, combined with the videotape of defendant in the utility room, provided sufficient underlying facts from which the magistrate could make an independent conclusion. See State v. Freeman, 297 N.W.2d 363, 366 (Iowa 1980). The magistrate made a

common-sense decision that there was a fair probability controlled substances would be found on defendant's person or in his truck. State v. Weir, 414 N.W.2d 327, 329-30 (Iowa 1987) (quoting Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548, reh'g denied, 463 U.S. 1237, 104 S. Ct. 33, 77 L. Ed. 2d 1453 (1983)). We find there was sufficient probable cause for the issue of the search warrant here.

Defendant next contends the items seized from his truck should be suppressed because the application for the search warrant did not properly list his truck as a thing to be searched. A search warrant application must describe, with sufficient specificity, the person, place, or thing to be searched. Iowa Code § 808.3 (1987).

Both the application and the warrant here were prepared by the same police officer and presented to the magistrate at the same time. The search warrant contained a description of defendant's truck. After review of all the evidence presented to him, the magistrate decided probable cause existed and signed the search warrant.

We find the description of the truck in the search warrant served as a part of the warrant application for purposes of complying with Iowa Code section 808.3. While we do not necessarily condone this practice by police officers making application for warrants, we find the magistrate was sufficiently informed of the potential subjects of the search here. The application substantially

complied with the requirements of section 808.3. See State v. Weir, 414 N.W.2d 327, 330-31 (Iowa 1987). Our supreme court has avoided an overly technical application of the procedural requirements for the issuance of search warrants. See State v. Wright, 244 N.W.2d 319, 321 (Iowa 1976); see also Weir, 414 N.W.2d at 330-31; State v. Sykes, 412 N.W.2d 578, 581-82 (Iowa 1987); State v. Swaim, 412 N.W.2d 568, 574 (Iowa 1987); State v. Paschal, 300 N.W.2d 115, 117-19 (Iowa 1981). The search warrant for defendant's truck was properly issued.

Because of our holding, we need not address defendant's other arguments. The decision of the trial court is affirmed.

AFFIRMED.