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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed January 24, 1984
vs.)
PAUL D. WHIPPLE,) 3-432
Defendant-Appellant.) 83-561

Appeal from the Iowa District Court for Des Moines County - Thomas R. Brown and Gary J. Snyder, District Associate Judges.

Defendant appeals his conviction for possession of marijuana, Iowa Code section 204.401(3) (1981), contending the trial court erred by: first, refusing to suppress evidence seized in a search of his house because he claims the search warrant was issued without probable cause; and second, by refusing to compel the State to disclose the identity of a confidential informant mentioned in the search warrant application. AFFIRMED.

Kent Hutcheson, Ft. Madison, for defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Snell and Schlegel, JJ.

Defendant Paul Whipple was convicted of possession of marijuana, violating Iowa Code section 204.401(3) (1981), after trial to the court. He was fined $150. The State's evidence against the defendant consisted largely of drugs seized when his house was searched pursuant to a search warrant. A magistrate issued the warrant on the basis of an affidavit which recited that an unnamed informant had heard about drug purchases at a certain address, had accompanied unnamed companions in a car to that address, and had waited in a car while the companions entered the house and returned with drugs. The affidavit also alleged that neighbors had stated there was much traffic of young people to and from that address. The affidavit indicated that police officers did not know who lived at the address before obtaining the warrant.

Before trial the defendant moved to suppress evidence obtained during the search on the ground the facts recited in the affidavit did not establish probable cause for a search warrant. He also filed a motion asking that the State be directed to identify its confidential informant. The trial court overruled both of these motions.

Defendant appeals his conviction, contending the trial court erred by overruling his motion to suppress evidence, by admitting the evidence at trial, and by overruling his motion asking that the confidential informant be identified.

We review criminal cases on assigned error unless an issue involves a violation of basic constitutional safeguards; in these occasions we make an independent evaluation of the totality of the circumstances. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975).

I. **Identity of Confidential Informant.** Defendant contends that he should have been given the identity of the confidential informant for two reasons: first, so that it could be determined whether there was an informant or whether the police officer fabricated the existence of one; and, second, so that the defendant

could question the informant as to whether he was pressured, coerced, or promised money for giving the information.

The State agrees that seeking disclosure of an informer's identity as a means of attacking the veracity of the affiant is a legitimate ground upon which disclosure may be sought. However, the State argues that a court must weigh those strong public policies which favor encouraging people to give information to the police.

In a case such as the one at bar, in which the affiant claimed there were other people who gave information supporting the confidential informant's story, the State alleges that the defendant must show some justification for challenging the veracity of the police officer. We agree. The United States Supreme Court has held:

> where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request.

Franks v. Delaware, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676, 57 L. Ed. 2d 667, 672 (1978). In the instant case, the defendant did not request an evidentiary hearing to inquire into the truth of the affidavit. Neither has he made an offer of proof to support an allegation of deliberate falsehood. See id. at 171-72, 98 S. Ct. at 2684-85, 57 L. Ed. 2d at 682; see also State v. Groff, 323 N.W.2d 204, 208-09 (1982). The defendant merely raises the speculation that the police officer may have concocted the confidential informant story in order to allege the court erred in not granting the defendant's request for the identity of the informant. We find this to be insufficient.

The State contravenes defendant's claim that he should have been permitted to learn the identity of the informant by directing us to the case of State v. Lamar, 210 N.W.2d 600 (Iowa 1973). In that case, the supreme court stated that

the informer privilege of confidentiality disappears when defendant makes a showing that an informer's identity is material to his defense or essential to a fair trial. Id. at 603.

In the instant case defendant's mere speculations as to what a cross-examination of the informer might disclose do not constitute a showing that the informer's identity is material to his defense or essential to his fair trial. The trial court committed no error in denying defendant's request for the informer's identity.

II. Suppression of Evidence. The defendant contends that there were insufficient operable facts on which to find probable cause for the issuance of the warrant in this case. Therefore, he argues, the search and seizure were illegal and the evidence obtained from this search should have been suppressed upon defendant's motion.

The warrant application indicated that the informant had told the police that, within the three previous weeks, he had been the passenger in a vehicle when the driver had stopped at the house in which the search took place and the evidence was seized. The driver had entered the house to buy hashish and the informant had seen the driver holding hashish when he returned to the vehicle. The informant further told the police that within the previous two days two people had told him they had purchased hashish from the same house within those two days.

Defendant alleges that probable cause for the search warrant did not exist because the informant did not see a drug transaction take place but merely concluded that one took place because his companion came out of the house with hashish in his possession. It is true the conclusions regarding illegal activity are inadequate, standing alone, to constitute probable cause. State v. Boer, 224 N.W.2d 217, 220 (Iowa 1974). However, the informant in the instant case had his conclusions bolstered by later conversations with two people. The magistrate who

issued the search warrant had additional information from which to garner probable cause. The police officer confirmed that the informant had been proven reliable on two previous occasions. Furthermore, independent police investigation had revealed that neighbors of the house for which the search warrant was requested had noticed quite a bit of traffic of young people in and out of the house. From this aggregation of facts, the issuing magistrate found probable cause for the search warrant.

The answer to the question of whether probable cause exists in a particular situation must be ascertained by an examination of the totality of the circumstances. Illinois v. Gates, ___ U.S. ___, ___, 103 S. Ct. 2317, 2328, 76 L. Ed. 2d 527, 543 (1983). The Supreme Court has determined that:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed.

Id. at ___, 103 S. Ct. at 2332, 76 L. Ed. 2d at 548 (quoting Jones v. United States, 362 U.S. 257, 271, 80 S. Ct. 725, 4 L. Ed. 2d 697 (1960)).

Using the Gates mandate, we conclude that the issuing magistrate had a substantial basis for finding a fair probability that illegal drugs would be found in the house for which he issued a search warrant and thus, for concluding that probable cause existed. The warrant was valid; the search was not illegal. Therefore, the trial court properly denied defendant's motion to suppress the evidence obtained in that search and properly admitted the evidence at trial.

AFFIRMED.