IN THE IOWA COURT OF APPEALS

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STATE OF IOWA,

Appellee/Cross-appellant,

v.

ROBERT THOMAS NEARY,

Appellant/Cross-appellee..

Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond and Edward L. Mitchell, Judges.

Defendant appeals his jury conviction for possession of a controlled substance with intent to deliver. **AFFIRMED AND REMANDED.**

Linda Del Gallo, Acting State Appellate Defender, Ahmet S. Gonlubol, Assistant Appellate Defender, for appellant/cross-appellee.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas S. Mullin, County Attorney, Connie E. Anstey, Assistant County Attorney, for appellee/cross-appellant.

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

SCHLEGEL, P.J.

Defendant Robert Thomas Neary appeals his jury conviction for possession of a schedule II controlled substance (cocaine) with intent to deliver. Defendant contends that the trial court erred in refusing to suppress evidence obtained when police executed a search warrant on his residence. In particular, defendant challenges the finding of probable cause. The State cross-appeals the sentence imposed on defendant, arguing that the trial court illegally refused to impose a mandatory minimum sentence. Finding no grounds for reversal, we affirm on defendant's appeal. On the cross-appeal, we remand with instructions to impose the statutory sentence.

Our standard of review is now well settled. We must review the facts and circumstances leading to the issuance of a search warrant de novo. State v. Weir, 414 N.W.2d 327, 329 (Iowa 1987) (citing State v. Seiler, 342 N.W.2d 264, 266 (Iowa 1983)). This inquiry is limited, however, to the four corners of the warrant and its attachments, that is, considering "only that information, reduced to writing, which was actually presented to the magistrate at the time application for the warrant was made." Id. (citing State v. Seager, 341 N.W.2d 420, 426 (Iowa 1983)).

> 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 a magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed.

Illinois v. Gates, 462 U.S. 213, 238-39, reh'g denied, 463 U.S. 1237 (1983) (citation omitted); accord Weir, 414 N.W.2d at 329-30 (quoting Gates). We give deference to the magistrate's finding 'and, because of a preference for warrants, resolve doubts in favor of validity. Weir, 414 N.W.2d at 330 (citing State v. Bishop, 387 N.W.2d 554, 557-58 (Iowa 1986)). The test the Iowa Supreme Court has enunciated is this: "whether a person of reasonable prudence would believe a crime was committed on the *premises to be searched or evidence* of a crime could be located there." Id. (citing State v. Sykes, 412 N.W.2d 578, 583 (Iowa 1987); State v. Woodcock, 407 N.W.2d 603, 604 (Iowa 1987); Seager, 341 N.W.2d at 426-27).

Associate Judge William E. Adams issued a search warrant to Sioux City police on February 15, 1989. The warrant was for the search of the residence and curtilage of defendant and his roommate, Michael Fairman. The search resulted in thirty-eight items being seized from defendant's residence, including cocaine, marijuana, drug paraphernalia, currency, and indicia of a recent trip to Los Angeles. Defendant's pretrial motion to suppress the evidence seized was denied by Judge Richard J. Vipond. The evidence was admitted at trial. Defendant's post-trial motions for a new trial and in arrest of judgment were overruled.

In accordance with Iowa Code section 808.3, Judge Adams' endorsement of the search warrant indicates that information given South Dakota, DEA, and Sioux City law enforcement officials by an informant, Michael Thomas, had led to the discovery of nearly a kilogram of cocaine at Thomas' residence. Information given to officials by Thomas also led to the arrest of defendant's sister, Michelle Neary, and defendant's roommate, Michael Fairman, after a controlled purchase of cocaine in Sioux City. Recorded telephone conversations between Thomas and Michelle Neary corroborated the purchase of the cocaine.

In separate, independent interviews, Thomas and Michelle Neary told law enforcement officials the same information about defendant's operation. Defendant had flown to Los Angeles with $32,000 supplied by Thomas and returned two days later with a kilogram of cocaine. Thomas had been $500 short, and defendant had kept 1 1/4 ounces of the kilogram (2.2 pounds) of cocaine brought from California. Michelle Neary also provided information connecting the defendant to the residence searched and indicated that she had received the 1 1/4 ounces of cocaine from her brother. Judge Adams' endorsement also indicates that he found the informants credible because "verifiable facts have proven accurate."

As the supreme court has pointed out, "factors such as the veracity and basis of knowledge of . . . an informant are . . . relevant, if not controlling, when a reviewing

court assesses 'the totality of the circumstances.'" Weir, 414 N.W.2d at 331 (citing Gates, 462 U.S. at 238; Sykes, 412 N.W.2d at 572). The importance of credibility is heightened, as in this case, when informants may have acted for selfish motives, such as leniency, and courts apply a higher standard of proof. Id. (citing State v. Drake, 224 N.W.2d 476, 478 (Iowa 1974)). Various factors bearing on credibility include whether the informant was named; the specificity of facts; whether information was against penal interest; whether information was corroborated; whether information was public knowledge; whether informant was trusted by accused; and whether informant witnessed the crime or fruits of it in the possession of the accused. Id. at 332 (citations omitted).

We conclude that the warrant application and its attachments demonstrated the credibility of the informants. Neither informant alone might be particularly worthy of a high degree of credibility. Taking the informants together, all of the above-cited factors point toward a high degree of credibility. Here, the search warrant application contained specific, corroborated, private information from named informants who made statements against penal interest about crimes and contraband with which they were intimately involved.

From this credible information, a "person of reasonable prudence" could easily deduce that "a crime was committed on the premises to be searched or evidence of a crime could

be located there." Id. at 330 (citing Sykes, 412 N.W.2d at 583; Woodcock, 407 N.W.2d at 604; Seager, 341 N.W.2d at 426-27). Keeping in mind that "[t]he quantum of information needed to establish probable cause is less than required for conviction," id. (citing State v. Bousman, 387 N.W.2d 605, 609 (Iowa 1986)), we conclude that the information before Judge Adams, including the warrant application and its attachments, sufficiently established a nexus between the defendant, his alleged criminal activities, the things seized, and the place searched. Id. (citing Seager, 341 N.W.2d at 427).

After trial, defendant was ordered to serve an indeterminate sentence not to exceed ten years. Iowa Code § 902.9(3) (1987) (class "C" felony). Defendant was convicted under section 204.401, which carries with it a mandatory minimum sentence of one-third of the maximum indeterminate sentence, Iowa Code § 204.413 (1987), which is three and one-third years in this case. No exception to this mandatory minimum applies in this case. The trial court, however, failed to impose this statutory minimum. We must, therefore, remand for resentencing in accordance with this opinion.

AFFIRMED AND REMANDED.