

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 24 1982

CLERK SUPREME COURT

STATE OF IOWA,

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Plaintiff-Appellee,

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Filed February 24, 1982 360

vs.

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JAMES HOBART RHODES,

)

1-429
65791

Defendant-Appellant.

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Appeal from Black Hawk District Court - William G. Klotzbach, Judge.

Defendant appeals from his conviction of theft in the second degree in violation of section 714.2(2), The Code 1979. Defendant asserts that: (1) the factual basis for granting a search warrant was insufficient and that evidence obtained pursuant to the warrant should have been suppressed; and (2) the trial court erred by failing to grant defendant's motion to disclose the identity of the informant. AFFIRMED.

Charles T. Mattson, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas N. Martin, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant appeals from his conviction of theft in the second degree in violation of section 714.2(2), The Code 1979. Defendant asserts that: (1) the factual basis for granting a search warrant was insufficient and that evidence obtained pursuant to the warrant should have been suppressed; and (2) the trial court erred by failing to grant defendant's motion to disclose the identity of the informant. We affirm.

Generally, our review of criminal proceedings is at law for correction of errors only, and not de novo. Iowa R. App. P. 4. However, when a constitutional issue is presented, the evidence relevant to that issue is reviewed de novo. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975).

I.

On April 17, 1980, Detective Sergeant Penrose applied for a search warrant and indicated that he had received information from a confidential informant regarding defendant's involvement in burglaries. The officer indicated, and the judge specifically found, that the informant had given reliable information in the past. The informant related the following information to the officer: that he had seen the defendant move stolen property on to the property to be searched; that on about April 9, 1980, defendant and another man were offering fifty suits for sale and stated that they were taken in a burglary at a DeLorbes clothing store; and that on April 17, 1980, the defendant and another person were attempting to sell women's clothes which were possibly taken from Charmars Fashions. Officer Penrose also stated that on three occasions he observed people carrying items into the house, apparently through the back door, and observed the defendant leave the house. The application specifically described the items to be searched for and the place to be searched as follows:

That said property to be searched for is described
as: Gold & Green French Provincial Living Room

set, consisting of (1) couch, (1) loveseat, (2) chairs, RCA Stereo unit that included AM-FM radio, 8-track tape deck, and turntable, (1) RCA 25-inch color television, with walnut frame, ladies apparel consisting of blouses, slacks and other miscellaneous ladies apparel. Assorted men's suit [sic] which include the brand names of Donald Brooks, Austin Reed, and Hart Schaffner & Marks. Any sales and price tags from Charmar's Fashions and De Lorbes Mens Wear. 1977 Pontiac Gran Prix, AHX 614 registered to Charley Mae Rhodes.

That said property is in the possession or control of the above-named defendant and is located in or on a person, premises, place, residence or vehicle described as: Two story dwelling and any or all out buildings located at 607 Cottage Street, Waterloo, Iowa.

The search warrant was issued on the basis of this information.

On April 17, 1980, Detective Sergeant Craig Penrose and other members of the Waterloo, Iowa, Police Department conducted a search of a residence located at 607 Cottage Street, Waterloo, Iowa, and a 1977 Pontiac Gran Prix automobile. The search was conducted pursuant to a warrant issued on April 17, 1980. Various items of stolen property were seized and subsequently admitted into evidence at trial.

On May 7, 1980, the defendant filed a motion to suppress evidence found pursuant to the search warrant, asserting the search warrant was based on unconfirmed hearsay and was unconstitutional. The defendant also filed a motion to compel disclosure of the identity of the informant, claiming the following: that the information received from the informant was insufficient to support probable cause for the issuance of the warrant since the underlying source of the information was not revealed; that there was no showing as to why the identity of the informant had to be kept confidential; that the defendant was entitled to know the identity of the informant since the affidavit in support of the warrant was vague; that the defendant had to question the informant about his source of information; that there was reason to believe that the information was obtained

illegally; and that the nondisclosure of the identity of the informant would deny the defendant right to confront the witnesses against him.

At the hearing on the motions, the defendant indicated that it was not possible to see the back door from the street. In denying the motion to compel disclosure of identity of the informant, the trial court concluded that "the defendant has failed to carry his burden of showing the need for disclosure and to overcome the public interest in the protection of the informer". In denying the motion to suppress, the trial court determined that Officer Penrose did have reliable information from a credible person. After a trial to the court, defendant was found guilty of theft in the second degree and sentenced. Defendant then instituted this appeal.

II.

Defendant contends that the trial court erred by failing to sustain defendant's motion to suppress evidence obtained through the execution of the search warrant because the affidavit furnished in support of the application for the search warrant was insufficient to give rise to probable cause. Defendant argues that the information supplied by the informant is insufficient to meet either the Aguilar or Spinelli tests. We disagree.

We find that while the defendant is correct that the search warrant application cannot meet the test of probable cause established in Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), the application can and does meet the alternative test that was formulated in Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969), and adopted by the Iowa Supreme Court in State v. Easter, 241 N.W.2d 885, 887 (Iowa 1976). We find the information supplied in the affidavit was sufficiently detailed to supply as much trustworthiness as the Aguilar test. Id. The information was sufficient under Spinelli to "describe the accused's criminal activity in sufficient detail that the

magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." Id. We find the information upon which the warrant was issued was both detailed and specific. It was certainly sufficient to establish probable cause. Our examination of the record indicates that the "facts and circumstances . . . are sufficient in themselves to justify the belief of a person of reasonable caution that an offense has been or is being committed." Id. Therefore, the search warrant was properly issued and we affirm the trial court.

III.

Defendant next argues that the trial court erred by refusing to disclose the identity of the confidential informant who supplied information to Sergeant Penrose. We disagree.

The defendant has the burden of proof to show just cause for requiring disclosure. State v. Lamar, 210 N.W.2d 600, 610 (Iowa 1973). Mere speculation that 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. Horn, 282 N.W.2d 717, 725 (Iowa 1979). When the accused makes a showing that an informant's identity is material to his defense or essential to a fair trial, the informant privilege disappears. Lamar, 210 N.W.2d at 603.

There was no showing by defendant that the informant's identity was either material to his defense or essential to a fair trial. Therefore, we find that the defendant has failed to meet his burden of proof and affirm his conviction.

AFFIRMED.