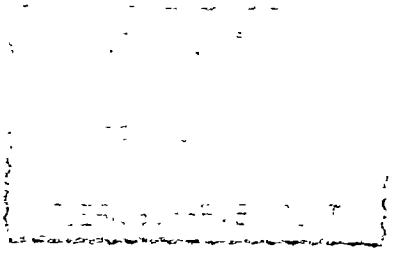
IN THE COURT OF APPEALS OF IOWA

No. 7-035 / 96-0505



000478

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KATRINA MAE THRASHER,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Phillip R. Collett, Chief Judge.

The defendant appeals her conviction, following a jury trial, for possession of marijuana in violation of Iowa Code section 124.401(1)(d) (1995) and failure to affix a drug tax stamp, in violation of sections 453B.3 and 453B.12. **AFFIRMED.**

Kirk A. Daily of Webber, Gaumer, Emanuel & Daily, P.C., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Victoria Siegel, County Attorney, and John S. Courter and Paul Zinag, Assistant County Attorneys, for appellee.

Heard by Habhab, C.J., and Sackett and Streit, JJ., but decided by Sackett, P.J., and Cady and Streit, JJ.

STREIT, J. 000479

The defendant appeals her conviction, following a jury trial, for possession of marijuana and failure to affix a drug tax stamp. Defendant maintains trial counsel was ineffective in failing to file a motion to suppress evidence seized from her apartment.

On January 29, 1994, the Ottumwa police executed a search warrant on the residence of the defendant, Katrina Thrasher, and her roommate, Ricky Rupe. The officers discovered quantities of hashish in the living room and 269.1 grams of marijuana, drug paraphernalia, and $2253 in cash. Thrasher made incriminating statements to the police that she knew Rupe was selling drugs from her apartment and that he used her vehicle to transport them.

Thrasher was charged by trial information with possession with intent to deliver marijuana, in violation of Iowa Code sections 124.401(1)(d) and 703.1 (1993), and failure to affix a drug tax stamp, in violation of sections 453B.3 and 453B.12. Defense counsel did not file a motion to suppress the evidence seized from the apartment prior to trial. The jury found Thrasher guilty as charged. The district court sentenced her to a six-month term of imprisonment for the possession charge and five years on the tax stamp charge. Thrasher has appealed.

In reviewing claims of ineffective assistance of counsel, we review de novo the totality of relevant circumstances. *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987).

The burden of proof in such claims rests with the defendant. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

A claim of ineffective assistance of counsel requires a showing that: (1) counsel's performance fell outside the normal range of competency; and (2) the deficient performance so prejudiced the defendant as to give rise to a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). In order to meet the first prong, defendant must overcome the strong presumption that counsel's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). To succeed on the second prong, the defendant must show that counsel's failure worked to the defendant's actual and substantial disadvantage so that, but for counsel's error, the result of the proceeding would have been different. *Id.*

Claims of ineffective assistance of counsel are usually not adjudicated on direct appeal because the attorney charged with ineffectiveness has not had an opportunity to respond to the allegations. *McKettrick*, 480 N.W.2d at 56. Such claims may be decided on direct appeal, however, if the defendant fails to show one of the two prongs. *State v. Walker*, 538 N.W.2d 316, 322 (Iowa App. 1995); *State v. O'Donnell*, 533 N.W.2d 576, 579 (Iowa App. 1995).

Thrasher contends trial counsel was ineffective in failing to file a motion to suppress the evidence taken from her apartment. She claims the search warrant issued by the court was invalid because the court failed to make the requisite finding of credibility for a confidential informant and because it lacked probable cause.

A. Confidential Informant. Thrasher maintains the district court failed to comply with section 808.3, which requires specific findings of credibility as to confidential informants. *See* Iowa Code § 808.3 (1997). Specifically, Thrasher argues a separate informant attachment for each informant was not provided with the application for the search warrant. She contends Rule 30 of the Iowa Rules of Criminal Procedure requires such attachment in order for the Court issuing the warrant to determine credibility.

Section 808.3 makes the courts credibility finding of confidential informants obligatory, not optional. *State v. Iowa District Court*, 472 N.W.2d 621, 624 (Iowa 1991). In *Iowa District Court,* the Iowa Supreme Court found failure of a warrant application to state why a police officer credited the stories given by unnamed informants as trustworthy, as well as failure of the issuing magistrate to explain why he credited the stories, resulted in the warrant not complying with the requirements of section 808.3. *Id.* In the present case, both of these requirements were in compliance.

The search warrant and application consisted of the search warrant itself, two pages designated as "Information for Search Warrant Form" and an additional two pages of typewritten information which was provided to the issuing judge. The State presented information from three confidential informants. The information provided by two of the informants was independently corroborated by police officers. The third informant had provided reliable information in the past. The court endorsed the search warrant application, checking available options why the information from the informants appears credible and including "the information supplied by the informants has been confirmed by observations of police officers, telephone records, by following the suspect, by a search, and other information."

The search warrant was issued with judicial findings of confidential informant reliability. We find no ineffective assistance of counsel for failure to file a motion to suppress on this issue.

B. Probable Cause. Thrasher further asserts the information upon which the search warrant was based is speculative at best. She argues in order to reach a conclusion that probable cause existed based on the information provided by the informants, it requires a "leap of conjecture."

Probable cause for a search warrant exists when the information provided in the application would lead a person of reasonable prudence to believe a crime was being

committed and the items to be seized were located at the premises sought to be searched. *State v. Seager*, 341 N.W.2d 420, 427 (Iowa 1983). The application for search warrant and information provided by the informants made reference to illegal drug activity by an individual named Terry Sheely. Informants advised the Sheriff of Mahaska County, Sheely was purchasing large quantities of marijuana in Ottumwa. The Sheriff subpoenaed Sheely's phone records and found Thrasher's number in Ottumwa listed on the records. Thrasher's phone records were also subpoenaed which showed phone calls to Sheely's phone in Oskaloosa.

Officers of the Oskaloosa Police Department observed Sheely go to Thrasher's residence in Ottumwa and leave holding something in his sleeve or in his coat on the right side. An informant also told the police he had been at Sheely's residence in Oskaloosa and observed Sheely make a sale of marijuana which Sheely stated he had obtained the marijuana from his supplier in Ottumwa.

We find the information provided by the informants and observations by the police establish probable cause to issue the warrant. Counsel's actions were reasonable under the circumstances. There was no reason for Thrasher's attorney to file a motion to suppress the warrant which was supported by probable cause. Thrasher's counsel was not ineffective.

AFFIRMED.