FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-39 / 89-625

STATE OF IOWA,

Appellee,

688

vs.

BLAKE RANDON CLAY,

Appellant.

Appeal from the Iowa District Court for Cedar County, James E. Kelley, Judge.

Defendant appeals his convictions, following a jury trial, for possession of marijuana and for sponsoring a gathering where controlled substances are used or possessed. **AFFIRMED.**

Bradley Norton of Norton & Norton, P.C., Lowden, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Lee W. Beine, County Attorney, and Sterling Benz, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

Defendant Blake Clay appeals his convictions of possession of marijuana and sponsoring a gathering where controlled substances are used or possessed. He was convicted in a jury trial and was sentenced to incarceration for sixty days on the possession charge and incarceration for six months on the charge of sponsoring a gathering. He appeals his convictions and sentences. We affirm.

I. Propriety of Issuance of the Search Warrant

The defendant claims the magistrate neglected a statutory duty to endorse on the warrant application a determination of the reliability of the Crimestoppers informant. Iowa Code section 808.3 requires magistrates to "endorse on the application the name and address of all persons upon whose sworn testimony the magistrate relied on to issue the warrant. . . ." The magistrate did not explicitly endorse on the application a determination of the reliability of the Crimestoppers informant. However, when a magistrate places his signature at the bottom of a peace officer's affidavit in support of a warrant application, the magistrate thereby adopts the officer's statements concerning the reliability of the informants on whom the officer relies, and in that way the magistrate makes the determination required by Iowa Code section 808.3. State v. Sykes, 412 N.W.2d 578, 582 (Iowa 1987).

When the magistrate signed the sheriff's application, which included both the information received from the Crimestoppers informant and the corroborating information independently obtained by the sheriff, the magistrate implicitly found the Crimestoppers informant reliable.

Clay also contends the warrant should not have been issued because the magistrate relied on hearsay. However, the supreme court has held a finding of probable cause to issue a search warrant may be based upon hearsay, including hearsay supplied by an unidentified informant. State v. Furber, 314 N.W.2d 365, 366-67 (Iowa 1982); State v. Dodson, 195 N.W.2d 684, 685 (Iowa 1972).

II. Denial of Defendant's Motion for Severance of Multiple Defendants

The defendant's housemate, Richard Mack, was also charged with drug-related crimes as a result of the search at the farmhouse. Clay filed a motion for severance of multiple defendants, contending the proposed joint trial would deny him a fair trial. The motion was denied.

Iowa Rule of Criminal Procedure 6(4)(b) provides, in part:

> When an indictment or information jointly charges two or more defendants, those defendants may be tried jointly if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties.

The trial court's refusal to grant a severance will be reversed on appeal only if the defendant demonstrates the court has abused its discretion. State v. Brown, 397

N.W.2d 689, 695 (Iowa 1986). An abuse of discretion will not be found unless the defendant demonstrates the joint trial prejudiced his right to a fair trial. Id.

Clay maintains the joint trial prejudiced him in three respects: 1) some of the marijuana found during the search was relevant evidence against Mack, not Clay, 2) he would have called Mack to testify on his behalf had the two been tried separately, and 3) "confusion and inconvenience" resulted from the fact that he was tried by a jury and Mack was tried by the court.

Although some of the marijuana found during the search belonged to Mack, it was relevant evidence against Clay. Clay was charged not only with possession, but with sponsoring or promoting a gathering with the knowledge or intent that controlled substances would be illegally used, possessed, or distributed. Therefore, evidence of use, possession, or distribution by anyone at the gathering would be relevant against Clay. Even if some of the evidence introduced against Mack had been irrelevant to the charge against Clay, a much stronger showing of prejudice is needed for reversal. A mere assertion that a defendant was prejudiced by presentation of evidence admissible only against his codefendant is not grounds for reversal. State v. Brown, 397 N.W.2d at 396-97.

There is no evidence to indicate whether Mack would have testified, what that testimony might have been, or

whether it would have been favorable to Clay. Thus, it is difficult to conclude Clay was prejudiced by the lack of Mack's testimony. The argument is a bald assertion, and it has been held that an argument that consists of nothing but a bald assertion will not be considered on appeal. Kellar v. Peoples Natural Gas Co., 352 N.W.2d 688, 693 (Iowa App. 1984).

Clay's assertion that he was prejudiced by the "confusion and inconvenience" which resulted from his trial by jury and his codefendant's trial by the court, is not supported by evidence. Again, his argument consists of mere unsupported assertion and will not be considered on appeal. Id.

III. Denial of Defendant's Motion for Directed Verdict

Clay does not contest the court's ruling on the possession charge, nor the sufficiency of evidence to show he sponsored or promoted the gathering, nor that marijuana was used at the gathering. His appeal is based solely on the issue of his knowledge or intent.

Our review of this issue is limited. Evidence is sufficient to withstand appellate scrutiny and support a conviction if it is "substantial." State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981). Evidence satisfies the criterion of substantiality if it is evidence which would convince a rational fact-finder the defendant is guilty

beyond a reasonable doubt. State v. LaGear, 343 N.W.2d 21, 23 (Iowa 1984). A review of the evidence presented at trial indicates substantial evidence was presented by which the jury could find Clay had knowledge that controlled substances would be used at his gathering. Clay admitted he thought friends would bring marijuana to the party, that he knew marijuana was brought to the party, and that he knew about the marijuana plants hanging in the basement. There is no evidence to suggest Clay attempted to prevent drug possession or use at the party. "Intent is seldom, if ever, capable of direct and positive proof. Rather, the intent, if any, may be arrived at by such reasonable inferences and deductions as may be drawn from the facts proved by the evidence in accordance with common experience and observation." State v. Rinehart, 283 N.W.2d 319, 321 (Iowa 1979). We find the evidence such that a reasonable inference of intention can be concluded.

IV. Abuse of Discretion in Sentencing

Clay's primary contention is the trial court did not consider factors such as age, present employment, residing with parents and no prior criminal record in determining his sentence.

As long as the record indicates the sentencing court exercised its discretion, this court will not interfere with the sentence unless the defendant shows "that such discretion was exercised on grounds or for reasons clearly

untenable or to an extent clearly unreasonable." State v. Pappas, 337 N.W.2d 490, 493 (Iowa 1983).

There is no evidence to suggest this sentence is clearly untenable or clearly unreasonable. At the sentencing hearing both aggravating and mitigating circumstances were presented. Also, the court which pronounced the sentence had also presided over the trial. The trial court was in possession of all information necessary to make an informed and rational sentencing decision. We find no abuse of discretion.

AFFIRMED.