

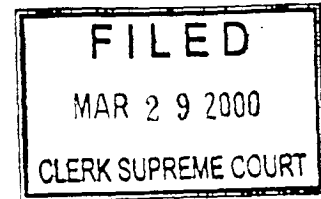
IN THE COURT OF APPEALS OF IOWA

No. 0-082 / 98-2263
Filed March 29, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KYLE A. DOOLIN,
Defendant-Appellant



Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge, and Robert Sosolla, District Associate Judge.

Kyle Doolin appeals from the judgment and sentence entered upon a jury verdict finding him guilty of possession with intent to deliver a controlled substance. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

~~Thomas~~ J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, ~~Denver~~ D. Dillard, County Attorney, and Russell G. Keast, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

000565

ZIMMER, J.

Kyle Doolin appeals the judgment and sentence entered upon a jury verdict finding him guilty of possession with intent to deliver a controlled substance. We affirm.

On February 20, 1998, Cedar Rapids Police Officer Stephen Spicher was dispatched to the Red Roof Inn where employees had found a trash bag on a second floor balcony area, fifteen to twenty feet from room 204. He took the bag to the police station and examined the contents. Inside were two single-edged razor blades with white powder on them, two syringes, a pop can converted to a pipe, and discarded mail addressed to the defendant, Kyle Doolin, and his wife Vanessa. The white residue field-tested positive for cocaine. A search warrant for room 204 was obtained and executed that same day. Doolin and a woman, Rebecca Griffith, were present. During the search, police found more syringes, loose powder on the night stand, a vial of clear liquid, a baggy of powder in a purse, a bag of small baggies, a small plastic spoon, and a bag of powder in the toilet. These items were first photographed before being removed and taken into evidence.

Doolin was arrested and charged with possession of a controlled substance (cocaine) with intent to deliver in violation of Iowa Code section 124.401(1)(c)(3) (1997) and as an habitual offender, in violation of Iowa Code section 902.8. Defense counsel moved to suppress the evidence seized pursuant to the search warrant, but the district court denied the motion. The jury trial commenced on August 17, 1998. Two days later the jury returned a guilty verdict. Doolin conceded his four prior felony convictions. On December 10,

000566

1998, judgment was entered and Doolin was sentenced to a term not to exceed fifteen years.

Doolin appeals. He urges the district court erred by admitting the seized evidence over his chain of custody objections. Second, he contends the evidence seized pursuant to the search warrant should have been suppressed because the warrant lacked probable cause. Finally, Doolin argues the district court erred by allowing testimony that he had allegedly assaulted his wife.

1. Chain of Custody. Doolin argues the State failed to establish a proper chain of custody for the items seized from the motel room. He contends a break in the chain occurred because no testimony revealed who had packaged the items and transported them from the motel to the police station. Decisions on the admissibility of physical evidence are within the sound discretion of the trial court. *State v. Collier*, 372 N.W.2d 303, 308 (Iowa App. 1985) (citations omitted); see also *State v. Ramirez*, 485 N.W.2d 857, 859 (Iowa App. 1992) (citation omitted). We reverse only when there has been a clear abuse of that discretion. *Collier*, 372 N.W.2d at 308.

In essence, Doolin's claim is that the State presented insufficient evidence to show the items removed from the motel were the same ones sent to the lab for analysis. Evidence will not be admitted unless it is properly identified. *Ramirez*, 485 N.W.2d at 858. Part of the necessary identification involves establishing a reasonable probability there was no tampering with or substitution of the evidence. *Id.* at 859 (citations omitted). The trial court must determine whether the identification of physical evidence is sufficient in light of the article's nature, the circumstances surrounding its custody, and the likelihood that an

intermeddler has tampered with it. *Id.* Once the court rules on the sufficiency of the identification, contrary speculation affects the weight but not the admissibility of the evidence. *State v. Satem*, 516 N.W.2d 839, 842 (Iowa 1994).

We find no abuse of discretion in the admission of the seized items. This record reveals no reasonable probability that anyone tampered with the evidence seized at the motel. The only alleged break in the chain of custody was the inability to discern which of three officers had transported the evidence from the motel room to the police station. This deficiency does not render the evidence inadmissible. The record does show that one of three officers transported the evidence from the motel to the police station where it was received by Officers Verschoore and Risse and placed in a locked cabinet until delivery to the crime lab. There was no indication in the record that anyone other than officers or state agents handled the items or even had access to them. The trial court was entitled to presume that state agents or officials did not tamper with evidence in their custody. *Ramirez*, 485 N.W.2d at 859. There were no other drug arrests that night before the officers returned to the station, such that they could have substituted that evidence with the items seized from Doolin's motel room. No other breaks in the chain were asserted.

The details of the execution of the search warrant and handling of the seized items indicate the evidence was properly identified. The officers who testified simply could not recall which of the three had done the actual transportation from the motel room to the police station; in all other respects, the evidence was accounted for. During the search, Cedar Rapids Police Officer Stephen Spicher photographed each of the items along with a marked card, as

listed in the evidence log. At trial, he identified the items in the photographs and recognized the State's exhibits as items shown in the photos and seized from the motel room. Detective John Matias acted as the evidence officer during execution of the search warrant. Matias listed each seized item in the motel room into an evidence log with an identifying number. He collected most of the State's exhibits and marked them before returning to the police station and turning them over to Officer Jeffrey Verschoore. The only vague aspect of the record was whether it was he, or Lieutenant Mark Risse who actually transported the items.

Verschoore testified that at the police station, he took out each item and wrote the assigned case number on the evidence cards and returned them to the evidence bag. He separated out the items that needed to be sent to the crime lab. He then turned the evidence over to Risse, who secured it in a locked cabinet area within the narcotics bureau. Risse testified the cabinet is only accessible to a few narcotics officers. Risse and another officer removed the items from the locked cabinet a few days following the search and prepared them to be sent to the lab in Des Moines for chemical analysis. Doolin makes no challenge to this portion of the chain of custody. Although neither Matias nor Risse could recall which one had transported the evidence to the police station from the motel, it is clear one of them did. Verschoore received the evidence at the police station that night and in all other respects it was properly accounted for. Accordingly, we are unable to find an abuse of the trial court's discretion in admitting the challenged evidence.

~~III. Probable Cause to Support Search Warrant.~~ The defendant also challenged the district court's denial of his motion to suppress evidence seized pursuant to the warrant. We review this constitutional question de novo in light of the totality of the circumstances. *State v. Canas*, 597 N.W.2d 488, 492 (Iowa 1999) (citation omitted).

Doolin argues there was an insufficient nexus between the drug paraphernalia found on the balcony area and room 204 to support a finding of probable cause. In our review of the district court's probable cause finding, we do not make an independent determination of probable cause; we merely decide whether the issuing judge had a substantial basis for concluding probable cause existed. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997) (citation omitted). In determining whether a substantial basis existed, we are "limited to consideration of only that information, reduced to writing, which was actually presented to the [judge] at the time the application for warrant was made." *Id.* at 363. We draw all reasonable inferences to support the judge's finding of probable cause. *Id.* at 364 (citations omitted). Probable cause is simply a nexus between the criminal activity, the items to be seized, and the place to be searched. See *State v. Gathercole*, 553 N.W.2d 569, 574 (Iowa 1996) (citations omitted). The quantum of evidence required to show probable cause is less than would be required for conviction but more than mere suspicion of the defendant's involvement. *Id.* (citation omitted).

In making a probable cause determination, a judge may consider a suspect's history of involvement or reputation in the drug trade. *State v. Padavich*, 536 N.W.2d 743, 748 (Iowa 1995). Room 204 of the Red Roof Inn

was registered in the name of Kyle Doolin's wife. Just nine days prior to the application for this search warrant, police received complaints of "a lot of traffic" at a room at the Comfort Inn in Cedar Rapids rented by Kyle and Vanessa Doolin. The Doolins denied police entry to the room, however, after they checked out, Officer Spicher examined it. He found a syringe and two baggies containing a residue that field-tested positive for cocaine.

Furthermore, on the day the warrant was applied for, a trash bag was found in a common area not far from room 204 at the Red Roof Inn. No guests, other than the Doolins, were staying in that area of the motel. The trash bag contained two single-edged razor blades covered with a white residue that field-tested positive for cocaine and a pop can had been converted into a pipe for smoking. The bag also contained two used syringes and items bearing the Doolins' names. These facts presented a substantial basis for the judge to conclude probable cause existed to search room 204. We affirm on this issue.

III. Evidence of Prior Assaults. Rebecca Griffith, who was found in the motel room with Doolin when the search warrant was executed, testified at his trial. At one point, she was asked about Doolin's relationship with his wife and she replied that she had seen him physically and verbally assault Vanessa. Doolin argues this testimony was irrelevant, constituted improper impeachment, and serves as grounds for a new trial.

The State contends error was not preserved and in response, Doolin argues his trial counsel was ineffective for failing to properly object to the evidence. Even if defense counsel failed to properly preserve error on this issue, we find Doolin was not prejudiced by its admission. See *State v. Laffey*, 600

N.W.2d 57, 60 (Iowa 1999) (stating defendant must show prejudice from trial counsel's failing in order to establish ineffectiveness claim). The remainder of Griffith's testimony focused on the events of February 20, 1998. She provided no details of the assaultive incidents she claimed to have witnessed. She did not express fear of Doolin. The State did not mention the challenged evidence in its closing argument. As the State points out in its brief, in light of the strong evidence against Doolin, "there is little likelihood that he was convicted on the basis of Rebecca Griffith's passing statements about his alleged assaultive conduct toward his wife." We affirm on this issue.

IV. Summary. The trial court did not abuse its discretion in admitting the items seized from Doolin's motel room over his chain of custody objection. The issuing judge had a substantial basis for finding probable cause to support the search warrant for the motel room. Finally, the district court did not err in overruling Doolin's objection to Griffith's testimony that he had assaulted his wife.

AFFIRMED.