IN THE COURT OF APPEALS OF IOWA

No. 6-089 / 95-0439

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

000367

vs.

DAVID MIKEL ROBBINS,

Appellant.

Appeal from the Iowa District Court for Tama County, Thomas L. Koehler and L. Vern Robinson, Judges.

David Robbins appeals his conviction and sentence, following a bench trial, for second-degree theft. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Brent D. Heeren, County Attorney, and Richard R. Vander Mey, Assistant County Attorney, for appellee.

Heard by Habhab, P.J., Huitink, J., and McCartney, S.J.*

*Senior judge from the second judicial district serving on this court by order of the Iowa Supreme Court.

HUITINK, J.

David Robbins appeals his conviction and sentence, following a bench trial, for second-degree theft in violation of Iowa Code sections 714.1(1), 714.2(2), and 714.3 (1993). We affirm.

Following a tip from a confidential informant, the Tama County Sheriff's Department obtained a warrant to search David Robbins' house for tools allegedly belonging to his employer, Gethmann Construction. Several items were found and seized during the search including rakes, brooms, shovels, and various other tools. Robbins was charged with second-degree theft as an habitual offender.

Prior to trial, Robbins filed a motion to suppress contending there was not probable cause for issuance of the warrant which led to the discovery of the seized tools. Specifically, Robbins claimed the information in the warrant was insufficient, unreliable, and did not demonstrate a nexus between corroborated information and any criminal activity in which he was involved. The district court overruled Robbins' motion.

Following a bench trial, Robbins was found guilty as charged and sentenced as an habitual offender to a fifteen-year prison term. He appeals.

Robbins first contends the district court erred in denying his motion to suppress. He claims the search warrant which led to the discovery of the allegedly stolen tools was unsupported by probable cause. Because this claim implicates Robbins'

constitutional right against unreasonable search and seizure, our review is de novo. *See State v. Todd*, 468 N.W.2d 462, 466 (Iowa 1991).

In exercising our de novo review, we recognize that warrants are preferred and accordingly resolve all doubts in favor of the warrant's validity. *State v. Hennon*, 314 N.W.2d 405, 407 (Iowa 1982). We do not make our own independent determination of probable cause, but instead give great deference to the proper determination of probable cause by the judge or magistrate. *State v. Bishop*, 387 N.W.2d 554, 558 (Iowa 1986). Our proper inquiry is whether the magistrate or judge had a "'substantial basis for. . . conclud[ing] that probable cause existed.'" *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983)).

The test for probable cause is whether a person of reasonable prudence would believe a crime was committed on the premises or that evidence of a crime could be located there. *Todd*, 468 N.W.2d at 466. While probable cause requires more than mere suspicion of criminal activity, there is a large difference between proof of guilt and proof of probable cause. *State v. Leto*, 305 N.W.2d 482, 485 (Iowa 1981). In cases where a citizen informant is involved, a common sense analysis of the totality of the circumstances must be applied to assess the reliability of the information. *State v. Niehaus*, 452 N.W.2d 184, 189 (Iowa 1990) (citing *Gates*, 262 U.S. at 238, 103 S. Ct. at 2332, 76 L. Ed. 2d at 548).

Our review of the record reveals that Tama County Deputy Sheriff Daniel Wilkens submitted a twelve-page search warrant application which included Wilkens' sworn statement explaining his basis for wanting to search Robbins' home The statement outlined a conversation Wilkens had with a Gethmann employee who received a call from an informant stating that Robbins was in possession of tools stolen from Gethmann Construction The statement also said the Gethmann employee was aware some tools were missing from Gethmann, that Robbins would have had access to these tools, and that the tools would be marked with green paint for identification as Gethmann property The statement further described Wilkens' subsequent conversation with the confidential informant in which the informant specifically described the tools Robbins had in his possession. Finally, the warrant application also contained a statement by the Gethmann employee who had contacted Wilkens and an "informant's attachment " This attachment documented the specific items of information Wilkens had received from the informant and included a description of how and when that information had been corroborated

We find the information contained in the warrant application sufficient to support the magistrate's probable cause determination. The items to be seized were specifically described and identifiable through the green markings discussed by the informant The application stated these items would be found in Robbins' home and that they were items suspected to be missing from Gethmann Construction These

factors provided the magistrate with substantial basis for concluding probable cause existed. The district court did not err in denying Robbins' motion to suppress.

Robbins next contends substantial evidence does not support his conviction for second-degree theft. He claims the State did not prove beyond a reasonable doubt that (1) the value of the tools in his possession was in excess of $1000 and (2) he intended to permanently deprive Gethmann of the tools found in his home. *See* Iowa Code § 714.1(1) and 741(2)(2).

In reviewing Robbins' sufficiency claim, our review is for correction of errors of law. Iowa R. App. P. 4. This court will reverse a conviction only if the verdict is not supported by substantial evidence or is clearly against the weight of the evidence. *State v. McGrew,* 515 N.W.2d 36, 37-38 (Iowa 1994). In determining whether substantial evidence supports a conviction, we examine all of the evidence in the light most favorable to the State, without regard to contradiction or inconsistencies, and assisted by all reasonable inferences. *State v. Propp*, 532 N.W.2d 784, 785 (Iowa 1995). Substantial evidence is evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.*

Robbins claims the State failed to show the tools in his possession had a value in excess of $1000. A Gethmann employee, however, testified the total value of the Gethmann tools recovered from Robbins was in excess of $1700. The employee identified each tool and gave his opinion as to its value, basing his testimony on actual

invoice and his knowledge of the replacement cost. This testimony, along with the State's exhibit listing the tools recovered from Robbins' home and their approximate value, provide sufficient evidence to support the district court's finding the tools exceeded $1000 in value.

Substantial evidence also supports the district court's conclusion Robbins intended to permanently deprive Gethmann of the tools found in his possession. The record shows that a large number of tools were found in Robbins' home and that he had possessed them for several weeks. Moreover, many of the items seized from Robbins' home were found in duplicate and were being stored in his basement. Finally, the evidence also shows someone had attempted to remove Gethmann's identification markers from some of the recovered items. Based on these factors, it was reasonable for the court to conclude Robbins was not borrowing the tools found in his home, but instead intended to permanently deprive Gethmann of this property.

In summary, we find the district court did not err in denying Robbins' motion to suppress based on lack of probable cause. We further find substantial evidence supports the district court's conclusion Robbins intended to permanently deprive Gethmann Construction of property valued in excess of $1000. We affirm.

AFFIRMED.