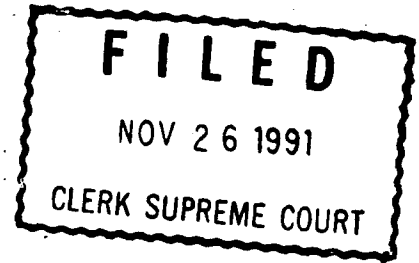


IN THE COURT OF APPEALS OF IOWA

No. 1-384 / 90-1346



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RON CAREY,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Washington County, Robert Bates, Judge.

Ron Carey appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Philip B. Mears of Mears Law Office, Iowa City, for appellant.

Bonnie J. Campbell, Attorney General; Thomas S. Tauber, Assistant Attorney General; and Gerald N. Partridge, County Attorney, for appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

Ron Carey was charged with manufacturing a schedule I controlled substance, marijuana. This stemmed from police officers' discovery of growing marijuana plants, marijuana seeds, scales, a book on the cultivation of marijuana, and two baggies of marijuana during a search of the applicant's mobile home. The search warrant was based, in part, on information from postal employees indicating misdelivery of a package addressed to "Finger Fairy, RR 2, Wayland, Iowa" which contained a green leafy substance and seeds.

A mail carrier stated another person had informed him Carey was the "Finger Fairy." The head county jailer corroborated this identification based on his custody of Carey in 1978. In addition, a deputy sheriff, who had on-the-job training in the area of narcotics, indicated the applicant's property contained a structure conducive to the growing of marijuana. On the basis of this information, the sheriff's department sought and obtained a search warrant from a magistrate.

After Carey was charged, he filed a motion to suppress the evidence obtained from the search. He claimed there was no probable cause for the issuance of the search warrant. The district court denied the motion. Apparently, Carey's counsel at this criminal trial had an understanding with the prosecutor to allow the introduction of evidence obtained as a result of the search warrant. The agreement provided Carey's rights on appeal would still

be preserved. This understanding was not made a part of the trial court record. During the trial, Carey did not object to the introduction of this evidence.

Carey appealed his conviction. He claimed the items seized during the search should have been suppressed because the search warrant was issued without probable cause. On June 25, 1985, this court affirmed the applicant's conviction. It found error was not preserved on the applicant's claim because no trial objection was made to the introduction of the evidence. See State v. Carey, No. 84-1583. (Iowa App. 1985).

On September 6, 1988, the applicant filed an application for postconviction relief. He sought to challenge the legality of the search warrant on the basis of lack of probable cause. Carey reasserted the issue rejected by this court on the basis trial counsel was ineffective in failing to preserve error. He subsequently amended the application to assert the record was adequate to preserve the issue for appeal.

On August 10, 1990, the district court entered a ruling dismissing the application for postconviction relief. The district court concluded the applicant failed to show he was deprived of effective assistance of counsel. Carey appeals from this dismissal.

Ordinarily, our review of postconviction relief proceedings is for errors of law. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction

petitioner asserts violation of constitutional safeguards--such as ineffective assistance of counsel--we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. Id.

Initially, we point out Carey had the same counsel both at trial and on appeal. Thus, any issue of ineffective assistance at either level is preserved.

The critical question here is whether trial counsel was ineffective in failing to preserve error on the denial of the suppression motion. In our 1985 unpublished opinion, we found trial counsel's failure to object to the admission of evidence waived the issue on appeal. However, the Iowa Supreme Court, in State v. Wright, 441 N.W.2d 364, 366 (1989), determined that an adverse ruling on a suppression motion is adequate of itself to preserve error. In doing so, the supreme court referred back to a 1976 ruling, State v. Hilpipre, 242 N.W.2d 306 (Iowa 1976), which held:

Finally, an adverse ruling on a pretrial suppression motion will suffice to preserve error for appellate review even though there is no attendant trial objection to the controverted material when offered in evidence.

Id. at 309.

We have reviewed the appellate briefs for Carey's direct appeal. Neither Carey nor the State cited to Hilpipre on the preservation issue. Further, there is evidence the prosecutor and Carey's trial counsel entered into an agreement after the district court's denial of the

suppression motion. That agreement indicated Carey's rights on appeal would be preserved and Carey's attorney would not object to the introduction of the seized evidence at trial. Carey relied on this agreement in not objecting at trial to the evidence.

We turn to the merits of the case. We need not decide the validity of the search warrant itself. We determine the search was valid under the good faith exception to the warrant requirement. The United States Supreme Court, in United States v. Leon, held police officers' good faith reliance on an otherwise invalid warrant would preclude suppression of the evidence seized pursuant to the warrant. 468 U.S. 897, 920-22, 104 S. Ct. 3405, 3419-20, 82 L. Ed. 2d 677, 697-98 (1984).

We have reviewed the documents submitted by the deputy in his application for the search warrant. The documentation in support of the warrant is extensive. The facts known to the deputy are plainly set forth for the magistrate to review. There is no apparent attempt at concealment. The deputy appears to have relied in good faith on the warrant.

We determine the trial court correctly denied Carey's suppression motion. Our holding is premised on the good faith exception to the warrant requirement. We therefore affirm the trial court's dismissal of Carey's postconviction application.

AFFIRMED.