

IN THE COURT OF APPEALS OF IOWA

No. 7-145 / 96-0601

000417

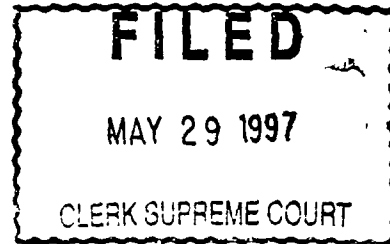
STATE OF IOWA,

Plaintiff-Appellee,

vs.

DENNIS HARLAN DIEKEN,

Defendant-Appellant.



Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan (motion to suppress) and Thomas N. Bower (trial), Judges.

Dennis Dieken appeals from his conviction, following a bench trial, for possession of a controlled substance, in violation of Iowa Code section 124.401(3) (1995). **AFFIRMED.**

Michael M. Pedersen of Martin, Nutting, Miller, Pedersen, Kelsen & Pieters, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

SACKETT, P.J.

Defendant-appellant Dennis Dieken was convicted of possession of a controlled substance in violation of Iowa Code section 124.401(3) (1995) following a search of his apartment. Defendant claims there was not a substantial basis for issuing the search warrant to search his apartment where the named informant listed in the warrant as a citizen informant had been arrested and was incarcerated. Defendant contends the informant was not reliable and the fruits of the search should be suppressed. We affirm.

The informant, Amy Rawhouser, was stopped for a traffic violation and arrested for possession of methamphetamine. Questioned by the police, she said she bought the methamphetamine earlier in the evening from a person named Deek. She described the location of Deek's apartment and how to get there. She also related Deek had a roommate named Denny. She said Deek's first name was Dennis and he had some of the drug left in a bag after he gave some to her.

This information was put in affidavit form and attached to an application for a search warrant to search the apartment of Dennis Dieken and Dennis Starbeck. The affidavit stated an investigator had gone to the place described by Rawhouser and saw the names of Dieken and Starbeck on the mailbox. The affidavit also stated criminal records showed Dieken had been arrested twice for narcotics violations.

The district court issued the search warrant finding the affidavit, addendum, and Rawhouser's voluntary statement provided sufficient probable cause to support

its issuance. The court found Rawhouser's statement to be credible and reliable and that the police corroborated the information.

Following execution of the search warrant, Dieken was arrested for possession of cocaine. He waived his right to a jury, was tried by the court, and was found guilty of possession of a controlled substance. The court sentenced him to a term not to exceed 120 days.

Dieken contends the court erred in giving Rawhouser the same presumption of reliability as is afforded a citizen informant. He claims Rawhouser had all the indicia of being an unreliable and untruthful informant. Dieken also claims the police did not sufficiently corroborate Rawhouser's information; they merely confirmed innocent or neutral facts.

The State contends, among other things, Dieken has failed to preserve error on his claim because his motion to suppress was not timely filed with the district court. We address the motion on its merits without considering the State's preservation of error claim.

Defendant challenges the search warrant on constitutional grounds, so we review de novo the facts and circumstances which led to its issuance. *State v. Weir*, 414 N.W.2d 327, 329 (Iowa 1987); *State v. Seiler*, 342 N.W.2d 264, 266 (Iowa 1983). We are limited in our review to a consideration of only that information, reduced to writing, which was actually presented to the magistrate at the time

application for the warrant was made. *State v. Seager*, 341 N.W.2d 420, 426 (Iowa 1983).

The State agrees showing Rawhouser as a citizen informant was a mischaracterization. It contends under the facts of this case that is not dispositive, and we agree. A citizen informant is not reliable *per se* and information he or she provides is assessed under the totality of the circumstances. *State v. Niehaus*, 452 N.W.2d 184, 189 (Iowa 1990).

The affidavit alerted the judge to the fact Rawhouser got drugs from the premises to be searched. Even though the magistrate need not make express findings of credibility when a search warrant affidavit relies on hearsay from a named informant, factors such as the veracity and basis of knowledge of such an informant are still relevant, if not controlling, when a reviewing court assesses "the totality of the circumstances." *See Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983); *Weir*, 414 N.W.2d at 331; *State v. Sykes*, 412 N.W.2d 578, 582 (Iowa 1987).

The need to assess the credibility of the informant is more important where, as here, the informant has been arrested and may have a personal motivation for seeking the favor of law enforcement. *See State v. Drake*, 224 N.W.2d 476, 478 (Iowa 1974).

Factors which support the finding Rawhouser was reliable include: (1) The facts detailed by her as to the location of the apartment, the details of its interior, and

the first names or nicknames of the two men there. *See State v. Easter*, 241 N.W.2d 885, 887 (Iowa 1976). (2) Her corroboration of the detail of her description of Dennis Dieken to an officer who knew Dieken as well as an officer's visit to the apartment described by Rawhouser to find the two men's names on the mailbox. *See Niehaus*, 452 N.W.2d at 190. (3) Additionally, she directly witnessed the criminal activity; she saw defendant in possession of the drugs and paraphernalia and he sold the substance to her. *See Drake*, 224 N.W.2d at 479.

On our review, we find the magistrate's finding Rawhouser was credible was sufficiently supported.

AFFIRMED.