FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )
Plaintiff-Appellee, )
vs. )
ROBERT ARTHUR ALLEN, )
Defendant-Appellant.

Filed January 30, 1981

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Appeal from Black Hawk District Court - Peter Van Metre, Judge.

Defendant appeals from his conviction of possession of a controlled substance with intent to deliver in violation of section 204.401(1)(a), The Code 1979, and from his conviction of possession of a controlled substance in violation of section 204.401 (3), The Code 1979. - AFFIRMED.

C. A. Frerichs, Waterloo, Iowa, for defendant-appellant

Thomas J. Miller, Attorney General of Iowa and Douglas F. Staska, Assistant Attorney Gerneral of Iowa, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction of possession of a controlled substance with intent to deliver in violation of section 204.401(1)(a), The Code 1979, and from his conviction of possession of a controlled substance in violation of section 204.401 (3), The Code 1979. We affirm both convictions.

On July 29, 1978, a confidential informant told Detective Craig Penrose of the Waterloo Police Department that defendant was dealing cocaine in the J & H Cafe in Waterloo, Iowa. With the assistance of other officers Detective Penrose set up a surveillance around the J & H Cafe, in which he observed defendant playing a pinball machine. Detective Penrose entered the cafe and arrested defendant without a warrant. Contraband, including cocaine and marijuana, was found in defendant's possession in warrantless searches at the time of arrest and later at the police station. Defendant was charged with possession of a controlled substance with intent to deliver in violation of section 204.401(1)(a), The Code 1979, and with possession of a controlled substance in violation of section 204.401(3), The Code 1979. Prior to trial defendant moved to suppress the contraband. A hearing was held and the trial court overruled defendant's motion. In a trial without a jury defendant was convicted of both charges.

Defendant contends that his arrest was unreasonable in violation of his Fourth Amendment constitutional rights. Consequently, our review is de novo, and we independently evaluate the circumstances of this case in totality, Bettuo v. Pelton, 260 N.W.2d 423, 425 (Iowa 1977).

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search es and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Fourth Amendment protections are enforceable against the states through the due process clause of the Fourteenth Amendment to the United States Constitution. Mapp v. Ohio, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed.2d 1081, 1090 (1961).

I. Defendant contends that because he was arrested for an investigatory purpose on less than probable cause, the arrest was invalid. See Dunaway v. New York, 442 U. S. 200, 215-16, 99 S. Ct. 2248, 2258 60 L. Ed.2d 824, 838 (1979): Brown v. Illinois, 422

U.S. 590, 605, 95 S. Ct. 2254, 2262, 45 L. Ed.2d 416, 428 (1975). Therefore, according to defendant, the contraband seized as a result of the arrest is inadmissible in court, State v. Smith, 178 N.W.2d 329, 332 (Iowa 1970), and the trial court erred in overruling defendant's motion to suppress the contraband.

We conclude that defendant's arrest was made with probable cause and without an investigative motive. Where probable cause of drug possession is established by information provided by a confidential informant, the officer making the probable cause determination must be informed of some of the underlying circumstances from which the informant concluded that the drugs were where he claimed they were and must be able to state some of the underlying circumstances justifying his belief in the informant's credibility. See McCray v. Illinois, 386 U.S. 300, 304, 87 S. Ct. 1056, 1059, 18 L. Ed. 2d 62, 67 (1967); Aguilar v. Texas, 378 U.S. 108, 114-15, 84 S. Ct. 1509, 1514, 12 L. Ed.2d 723, 729 (1964). Detective Penrose was informed of the underlying circumstances from which the confidential informant concluded that defendant possessed narcotics, when the informant told Penrose that he had observed defendant earlier in the J & H Cafe making a $25 cocaine sale and in possession of other foils of cocaine. Because Detective Penrose personally had known the confidential informant for ten years and because the informant had given reliable information to Penrose and other members of the Waterloo Police Department over a period of years, as of the time of making the probable cause determination Detective Penrose was capable of stating the underlying circumstances justifying his belief in the informant's credibility. The facts and circumstances within Detective Penrose's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing defendant had committed or was committing a drug offense. Therefore, Detective Penrose had probable cause to arrest defendant, Beck v. Ohio, 379 U.S. 89, 91, 85 S. Ct. 223, 225, 13 L. Ed.2d 142, 145 (1964).

Defendant contends that where, as in the instant case, an officer relies solely on information supplied by an informant and does not observe any criminal activity himself, he does not have probable cause to make an arrest. See Draper v. United States, 358 U. S. 307, 314-15, 324-25. 79 S. Ct. 329, 333-34, 339, 3 L. Ed.2d 327,333, 338-39 (1950) (Douglas, J., dissenting). However, defendant's contention is unsuccessful in light of the fact that in McCray v. Illinois, 386 U.S. 300, 87 S. Ct. 1056, 18 L. Ed.2d 62

(1967) and Draper v. United States, 358 U.S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959) the United States Supreme Court held that there was probable cause to make drug arrests based solely on information supplied by police informants.

Our de novo review discloses that no impermissible motive prompted the arrest of defendant. Probable cause justified defendant's arrest. The only evidence that an improper motive prompted the arrest was the following testimony of Detective Penrose:

> Q: Going back to this fact in your own mind you believed that he had drugs on him at the present time and you arrested him, wasn't your arrest for the purpose of verifying whether he had those drugs on him?
>
> A: I guess that it would be.

We note that the inevitable result of arresting and searching a suspect based on probable cause that he unlawfully possessed concealed drugs is to verify whether the defendant does possess the drugs. At any rate, the evidence is strong that Detective Penrose had a proper motive for making the arrest. Detective Penrose gave the following testimony;

> Q. [I]n your own mind what were you arresting him for?
>
> A. Possession of a controlled substance with intent to deliver.
>
> Q. When you made your arrest of Mr. Allen, that was not a subtrofuge [sic] on your part just to gain an opportunity to search him?
>
> A. No sir.
>
> . . . .
>
> Q. So, . . . you arrested him. . . to prevent him from commiting a crime in the future, preventive law enforcement?
>
> A. I guess. He was arrested because of the information that I was given that he had a quantity of cocaine and was selling it.

We conclude that the testimony as a whole discloses that what motivated Detective Penrose to arrest defendant was that he had probable cause for believing defendant had committed and was committing an offense. The trial court therefore did not err in overruling defendant's motion to suppress the contraband evidence obtained as a result of the arrest.

II. Defendant points out that the confidential informant in the instant case would

not testify against defendant. Defendant states that the standards applicable to the factual basis supporting an officer's probable cause determination at the time of a challenged arrest are at least as stringent as the standards applied with respect to a magistrate's assessment. Whiteley v. Warden of Wyoming Penitentiary, 401 U.S. 560, 566, 91 S. Ct. 1031, 1036, 28 L. Ed.2d 306,312 (1971). Defendant contends that a magistrate could not have issued a valid warrant for defendant's arrest, and similarly Penrose's arrest of defendant was invalid. Defendant bases his contention on the proposition that a magistrate may not reasonably issue an arrest warrant solely on the basis of information supplied by a confidential informant who the magistrate knows will not testify against the arrestee. Defendant cites no authority in support of this proposition. Failure to cite authority in support of an issue may be deemed a waiver of that issue. State v. Potts, 240 N.W.2d 654, 656 (Iowa 1976); State v. King, 225 N.W.2d 337, 343 (Iowa 1975); Iowa R. App. P. 14(a) (3). We deem the issue waived.

Even on the merits we reject defendant's argument. An arrest is valid if there is probable cause to make it. Draper, 358 U.S. at 310-11, 79 S. Ct. at 331-32, 3 L. Ed.2d at 330. All a magistrate need know in order to validly issue an arrest warrant is whether there is probable cause to believe that an offense has been or is being committed. See id. The United States Supreme Court has recognized that an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, so long as the magistrate is informed of some of the underlying circumstances supporting the affiant's conclusions and his belief that any informant involved whose identity need not be disclosed was credible or his information reliable. United States v. Ventresca, 380 U.S. 102, 108, 85 S. Ct. 741, 745-43, 13 L. Ed.2d 684, 688-89 (1965).

AFFIRMED.