

IN THE COURT OF APPEALS OF IOWA

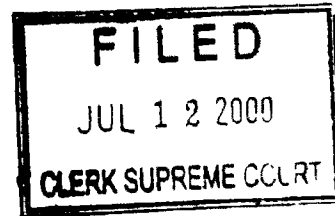
No. 0-363 / 99-2045

Filed July 12, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROGER FREDERICK GROVER,
Defendant-Appellant.



Appeal from the Iowa District Court for Franklin County, Bryan H. McKinley, Paul W. Riffel, and Stephen Carroll, Judges.

Defendant appeals from the judgment and sentence entered upon the district court's finding that he was guilty of failure to affix a drug tax stamp in violation of Iowa Code section 453B.12 (1997). **REVERSED AND REMANDED.**

DeDra Schroeder of the Schroeder Law Office, Charles City, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, and Brent Symens, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

VAITHESWARAN, J.

The district court adjudged Roger Grover guilty of failure to affix a drug tax stamp to a taxable substance (marijuana), in violation of Iowa Code section 453B.12. On appeal, Grover contends a search warrant which yielded the illegal drugs was not supported by probable cause. We agree.

I. Background Facts and Proceedings

Affidavits in support of the warrant application reveal the following facts: On April 7, 1999, members of the Hampton Police Department learned that a neighboring county had issued a warrant for the arrest of Kenneth Irwin. Officer Ray Beltran was advised to watch for a specified vehicle in which Irwin was a passenger. At 12:49 P.M. that day, Beltran saw the vehicle parked near Grover's house. About eight minutes later, he saw the vehicle pull away from the house with two occupants. Beltran stopped the vehicle, identified the driver as Larry Dean Jones, Jr. and explained he pulled the car over because of the outstanding warrant for Irwin's arrest. At this juncture, Beltran noticed a plastic bag in Jones's hand and asked him what he was holding. Jones resisted showing Beltran what was in his hands. Instead, he placed the car in gear and left the scene. Beltran stopped the car after a brief pursuit. A pat down search of Jones yielded three baggies of what was believed to be methamphetamine. Jones was arrested. Irwin also was arrested on the outstanding warrant. An inventory search of the vehicle turned up drug paraphernalia and a cellular phone. Jones's belongings included \$800 in cash and a record of individual names, followed by cash amounts.

At the police station, Hampton Police Chief S.F. Nelson asked Irwin where he had been just before he was arrested. Irwin said he was last at the Grover residence for approximately ten minutes. Nelson also asked him when he last took any drugs. Irwin responded he used methamphetamine the night before.

Later on April 7, 1999, the State sought and obtained a search warrant for drugs and drug-related items at the Grover home. Officers seized seven bags of marijuana as well as additional marijuana in a cigar box, drug paraphernalia, propane and butane gas torches, lighters, a scale, a caller identification box, and \$2045 in cash.

On April 16, 1999, the State charged Grover with possession of a controlled substance with intent to deliver, in violation of Iowa Code section 124.401(1)(d) (1997) and failure to affix a drug tax stamp, in violation of Iowa Code section 453B.12. Grover moved to suppress evidence seized from his home. At the hearing on Grover's motion to suppress, Nelson testified he had seen Grover "in the last several years" with people who were charged with and/or convicted of drug related crimes. The district court denied Grover's motion.

The court later granted the State's motion to dismiss the possession charge and proceeded to hear evidence on the tax stamp charge. Following trial, the court adjudged Grover guilty, sentenced him to a suspended prison term not to exceed five years, and placed him on probation for five years. This appeal followed.

II. Suppression Ruling

Grover asserts the search warrant executed on his home was not supported by probable cause. Under the Fourth Amendment to the United

States Constitution, ". . . 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." "The test for probable cause is whether a reasonably prudent person would believe that a crime has been committed on the premises to be searched or evidence of a crime is being concealed there." *State v. Green*, 540 N.W.2d 649, 655 (Iowa 1995). There must be "a nexus between criminal activity, the things to be seized and the place to be searched." *Id.* (quoting *State v. Weir*, 414 N.W.2d 327, 330 (Iowa 1987)). While our review is de novo, we do not make an independent determination of probable cause, but decide whether the judge issuing the warrant had a substantial basis for concluding probable cause existed. *Id.* In determining whether a substantial basis exists, 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." *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997) (quoting *State v. Godbersen*, 493 N.W.2d 852, 855 (Iowa 1992)).

The district court concluded a "reasonable inference did exist at the time of the application; that either a sale or purchase of drugs occurred at the Grover residence." The court reasoned: (1) Jones's brief stop at Grover's house was consistent with drug trafficking and (2) Jones's vehicle was stopped minutes after leaving Grover's house and drugs as well as items consistent with drug trafficking were found. We cannot agree that these facts amounted to probable cause for issuance of the search warrant on Grover's home. Nothing retrieved from either Jones or his car tied Grover to drugs or drug trafficking. Additionally, Irwin's

statement to the police chief did not implicate Grover in drug use or drug trafficking.

We are left with evidence that Jones's vehicle was parked in front of Grover's house and the police chief's assertion that "drug traffickers are known to make brief stops at residences for the purpose of purchasing or delivering illegal substances." Our courts have considered an officer's expert opinion "an important factor" in reviewing a warrant application. *See State v. Godbersen*, 493 N.W.2d 852, 856 (Iowa 1992). However, the opinion must rest on a sufficient factual foundation. That foundation is lacking here. Accordingly, we conclude this evidence did not furnish a substantial basis for the district court's ruling that the search warrant was supported by probable cause. In light of our conclusion, we need not address the remaining issues raised by Grover. We reverse the district court's denial of Grover's motion to suppress and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.