

IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-1052

STATE OF IOWA,
Plaintiff-Appellee,

vs.
PATRICK BRACY,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MARSHALL COUNTY
THE HONORABLE JOHN A. HANEY, JUDGE

APPELLEE'S BRIEF

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FINAL

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**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

**I. The Warrant for the Search of Bracy’s Residence Is
Supported by Probable Cause.**

Authorities

Alabama v. White, 496 U.S. 325 (1990)
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State v. Tyler, 830 N.W.2d 288 (Iowa 2013)
State v. Walshire, 634 N.W.2d 625 (Iowa 2001)
State v. Weir, 414 N.W.2d 327 (Iowa 1987)
U.S. Const. amend. IV
Iowa Const. art. I, § 8

ROUTING STATEMENT

This case can be decided based on existing legal principles. Therefore, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is a direct appeal by the defendant-appellant Patrick Bracy from his convictions on eight counts: possession of more than five grams of methamphetamine with intent to deliver, second offense, in violation of Iowa Code sections 124.206, 124.401(1)(b)(7), 124.411, and 124.413 (Count I); possession of a controlled substance (psilocybin and/or psilocyn), as a third offense and as a habitual offender, in violation of Iowa Code sections 124.204, 124.401(5), 902.8, and 902.9(1)(c) (Count II); possession of a controlled substance (marijuana), as a third offense and as a habitual offender, in violation of Iowa Code sections 124.401(5), 902.8, and 902.9(1)(c) (Count III); possession of a controlled substance (amphetamine), as a third offense and as a habitual offender, in violation of Iowa Code sections 124.206, 124.401(5), 902.8, and 902.9(1)(c) (Count IV); possession of a controlled substance (alprazolam), as a third offense and as a habitual offender, in violation of Iowa Code sections 124.210,

124.401(5), 902.8, and 902.9(1)(c) (Count V); failure to affix a drug tax stamp, as a habitual offender, in violation of Iowa Code sections 453B.3, 453B.1(3)(a)(1) and (10), 453B.12, 902.8, and 902.9(1)(c) (Count VI); prohibited acts, i.e. keeping a drug house, in violation of Iowa Code section 124.402(1)(e) and (2)(a) (Count VII); and, unlawful possession of a prescription drug (cyclobenzaprine), in violation of Iowa Code section 155A.21 (Count VIII).¹ Sent. Order; App. 24-30.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

In August of 2018, Marshalltown police detective Dane Bowermaster received tips from two criminal defendants that Patrick Bracy was dealing large amounts of methamphetamine. Warrant Appl., Attachment A; App. --. Bracy was arrested on an outstanding warrant on September 4, 2018. After his arrest, two concerned citizens informed police that Bracy was dealing methamphetamine,

¹ Count IX of the trial information alleged that the sentences on Counts II through VII were subject to enhancement under Iowa Code sections 902.8 and 902.9(1)(c). Trial Info.; App. 5.

that he had been in possession of a large quantity of methamphetamine a few days before his arrest, and that when he was arrested, Bracy left behind pound-quantities of methamphetamine. Warrant Appl., Attachment A; App. --. Patrick Bracy lived with his father, Donald Bracy. Minutes of Testimony; Conf. App. 4-55.²

Bracy made two calls from jail in which he made incriminating statements. On September 10, 2018, Patrick Bracy called his father, Donald Bracy. Patrick told his father, “don’t let nothing happen to my safe man. There is a lot of money in that safe. That’s where everything is.” Warrant Appl., Attachment A; App. --. Bracy had no apparent legitimate source of cash; he had told officers at the time of his arrest that he was unemployed. Warrant Appl., Attachment A; App. --.

In the second call, Bracy called Marie Vargas Cervantes, the woman he had been with when he was arrested on the outstanding warrants. She asked Bracy, “do you know how much shit I have gone through to get your debt paid off?” Bracy responded, “it’s like I told

² Bracy case was tried to the bench on the minutes of testimony. Findings of Fact, Conclusions of Law, and Verdict; Conf. App. 83-96.

him, all that shit is right there from my dad[']s house.” Warrant Appl., Attachment A; App. --.

Dane Bowermaster, a detective with the Marshalltown Police Department, assigned to the Mid Iowa Drug Task Force, checked Bracy’s criminal history and learned that he had two prior drug convictions. In August of 2014, Bracy was convicted of possession of a controlled substance with intent to deliver; in January of 2017, he was convicted of possession of methamphetamine. Det. Bowermaster knew through his experience that it is common for drug dealers to keep drugs and cash in their residences. In his experience, people often refer to methamphetamine as “shit.” Warrant Appl., Attachment A; App. --.

Based on this information, Det. Bowermaster obtained a warrant for the search of Bracy’s residence, outbuildings, and vehicles. Officers found a safe in the house. The safe contained: defendant’s identity card and social security card; three bags of methamphetamine; cell phones; a digital camera with a SD card; a 16 gigabyte SD card; a silver spoon; a digital scale with residue; a thumb drive; a baggy containing psilocybin mushrooms; a pill bottle containing 37 dosage units of the prescription drug cyclobenzaprine;

a clear container with marijuana inside; and, a substance identified as a possible drug-cutting agent. More drugs were located in the garage. There, officers found methamphetamine, marijuana, eight dosage units of alprazolam, and six dosage units of amphetamine. The total amount of methamphetamine seized was 235.99 grams (approximately 8.4 ounces). Findings of Fact, Conclusions of Law, and Verdict; Conf. App. 83-96.

Additional facts will be discussed in the State's argument, below.

ARGUMENT

I. The Warrant for the Search of Bracy's Residence Is Supported by Probable Cause.

Preservation of Error

The State does not challenge error preservation.

Scope and Standard of Review

Patrick Bracy challenges the district court's denial of his motion to suppress evidence obtained during the execution of a search warrant at his home and garage on the ground that the search violated the state and federal constitutions. A challenge to the denial of a motion to suppress on federal or state constitutional grounds is reviewed de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011).

This review requires an independent evaluation of the totality of the circumstances as shown by the entire record. *Id.* (citing *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001)). While the Court gives deference to the district court's factual findings, it is not bound by them. *Id.* (citing *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007)).

Merits

Patrick Bracy challenges the district court's denial of his motion to suppress evidence found during the execution of a search warrant at his home and garage. He contends that information supplied by confidential informants and included in the warrant application was not shown to be reliable and, without that information, the warrant was not supported by probable cause. His challenge to the district court's suppression ruling should be rejected. Although this case presents a close case, it should be resolved in favor of upholding the search warrant.

The Fourth Amendment to the United States Constitution protects persons from unreasonable searches and seizures and requires a search warrant to be supported by probable cause. U.S. Const. amend. IV. The Iowa Constitution similarly protects persons from unreasonable searches and seizures. Iowa Const. art. I, § 8.

State v. Baker, 925 N.W.2d 602, 610 (Iowa 2019). Bracy contends that there was not probable cause to support the warrant issued in his case and, therefore, the search was unlawful under the state and federal constitutions. The Iowa Court takes “an independent approach in the application of our state constitution.” *State v. Moore*, 2017 WL 1733226, *1 (Iowa Ct. App. May 3, 2017) (quoting *State v. McIver*, 858 N.W.2d 699, 702 (Iowa 2015)). However, when, as here, the defendant does not advocate for an independent approach, the Court ordinarily applies the substantive federal standards, but reserves the right to apply the standard in a fashion different from federal precedent. *Moore*, 2017 WL 1733226, at *1; *McIver*, 858 N.W.2d at 702; *State v. Tyler*, 830 N.W.2d 288, 291–292 (Iowa 2013).

In reviewing whether a warrant is supported by probable cause, the Court considers only “that information, reduced to writing, which was actually presented to the [judge] at the time the application for warrant was made.” *State v. McNeal*, 867 N.W.2d 91, 100 (Iowa 2015) (cleaned up). The test to determine whether there is probable cause to issue a search warrant is

whether a person of reasonable prudence would believe a crime was committed on the premises to be searched or evidence of a

crime could be located there.” Probable cause to search requires a probability determination that “(1) the items sought are connected to criminal activity and (2) the items sought will be found in the place to be searched.

McNeal, 867 N.W.2d at 99–100 (cleaned up).

In making that determination, the judge “is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information,’ probable cause exists.” *State v. Baker*, 925 N.W.2d 602, 613 (Iowa 2019) (quoting *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997), in turn quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). The amount of evidence needed to support probable cause is less than is required to support a conviction, but more than mere suspicion of criminal activity is needed. *State v. Robbins*, 2018 WL 1433525, *2 (Iowa Ct. App. Mar. 21, 2018) (citing *State v. Weir*, 414 N.W.2d 327, 330 (Iowa 1987)).

The Court indulges a strong preference for searches conducted pursuant to a warrant. Therefore, when police obtain a warrant the Court does not strictly scrutinize the sufficiency of the underlying affidavit. *McNeal*, 867 N.W.2d at 99-100 (citing *Gates*, 462 U.S. at 236).

As the Supreme Court of the United States has explained:

If the affidavits submitted by police officers are subjected to the type of scrutiny some courts have deemed appropriate, police might well resort to warrantless searches, with the hope of relying on consent or some other exception to the warrant clause that might develop at the time of the search. In addition, the possession of a warrant by officers conducting an arrest or search greatly reduces the perception of unlawful or intrusive police conduct, by assuring “the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.”

McNeal, 867 N.W.2d at 100 (quoting *Gates*, 462 U.S. at 236) (other citations omitted).

For those reasons, our Court does not independently determine probable cause but merely decides “whether the issuing judge had a substantial basis for concluding probable cause existed.” *McNeal*, 867 N.W.2d at 100 (citing *Gogg*, 561 N.W.2d at 363). In making that determination, the Court does not interpret the affidavit of probable cause in a hyper-technical, manner. *McNeal*, 867 N.W.2d at 100.

Instead, the Court draws “all reasonable inferences to support the judge's finding of probable cause and give[s] great deference to the judge's finding.” *McNeal*, 867 N.W.2d at 100 (cleaned up); accord *Gates*, 462 U.S. at 236. In close cases, the Court decides in favor of upholding the validity of the warrant. *McNeal*, 867 N.W.2d at 100; *Gogg*, 561 N.W.2d at 364. A search conducted pursuant to a

warrant may be constitutional even though one conducted without a warrant would be invalid. *State v. Leto*, 305 N.W.2d 482, 485 (Iowa 1981) (citing *United States v. Ventresca*, 380 U.S. 102, 106 (1965) (“(a)lthough in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants”)).

Bracy contends that the search warrant affidavit did not establish the reliability of the information supplied by the confidential sources and that, without that information, the affidavit did not establish probable cause. The warrant application contains information supplied by two concerned citizens and two criminal defendants. When assessing the credibility of informants, the Court has relied on the following factors: (1) “whether the informant was named,” (2) “the specificity of facts detailed by the informant,” (3) “whether the information furnished was against the informant's penal interest,” (4) “whether the information was corroborated,” (5) “whether the information was not public knowledge,” (6) “whether the informant was trusted by the accused,” and, (7) “whether the informant directly witnessed the crime or fruits of it in the possession

of the accused.” *Robbins*, 2018 WL 1433525, at *2 (quoting *State v. Weir*, 414 N.W.2d 327, 332 (Iowa 1987)).

“A citizen informant is ordinarily defined as a person who is a witness to or a victim of a crime.” *State v. Sallis*, 2019 WL 1055779, *3 (Iowa Ct. App. Mar. 6, 2019) (quoting *State v. Niehaus*, 452 N.W.2d 184, 189 (Iowa 1990)). The Court “recognize[s] a rebuttable presumption that ‘information imparted by a citizen informant in generally reliable.’” *McNeal*, 867 N.W.2d at 100–101 (quoting *State v. Walshire*, 634 N.W.2d 625, 629 (Iowa 2001)).

However, an anonymous tip alone does not ordinarily contain sufficient indicia of reliability to provide probable cause. *McNeal*, 867 N.W.2d at 101 (citing *Florida v. J.L.*, 529 U.S. 266, 270 (2000)). On the other hand, the United States Supreme Court has held that a significantly corroborated anonymous tip is sufficient for purposes of the Fourth Amendment. *Id.* (citing *Alabama v. White*, 496 U.S. 325, 331 (1990)). “[I]f a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.” *Id.* (citing *White*, 496 U.S. at 330). “The reliability of a citizen informant may be shown ‘by the very nature of the circumstances under which

the incriminating information became known.” *Sallis*, 2019 WL 1055779, at *3 (quoting *Post*, 286 N.W.2d at 200 and *State v. Drake*, 224 N.W.2d 476, 478 (Iowa 1974)).

The affiant is Marshalltown police detective Dane Bowermaster, who is assigned to the Mid Iowa Drug Task Force. Det. Bowermaster obtained information from four confidential sources that Bracy was dealing large amounts of methamphetamine. Warrant Appl.; App. --.

During the second week of August of 2018, Det. Bowermaster had contact with a criminal defendant known as CD1, who provided the following information.

CD1 told me that they knew Pat Bracy to be a large level meth dealer, who was in possession of multiple ounces of methamphetamine. CD1 told me that Pat lived on Linn St[.] and was able to take me to the 600 block of W[.] Linn St[.] and pointed out a possible house where Pat lived. CD1 was not certain which was Pat’s at this time. CD1 stated that Pat was living with his father.

Warrant Appl., Attachment A; App. --.

In the third week of August, 2018, Det. Bowermaster met with a second criminal defendant, CD2, who provided the following information.

CD2 told me that they also knew Pat to be a meth dealer moving anywhere from ounce to pound level quantities. CD2 told me

that Pat was living at 614 W[.] Linn St[.] at his father's house. CD2 was able to take me by and identify Pat's house. CD2 identified 614 W[.] Linn St[.] as Pat's residence.

Police received additional information from two concerned citizens. During the second week of September, 2018, an officer with the Marshalltown police department had contact with a concerned citizen known as CC1. CC1 told police that Bracy lived on West Linn Street and pointed out a house in the 600 block of West Linn Street that the tipster thought might be the house. CC1 told police "Pat was a meth dealer." CC1 reported that he or she knew that "a few days before" Bracy's arrest on September 4, Bracy "was in possession of large quantities of" methamphetamine, which the source specified was multiple ounces of methamphetamine. Warrant Appl., Attachment A; App. --.

Police received additional information from a second concerned citizen, CC2. CC2 told police that, after Bracy's arrest on September 4, 2018, CC2 "heard that Pat had left pound quantities of meth behind." CC2 also told police that Bracy was living at 614 West Linn Street, took police by the house, and pointed out the house. Warrant Appl, Attachment A; App. --. The portion of the tip that reported that the tipster had heard Bracy had possession of methamphetamine

appears to consist of information merely heard by the informant and would not support probable cause. However, the tipster had personal knowledge of where Bracy was living.

Det. Bowermaster also was able to corroborate the information that the sources had provided regarding Bracy's residence. Det. Bowermaster checked Marshalltown police records and found that Bracy had previously listed his address as 614 W. Linn Street in Marshalltown. In addition, Det. Bowermaster knew that Patrick Bracy's father is Donald Bracy. The detective observed a white Mazda registered to Donald Bracy parked in the driveway at 614 W. Linn Street. Warrant Appl., Attachment A; App. --. In addition, on August 27, 2018, Det. Bowermaster observed Patrick Bracy exit the rear door of the house at 614 W. Linn Street, walk towards the garage, and then re-enter the house. Again, Det. Bowermaster observed the white Mazda registered to Donald Bracy parked in the driveway. Warrant Appl., Attachment A; App. --.

Detective Bowermaster was able to connect the White Mazda to Patrick Bracy. Patrick Bracy was arrested on a traffic offense on May 23, 2018; he was driving the white Mazda at the time. In addition, on August 30, 2018, Patrick Bracy was involved in an incident at a

residence, from which Bracy fled on foot. The white Mazda was parked outside that residence. Warrant Appl., Attachment A; App. --.

In addition, Det. Bowermaster was able to corroborate the informants' tips with information he obtained from Bracy himself. On September 4, 2018, Patrick Bracy was arrested on outstanding warrants. At the time of his arrest, he was with Maria Vargas Cervantes. They were both in a red Ford truck registered to Donald Bracy. Warrant Appl., Attachment A; App. --. Six days later, on September 19, 2018, Bracy called his father from Jail. He told Donald Bracy, "don't let nothing happened to my safe man. There is a lot of money in that safe. That's where everything is." Warrant Appl., Attachment A; App. --. Pat Bracy had no apparent, legitimate source of cash; he had disclosed to police at the time of his arrest that he was not employed. Warrant Appl., Attachment A; App. --.

Later that same day, Bracy called Maria Vargas Cervantes from jail. She told Bracy, "do you know how much shit I have gone through to get your debt paid off?" Bracy responded, "[I]t's like I told him, all that shit is right there from my dad[']s house." The magistrate reasonably could have inferred that the "shit" was illegal drugs and the "debt" was for the purchase of illegal drugs.

That inference was particularly reasonable in light of the information Det. Bowermaster provided to the magistrate about the common activities of persons who possess and/or deal illegal drugs. He stated that, in his experience, people often refer to methamphetamine as “shit.” He also stated that it is common for narcotics dealers to have cash on hand. Drug transactions generate a significant amount of currency and dealers often possess cash proceeds of narcotic sales. In addition, it is common for someone who possesses drugs to owe a drug debt; drugs are often provided in advance of payment, creating a debt to the supplier. Det. Bowermaster also provided the magistrate with information that a narcotics trafficker must maintain large amounts of cash in order to finance his ongoing narcotics business and that the currency, as well as the contraband, may be kept in secure “stash locations” within his residence. Warrant Appl., Attachment A; App. --. Det. Bracy’s expert information supported an inference that Bracy was referring to methamphetamine dealing in his phone calls and corroborated the tips provided by the confidential informants.

The inference that defendant was discussing drug trafficking in his jail conversations is further supported by Bracy’s criminal history.

Likewise, his criminal history corroborated the informants' tips that Bracy was dealing methamphetamine. Bracy has a conviction in August of 2014 for possession of a controlled substance with intent to deliver, and a conviction in January of 2017 for possession of methamphetamine. Warrant Appl., Attachment A; App. --. An individual's prior criminal record is a valid consideration. *See, McNeal*, 867 N.W.2d at 102 (citing, *State v. Hoskins*, 711 N.W.2d 720, 727 (Iowa 2006) (considering officer's knowledge of suspect's prior drug convictions in determining whether there was probable cause to justify search); *State v. Poulin*, 620 N.W.2d 287, 290 (Iowa 2000) (considering defendant's prior conviction in determining whether there was probable cause to support the issuance of a search warrant); *State v. Padavich*, 536 N.W.2d 743, 748 (Iowa 1995) (noting that several factors, including "a suspect's history of involvement in the drug trade[,]” may be considered in determining whether there is probable cause to support the issuance of a search warrant)). The Court has noted that “the use of such information is common in law enforcement” and is of “some value in the ultimate determination of probable cause.” In this case, the value of defendant’s record is unusually high as those prior convictions are

probative not only of whether Bracy is a person who might possess or deal methamphetamine, but is also probative of what Bracy meant when he referred to “the shit” and the money in his safe. Bracy’s prior convictions corroborate the informants and strongly support the warrant application in this case.

The search warrant affidavit provided a substantial basis for the magistrate to find probable cause. Consequently, giving due deference to that probable cause finding, the Court should uphold the district court’s denial of Bracy’s motion to suppress and should affirm Bracy’s convictions.

CONCLUSION

The Court should uphold the district court’s denial of Bracy’s motion to suppress and affirm his convictions.

REQUEST FOR NONORAL SUBMISSION

Oral argument is unlikely to assist the Court in deciding the issue raised on appeal. Therefore, the State waives oral argument. However, If appellant is granted oral argument, counsel for appellee desires to be heard in oral argument, as well.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,655** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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