

IN THE COURT OF APPEALS OF IOWA

No. 6-230 / 05-0628

Filed June 28, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES WAYNE ALLEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, William L. Dowell (motion to suppress) and Mary Ann Brown (trial), Judges.

A defendant appeals from the denial of his motion to suppress by the district court. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, Patrick C. Jackson, County Attorney, and James L. Beres, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, J.

Charles Allen appeals from the district court's denial of his motion to suppress evidence, resulting in Allen's subsequent convictions and sentences for possession with intent to deliver cocaine and possession of a firearm by a felon, respectively a class C felony under Iowa Code section 124.401(1)(c)(2)(b) and a class D felony under section 724.26 and enhanced by Allen's habitual offender status under section 902.8 (2003). We affirm.

I. Background Facts and Proceedings.

The Southeast Iowa Narcotics Task Force obtained and executed a search warrant on December 7, 2004, for the residence of Charles Allen in Burlington, Iowa. The application followed an extended period of investigation with the police surveilling the traffic entering and exiting Allen's residence. In the warrant application, sworn to by Investigator Robert Purdy, two different sources were cited regarding drug sales by Allen. One source was confidential informant #04-11, who on November 17 and November 24, made two controlled drug buys of methamphetamine and cocaine from Allen at his residence. Investigator Purdy was on the scene for both buys. The other source listed was Eric Magorian, whom the police had apprehended and detained for possession of cocaine on December 7, 2004, immediately after Magorian had left Allen's residence. Magorian informed the police that he had just purchased the cocaine from Allen at his residence. He gave very specified information regarding this drug purchase as well as past drug purchases and usage by Magorian with Allen. As a result of the search, police found and seized various items of drug paraphernalia associated with both personal use and distribution including:

individually wrapped amounts of cocaine, a digital scale, a police scanner, large amounts of cash, and two firearms.

Allen moved to suppress the evidence gathered under the search warrant on the grounds that the warrant lacked sufficient probable cause. Allen asserted that the requirements of Iowa Code section 808.3 were not met because the magistrate failed to make a credibility finding as to the informants in the affidavit, and therefore the information supplied by both Informant #04-11 and Magorian should be excised from the warrant application. The district court overruled Allen's motion to suppress, finding that the specificity and commonality of the facts concerning all three alleged drug purchases from Allen corroborated each other and supplied probable cause for the warrant to issue. Following a jury trial in March 2005, Allen was convicted and sentenced as a habitual offender for possession with the intent to deliver cocaine and possession of a firearm by a felon. He now appeals the denial of his motion to suppress.¹

II. Scope of Review.

We review rulings on motions to suppress based on alleged Fourth Amendment violations de novo. *State v. Bolsinger*, 709 N.W.2d 560, 565 (Iowa 2006). The language of the Iowa Constitution and federal Fourth Amendment is substantially identical and similar in scope and effect, and because we find no basis to distinguish the protections afforded by the two under the facts of this case, our discussion of Allen's claimed seizure violation applies equally under

¹ Allen filed a second motion to suppress concerning statements he made to police after counsel was appointed, which is not the subject of this appeal.

both constitutional provisions. See *State v. McCoy*, 692 N.W.2d 6, 15 (Iowa 2005).

III. Probable Cause.

Allen asserts that the credibility of the two informants relied upon in the warrant application was not sufficiently established, thereby requiring their information be excised and not considered in a review of the probable cause determination. The existence of probable cause to search a particular area depends on whether a person of reasonable prudence would believe that evidence of a crime might be located on the premises to be searched. *State v. Davis*, 679 N.W.2d 651, 656 (Iowa 2004). Additionally, “we draw all reasonable inferences to support the judge’s finding of probable cause . . . and give great deference to the judge’s finding,” and “close cases are decided in favor of upholding the validity of the warrant.” *State v. Shanahan*, 712 N.W.2d 121, 132 (Iowa 2006) (quoting *State v. Gogg*, 561 N.W.2d 360, 364 (Iowa 1997)).

In his reply brief, Allen concedes that his initial claim, that the magistrate must make a written credibility finding as to unnamed informants, is no longer required under section 808.3,² which provides:

[I]f the grounds for issuance are supplied by an informant, the magistrate shall identify only the peace officer to whom the information was given. *The application or sworn testimony supplied in support of the application must establish the credibility of the informant or the credibility of the information given by the informant.* The magistrate may in the magistrate’s discretion require that a witness upon whom the applicant relies for information appear personally and be examined concerning the information.

² The code section, amended in 1998, previously required the magistrate or issuing judge to make a written credibility determination as to unnamed informants used in the warrant application.

Iowa Code § 808.3 (2003) (emphasis added).

We agree with the State's argument that this particular requirement does not even apply in this case, as Investigator Purdy, and not the confidential informant, provided the information regarding the controlled buy in the affidavit. But even under section 808.3's delineated requirements for credibility, we conclude the warrant application adequately established the credibility of Informant #04-11 and the information he gathered. The price and amounts of drugs purchased from Allen in each of the controlled buys correspond to each other and are independently corroborated by the price and amounts attested to by Magorian.³ The controlled buys took place either in Allen's residence or in the metal shed on the south side of the residence. This independently corresponds to Magorian's statements to the police that he had purchased drugs from or consumed drugs with Allen in the residence and the metal shed on the south side of the residence. See *State v. Swaim*, 412 N.W.2d 568, 574 (Iowa 1987) ("Independent corroboration of the details of an informant's tip, even if limited to observation of innocent behavior, may serve as strong support for that informant's reliability."); *State v. Paschal*, 300 N.W.2d 115, 120 (Iowa 1981) (holding the reliability of an unnamed informant was established by independent corroboration of similar information from another informant or source). Furthermore, Investigator Purdy was present as part of the narcotics team surveilling Allen's residence at the time of both controlled buys and Magorian's

³ Of the drug sales by Allen alleged in the warrant application, the November 17 purchase was 1/16 (a "teener") of an ounce of methamphetamine for \$100; the November 24 purchase was less than 1/8 of an ounce of cocaine for \$180; and Magorian told police he had purchased a teener of cocaine for \$100 and "half a gram" for \$40.

apprehension. See *State v. Sykes*, 412 N.W.2d 578, 583 (Iowa 1987) (holding a confidential informant's credibility and the ultimate probable cause finding were bolstered by the direct observations of police, including the affiant, surveilling controlled purchases). We conclude that the search warrant application with affidavit establishes the credibility of the information provided by Investigator Purdy regarding the controlled buys, satisfies the requirements of section 808.3, and on its own is sufficient probable cause for the issuance of the warrant. *State v. Padavich*, 536 N.W.2d 743, 748-50 (Iowa 1995).

Although we conclude the information regarding the controlled buys provided probable cause for the search warrant, we also agree that the information from Magorian bolstered the probable cause of the controlled buys. As Magorian is a named informant in the warrant application, the reliability of his information as establishing probable cause is judged under a constitutionally-based "totality of the circumstances" analysis. *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983).

Factors relevant to this determination include: past reliability, the fact that the informant was named, whether the informant directly witnessed the crime or fruits of it in the possession of the accused, the specificity of the facts detailed by the informant, whether the information furnished is against the informant's penal interest, whether the informant was trusted by the accused, and whether the information was not public knowledge.

State v. Weir, 414 N.W.2d 327, 332 (Iowa 1987).

Magorian's statements to Investigator Purdy and the police were sufficient under all factors weighed to establish his credibility. See *Gogg*, 561 N.W.2d at 365 (applying factors for consideration of named informant's credibility under a totality of the circumstances). Magorian admitted purchasing cocaine from Allen,

one of the drugs Allen sold in the controlled buy. His past interactions with Allen demonstrated that he was trusted enough by Allen for Allen to allegedly sell Magorian drugs on a regular basis over the past two months. Magorian's statements were detailed in the amounts of drugs and prices charged by Allen and the location in Allen's residence used to conduct business, none of which was public knowledge. Magorian's statements were also against his penal interests because he admitted not only making this drug purchase, but also buying drugs from Allen four to five times in the past two months, consuming drugs with Allen in the metal shed on the south side of the residence, and giving Allen a rifle in exchange for drugs. Although Magorian's credibility appears impaired because his cooperation with the police led to no prosecution regarding his purchase of cocaine from Allen on December 7, 2004, Allen fails to point to evidence of bargaining or promises of leniency on the record. *Compare Weir*, 414 N.W.2d at 332 (holding the warrant application was supported by probable cause even though the named informant demanded payment for her information). Considering the information gathered from the confidential informant's controlled purchases from Allen, the observations of the narcotics task force, Magorian's information, and Allen's prior criminal history involving controlled substances, we agree with the district court that there was probable cause for the issuance of the search warrant. We therefore affirm the district court's denial of Allen's motion to suppress.

AFFIRMED.