

**IN THE COURT OF APPEALS OF IOWA**

No. 6-962 / 06-0569  
Filed December 28, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**STEVEN EARNIE MYERS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

Defendant appeals from his conviction for possession of a controlled substance (marijuana). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David A. Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Stephen Holmes, County Attorney, and Stephen Owen, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., Vogel, J., and Brown, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**HUITINK, P.J.**

In December 2005 Detective James Ulin of the Marshalltown Police Department received a report of a possible violation of the pseudoephedrine purchasing restrictions of Iowa Code section 124.213 (Supp. 2005). After further investigation, the detective prepared an application for a search warrant to search the home of Steven Myers. A search warrant was issued and executed on December 19, 2005. During the search, officers found approximately thirty grams of marijuana in Myers's home.

Myers was charged with possession with intent to deliver marijuana in violation of Iowa Code section 124.401(1)(d) (2005). The State later agreed to amend the trial information to charge Myers with possession of marijuana in violation of section 124.401(5). Myers filed a motion to suppress, alleging a lack of probable cause to issue the search warrant. The district court denied the motion, and Myers agreed to a bench trial based on the minutes of testimony. The district court found him guilty of possession of marijuana and sentenced him to serve two days in the county jail. Myers appeals, arguing the district court erred in denying his motion to suppress. He contends there was no nexus between the offense of which he was suspected, the purchase and possession of a quantity of pseudoephedrine, and a search of his residence.

Our review is de novo. *State v. Davis*, 679 N.W.2d 651, 655-56 (Iowa 2004). We do not make "an independent determination of probable cause, but only determine whether the issuing court had a substantial basis for finding the existence of probable cause." *Id.* at 656. In determining whether a substantial basis existed for finding probable cause, we consider only that information,

reduced to writing, which the applicant presented to the court at the time of the application for the warrant. *State v. Godbersen*, 493 N.W.2d 852, 855 (Iowa 1992).

We examine the totality of the circumstances to determine whether probable cause has been established for the issuance of a search warrant.

*Davis*, 679 N.W.2d at 656. As our supreme court has explained,

[t]he 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. The task of the judge issuing the search warrant is “to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit” presented to the judge, there is a fair probability that law enforcement authorities will find evidence of a crime at a particular place. A finding of probable cause depends on “a nexus between criminal activity, the things to be seized and the place to be searched.” In making that determination, the judge may rely on reasonable, common-sense inferences from the information presented. Close questions are resolved in favor of the validation of the warrant. In reviewing the court’s determination, we draw all reasonable inferences to support a court’s finding of probable cause.

*Id.* (citations omitted). The nexus between criminal activity, the items to be seized, and the place to be searched “can be found by considering the type of crime, the nature of the items involved, the extent of the defendant’s opportunity for concealment, and the normal inferences as to where the defendant would be likely to conceal the items.” *State v. Gogg*, 561 N.W.2d 360, 365 (Iowa 1997) (citation omitted). The facts and information presented to establish a finding of probable cause “need not rise to the level of absolute certainty, rather, it must supply sufficient facts to constitute a fair probability that contraband or evidence will be found on the person or in the place to be searched.” *State v. Thomas*, 540 N.W.2d 658, 662-63 (Iowa 1995).

In his application for a search warrant, Detective Ulin stated that Myers had purchased a total of more than thirteen grams of pseudoephedrine at three different locations in Marshalltown on December 12 and December 17, 2005. Detective Ulin further stated that Myers shopped at different stores to avoid detection and that he violated section 124.213 (Supp. 2005) by purchasing more than 7.5 grams of pseudoephedrine in a thirty-day period. The detective verified that Myers lived at the address where the search was to take place. He noted,

In my experience, persons manufacturing methamphetamine can and do use people to purchase pseudoephedrine for them. Pseudoephedrine is a key ingredient in the manufacture of methamphetamine, a schedule II controlled substance. People buying the pseudoephedrine often receive meth[amphetamine] in exchange for these purchases. These persons also shop at different stores in different towns on the same date in order to avoid detection by law enforcement. As users of methamphetamine, they often maintain drugs, paraphernalia, notes, names and contact information in their residence. It is also my experience that they keep large sums of money on hand to buy the pseudo[ephedrine] with cash. This cash may be their own or given to them by the manufacturer to purchase pseudo[ephedrine].

. . . .  
In my experience, these are all indications of purchasing pseudoephedrine for use in the clandestine manufacture of methamphetamine. . . . In my experience, persons using drugs or doing these kinds of pseudoephedrine purchases hide evidence in the residence, vehicles, and on their persons.

The district court found a nexus between Myers's possession of "too much pseudoephedrine," the "key ingredient" in the manufacture of methamphetamine, and the requirement of a "secure location or an enclosed space" for the manufacture of methamphetamine, "which very well could be the defendant's house." Thus, the court found probable cause "to believe that somebody in possession of too much pseudoephedrine logically would be using their

residence as the key location for the manufacturing of that illegal controlled substance.”

Considering the totality of the circumstances, we conclude the affidavit supported the court’s conclusion that probable cause existed for the issuance of the search warrant permitting the search of Myers’s residence. Myers had recently purchased a large quantity of pseudoephedrine, a key ingredient in the manufacture of methamphetamine. The magistrate issuing the warrant could reasonably infer from the facts recited in the affidavit that Myers’s residence was a likely location for the manufacture of methamphetamine. See, e.g., *State v. Groff*, 323 N.W.2d 204, 212 (Iowa 1982) (holding that magistrate could reasonably infer that defendants’ residence was the likely location for processing marijuana plants found in a farm field owned by a defendants, but located in another county; quantity of marijuana observed indicated a “large-scale growing operation” that required “a location where the plants could be processed before distribution and use”). The district court properly denied the motion to suppress.

**AFFIRMED.**