

IN THE COURT OF APPEALS OF IOWA

No. 7-694 / 06-1971
Filed November 15, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER LAWRENCE ALTMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Fredrick E. Breen
and Kurt John Stoebe, Judges.

Christopher Lawrence Altman appeals from the judgment and sentence
entered upon his conviction for possession with intent to deliver. **AFFIRMED.**

James E. Fitzgerald, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, Timothy N. Schott, County Attorney, and Ricki L. Osborn, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

This is an appeal by defendant Christopher Lawrence Altman (Altman) from the judgment and sentence imposed upon his conviction of possession of more than one-half ounce of a controlled substance, marijuana, with intent to deliver, in violation of Iowa Code section 124.401(1)(d) (2005). The sole issue is whether the district court properly overruled defendant's pretrial motion to suppress incriminating evidence seized pursuant to a warrant allegedly issued without probable cause and in violation of Iowa Code section 808.3.

I. BACKGROUND FACTS AND PROCEEDINGS.

On January 5, 2006, Officer Brad Wilkins applied for a search warrant for Altman, Altman's house, and two vehicles. In support of his application, Officer Wilkins detailed information he received from a confidential informant (CI).

On 1-03-06 I spoke with [CI who stated] Chris Altman is involved in the distribution of marijuana. CI said that Altman drives a tan colored Chevy Tahoe and lives with a girl on 13th Street. CI said that Altman usually does his distribution in the Pleasant Valley area around 10th Ave SW and 12th ST SW. CI said Altman sells marijuana from his vehicle. CI said that within the past three days CI saw Altman in the Pleasant Valley area in his Tahoe selling marijuana. CI saw Altman with baggies of marijuana. CI also said that Altman puts marijuana in envelopes and leaves them in his mailbox for people to pick up. CI offered this information without me asking about it and it corroborates the information Officer Nelson received. CI has provided credible and reliable information in the past. . . . CI has been paid for their information in the past but there are no upfront deals made on payment and CI knows that we may not pay them.

The magistrate issued the search warrant and Altman was arrested. Before trial, Altman filed a motion to suppress the evidence obtained by the search warrant. On May 22, 2006, the trial court granted the motion regarding the evidence seized at Altman's residence, but overruled the motion with respect

to both vehicles. Altman was tried and convicted based on the minutes of testimony.

II. SCOPE AND STANDARDS OF REVIEW.

Because Altman challenges the search warrant on constitutional grounds, we are obliged to review *de novo* the facts and circumstances concerning probable cause for the issuance of the warrant. *State v. Seiler*, 342 N.W.2d 264, 266 (Iowa 1983). Our review of the trial court's determination concerning the statutory sufficiency of the warrant is for correction of errors at law. *State v. Myers*, 570 N.W.2d 70, 72 (Iowa 1997). We are limited in our review to a consideration of only that information, reduced to writing, which was actually presented to the magistrate at the time application for the warrant was made. *State v. Seager*, 341 N.W.2d 420, 426 (Iowa 1983). Additionally, we give deference to the magistrate's finding and, due to the preference for warrants, doubts are resolved in favor of their validity. *Myers*, 570 N.W.2d at 73; *State v. Bishop*, 387 N.W.2d 554, 557 (Iowa 1986).

II. MERITS.

Altman's challenge to the warrant focuses on the credibility of the CI. Altman argues there was insufficient information supporting the CI's reliability or the credibility of the CI's information. This omission, argues Altman, violates Iowa Code section 808.3, invalidates the probable cause finding, and makes the evidence obtained pursuant to the search warrant inadmissible.

Under Iowa Code section 808.3, if the grounds for issuance of a search warrant are supplied by an informant: "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.”

We have considered and reject Altman’s arguments because the search warrant application met the standards of section 808.3 by establishing both the credibility of the CI and the credibility of the CI’s information. We agree with and adopt the findings of the district court:

This CI was – amply shown to be reliable in the informant’s attachment because the officer had known him a long time, five years. He was a mature individual. He didn’t have any motivation to falsify information and otherwise demonstrated truthfulness, particularly, when he supplied information eleven times in the past. That on three of those occasions it had been the basis for a search warrant. That his past information led to four arrests. That past information had led to the filing of drug charges, had led to the seizure and discovery of stolen property or drugs. That this Officer Wilkins had not found that the [CI] had given false information in the past. The information supplied by the informant being corroborated. Certainly, the ownership of the vehicles and use of them have been corroborated by Officer Wilkins’ own observations of the defendant driving the vehicle. And that the CI had performed controlled buys in the past.

Even under the higher standard of proof courts generally apply when weighing the reliability of a CI who is paid, there is ample evidence of the CI’s reliability. See *State v. Weir*, 414 N.W.2d 327, 331 (Iowa 1987).

AFFIRMED.

Sackett, C.J. concurs specially.

SACKETT, C.J. (concur specially)

I concur in all respects except I would not adopt the trial court's findings in all respects.