

IN THE COURT OF APPEALS OF IOWA

No. 08-422 / 07-1065
Filed July 16, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALEXIS YARDLEY WILLIAMS,
Defendant-Appellant.

Appeal from the Iowa District Court for Tama County, Douglas S. Russell, Judge (motion to suppress), Robert E. Sosalla, Judge (trial), and Mitchell K. Turner, Judge (judgment and sentence).

Alexis Williams appeals his conviction for possession of marijuana.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Stephen Japuntich, Assistant State Appellate Defender, for appellee.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Brent D. Heeren, County Attorney.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

MILLER, J.

Appellant Alexis Williams appeals his conviction for possession of marijuana in violation of Iowa Code section 124.401(5) (2005). We affirm.

I. BACKGROUND FACTS

In January 2006, Tama County Deputy Bruce Rhoads was involved in the execution of a drug-related search warrant that resulted in the discovery of marijuana. The suspect in that case was arrested and named Alexis Williams as the source of his marijuana. That suspect had been used as a confidential informant (CI) on other occasions. Rhoads stated that through past experience with this CI, he thought that the CI lied at times and was evasive. However, he also stated that the CI had participated in a successful controlled buy that led to arrests.

Rhoads investigated driver's license information and booking information from a previous offense and confirmed that Williams lived at 104 East State Street, Apartment A, in Toledo. His investigation also revealed that Kim Rice lived at that same address.

Near the very end of March 2006 Rhoads went to 104 East State Street and seized multiple bags of garbage from a dumpster that was used by residents of the apartment building at that address. In the bags he found mail to residents of 104 East State Street, and no mail to any other addresses. A white plastic garbage bag with yellow ties at the top contained mail addressed to Williams, and mail addressed to Kim Rice, at 104 East State Street, some of that mail designating "Apartment A." In that same bag Rhoads found junk mail, with no

name of any addressee but with "104 East State Street Apt A" as the designated address. Rhoads found no drug related evidence during this search, which occurred about two weeks before April 10, 2006.

On April 10, 2006, Rhoads seized and inspected three white plastic trash bags with yellow ties at the top that he found in the common dumpster used by residents of the apartment building at 104 East State Street.¹ In one of the garbage bags, Rhoads found junk mail addressed to "Our neighbor at 104 E State St Apt A Toledo, Iowa 52342-1513." The mail was marked "TIME SENSITIVE," and requested in-home delivery from April 7 to April 10. This indicated to Rhoads that the garbage had been put out recently. In this same bag of garbage Rhoads found seeds and a stem consistent with marijuana. A test of one seed indicated positive as marijuana.

Based on all of this information, on April 12, 2006, Rhoads applied for and was issued a search warrant for 104 East State Street, Apartment A. On April 13, 2006, officers executed the search warrant and found .27 grams of marijuana in Williams's apartment. Williams was consequently arrested and charged with possession of marijuana in violation of Iowa Code Section 124.401(5). Williams filed a motion to suppress evidence gained as a result of this search warrant, arguing that probable cause to issue the search warrant did not exist and therefore the search of his apartment was a violation of the Fourth Amendment to the United States Constitution and related provisions of the Iowa Constitution.

¹ There is no expectation of privacy in garbage that is put out for collection, and thus evidence obtained by searching such garbage is properly considered in determining whether a search warrant should issue. *State v. Henderson*, 435 N.W.2d 394, 396-97 (Iowa Ct. App. 1988).

The district court denied Williams's motion to suppress. Williams appeals his ensuing conviction, claiming error in the denial of his motion to suppress.

II. STANDARD OF REVIEW

Because Williams challenges the constitutionality of the search warrant, we review the facts and circumstances which led to the issuance of the search warrant *de novo*. *State v. Weir*, 414 N.W.2d 327, 329 (Iowa 1987). Our task is not to determine whether probable cause existed, but to find whether the magistrate had a substantial basis for concluding that probable cause existed. *State v. Davis*, 679 N.W.2d 651, 657 (Iowa 2004). In making this finding, we can only consider information in writing that was presented to the magistrate when the application for the search warrant was originally made. *Id.*

III. PROBABLE CAUSE TO ISSUE SEARCH WARRANT

Williams contends that there was not probable cause to issue the search warrant and that all evidence that was produced from the resulting search should not have been admitted at trial. The magistrate's job in considering whether to grant the motion to suppress is to make a practical, common-sense decision, after considering all of the facts, of whether there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983); *Weir*, 414 N.W.2d at 329-30. We have a duty to give deference to the magistrate's findings. *Weir*, 414 N.W.2d at 330. The test that has been consistently used in Iowa to determine probable cause is "whether a person of reasonable prudence would believe a crime was being committed on the

premises to be searched or evidence of a crime could be located there.” *State v. Sykes*, 412 N.W.2d 578 (Iowa 1987); *State v. Woodcock*, 407 N.W.2d 603, 604 (Iowa 1987); *State v. Seager*, 341 N.W.2d 420, 426-27 (Iowa 1983). Any doubt is resolved in favor of the validity of the warrant. *Weir*, 414 N.W.2d at 330. In order to find probable cause, there must be a nexus between the crime to be committed, the things to be seized, and the place to be searched. *Seager*, 341 N.W.2d at 427.

Considering all the facts presented in the application for a warrant, we find that the magistrate did have substantial evidence to conclude that probable cause existed. The magistrate considered the information provided by the CI and found that because the CI was reliable at times and unreliable at other times, the CI’s statement by itself was insufficient to provide probable cause for the issuance of a search warrant. However, the magistrate found that the evidence of a seed that tested positive as marijuana, found in the same garbage bag as mail addressed to Williams’s apartment, corroborated the statements of the CI, and together this information established probable cause to search Williams’s apartment. Given the facts presented to the magistrate, a reasonably prudent person would believe that evidence of a crime, possession of marijuana, could be located within Williams’s apartment.

IV. CONCLUSION

We find that the information presented in the application for search warrant is sufficient for the magistrate to have found that probable cause existed.

We therefore affirm the district court's denial of Williams's motion to suppress.

We affirm Williams's conviction.

AFFIRMED.