

**IN THE COURT OF APPEALS OF IOWA**

No. 8-830 / 08-0094  
Filed October 29, 2008

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

**vs.**

**JUSTIN BRADLEY ALBERTSEN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Woodbury County, John C. Nelson,  
District Associate Judge.

Defendant appeals from judgment entered upon his conviction for  
possession of marijuana. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Patrick Jennings, County Attorney, and Marti Sliester,  
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

**MAHAN, J.**

Justin Albertsen appeals from judgment entered upon his conviction for possession of marijuana. He contends the district court erred in denying his motion to suppress items seized from his bedroom pursuant to a search warrant. We affirm.

We review questions of a constitutional dimension de novo, based on the totality of the circumstances conduct. *State v. Bumpus*, 459 N.W.2d 619, 622 (Iowa 1990). However, we do not make an independent determination of probable cause; rather we determine whether the issuing judge or magistrate had a substantial basis for concluding probable cause existed. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997). In our analysis, we examine only the information actually presented to the judge or magistrate. *Id.*

Upon a de novo review, the search warrant Albertsen challenges is valid. Under the Fourth Amendment, search warrants must be supported by probable cause, which is determined by the totality of the circumstances. *Gogg*, 561 N.W.2d at 363.

Based on the totality of the circumstances, the issuing judge had a substantial basis for concluding probable cause existed. *Id.* The officer's affidavit accompanying the search warrant application included the following information: A 911 call was made requesting help for an eighteen-year-old female who was unconscious and unresponsive. The female was taken to the hospital for treatment where medical staff informed police that the prognosis for the female surviving was not good. At the hospital, family of the female victim informed police the female was a methamphetamine drug user and associated

with drug users. The female victim was at 1609 West 30th Street at the time she became unconscious and defendant was present, along with his mother and brother. Paramedics informed the emergency room doctor that when they arrived at the scene, numerous people were seen outside the residence. When police arrived at the residence, only the mother remained, and she denied police access to where the female had “gone unconscious” and did not have “very many answers” for the activities at the residence. The mother informed police that defendant and his brother attempted CPR on the female. Defendant did not accompany the female to the hospital. The mother did not want police to look in her house “because the bedrooms belonging to the males in the house are in a state of disarray and that there are damaged walls in the bedrooms . . . she felt the holes in the walls ‘would look bad.’” Defendant claims membership with a known gang. The mother of the female victim received an anonymous call stating that the female had been drinking and suddenly gone into shock.

Albertsen contends the unnamed family members noted in the affidavit should be treated as confidential informants, requiring specific indices of reliability. We disagree. The family members were not listed by name in the affidavit; however, their status as family members was sufficient to alert the issuing magistrate to their relationship and the basis for their knowledge of the female’s drug usage and habits. See *State v. Niehuas*, 452 N.W.2d 184, 189 (Iowa 1990) (noting that the reliability of a citizen informant is generally shown by the very nature of the circumstances under which the incriminating information became known).

The affidavit of probable cause is interpreted in a common sense, rather than a hypertechnical, manner. *Gogg*, 561 N.W.2d at 364. In addition, we draw all reasonable inferences to support the judge's finding of probable cause and give great deference to the judge's finding. *Id.* Close cases are decided in favor of upholding the validity of the warrant. *Id.* The information in the affidavit in this case provides substantial basis to find probable cause that evidence of a crime might be found at defendant's residence.

After our review of the record and viewing the statements in the affidavit in a common-sense manner, drawing all reasonable inferences from those statements and giving deference to the judgment of the issuing judge, we conclude the issuing judge had a substantial basis for concluding probable cause existed to issue the search warrant. We affirm.

**AFFIRMED.**