

IN THE COURT OF APPEALS OF IOWA

No. 8-979 / 08-0151
Filed January 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROSEMARY RAMON,
a/k/a ROSEMARY PETERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge.

Rosemary Ramon appeals from judgment and sentence entered by the district court finding her guilty of possession of less than five grams of methamphetamine with intent to deliver. **AFFIRMED.**

Nichole Mordini of Davis Brown Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, Paul L. Martin, County Attorney, for appellee.

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

POTTERFIELD, J.**I. Background Facts and Proceedings**

On February 24, 2007, Officer Steve Klemas interviewed Nicholas Wilmarth, a suspect in a number of burglaries that occurred in Mason City. During the interview, Wilmarth admitted to numerous burglaries and to exchanging stolen property for methamphetamine with Terry McGrane at his home that he shared with Rosemary Ramon Peters (Ramon). Wilmarth stated that he saw some of the stolen property at their residence two days prior to his interview. Klemas related this information to drug task force officer David Tyler, who watched and listened to some of Klemas's interview with Wilmarth from another room using a DVR camera system. Tyler and Klemas paused the interview periodically to discuss certain issues, but they never discussed the fact that Wilmarth told Klemas during the interview that he was high.

Based on the information he received, Tyler prepared an application for a search warrant for Ramon's residence. Tyler's application stated that Wilmarth named the home of Ramon as a place where he traded stolen items for drugs. The application listed several items that Wilmarth stated he had traded to Ramon and McGrane and stated that Wilmarth made these statements against his penal interest after he was given his Miranda warning. The application also noted that McGrane had two past drug-related charges.

The application was granted. In determining that probable cause existed, the magistrate's endorsement on search warrant application cited Wilmarth's admission to numerous burglaries, his statement that Ramon's home was the location of stolen property received in exchange for drugs, and McGrane's history

of drug convictions. When police searched Ramon's residence later that day, they found methamphetamine, large amounts of cash, drug packaging materials, and stolen property. Ramon was subsequently charged with possession of methamphetamine with the intent to deliver in violation of Iowa Code section 124.401(1)(b) (2005).

Ramon filed a motion to suppress any evidence seized at her residence, stating that the search warrant lacked probable cause for several reasons, including a failure to show that the informant was reliable. Ramon later filed an amended motion to suppress evidence asserting that Wilmarth's intoxication at the time of the interview undermined his credibility and should result in a redaction of any information he provided from the warrant before reviewing it for probable cause. Ramon contended that, without information from Wilmarth, the warrant application would not contain probable cause.

At a hearing on the motion to suppress, Klemas testified that he asked Wilmarth at the beginning of the interview if he was intoxicated.¹ Wilmarth responded that he was high and had "been smoking all day," most recently within roughly two hours. Klemas testified that Wilmarth showed "no signs of intoxication in the sense of speech, balance, recollection, things of that issue." He stated that Wilmarth had no trouble understanding his questions and giving clear, detailed answers.

The district court found that a reasonable magistrate would have found Wilmarth reliable and found that probable cause existed to issue the search

¹ Klemas testified that his question about Wilmarth's intoxication was not a result of Wilmarth's behavior, but of Klemas's belief that Wilmarth had a drug addiction.

warrant. Accordingly, the district court found that the search warrant was supported by probable cause and denied the motion to suppress. Ramon was convicted and appeals from her judgment and sentence claiming the district court erred in denying her motion to suppress because: (1) the search warrant was defective due to a lack of probable cause and an omission of material facts; and (2) the warrant was based on double hearsay and should not have been the sole basis for a probable cause determination.

II. Standard of Review

We review Ramon's challenge to the district court's finding of probable cause to support the issuance of the search warrant *de novo*. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997). We do not make an independent determination of probable cause, but must only determine whether the district court had a substantial basis for finding probable cause. *Id.* In making this determination, we are limited to the written information that the applicant presented in the application for the warrant. *Id.* We resolve all close cases in favor of the validity of the warrant. *State v. Bishop*, 387 N.W.2d 554, 558 (Iowa 1986).

III. Omission of a Material Fact

Ramon contends that Tyler was purposefully untruthful or acted with reckless disregard for the truth by failing to disclose in his application for a warrant that Wilmarth was intoxicated at the time of the interview. Ramon further asserts that if Tyler had disclosed Wilmarth's intoxication, the magistrate would not have found probable cause to issue the search warrant.

In impeaching the search warrant, Ramon has the burden to show "allegations of deliberate falsehood or of reckless disregard for the truth"

State v. Green, 540 N.W.2d 649, 656 (Iowa 1995). Reckless disregard can be established by showing: (1) the applicant had serious doubts about the informant's truthfulness; or (2) circumstances evincing an obvious reason to doubt the informant's veracity. *State v. Niehaus*, 452 N.W.2d 184, 187 (Iowa 1990). An omission of a material fact constitutes a misrepresentation only when the omitted facts cast doubt on the existence of probable cause. *Id.* Though we are limited to the written information in the application in determining probable cause, when considering whether an omission was intentional or material, we may consider the surrounding facts. *Id.*

Iowa courts have consistently applied the following test to determine the existence of probable cause: "whether a person of reasonable prudence would believe a crime was committed on the premises to be searched or evidence of a crime could be located there." *State v. Weir*, 414 N.W.2d 327, 330 (Iowa 1987). While the information needed for a finding of probable cause is less than is required for a conviction, the information must consist of more than rumor or suspicion. *Id.*

Ramon cannot show that Tyler's omission of Wilmarth's intoxication casts doubt on the existence of probable cause. Klemas testified that Wilmarth showed "no signs of intoxication in the sense of speech, balance, recollection, things of that issue." Klemas stated that he had no trouble understanding Wilmarth and that Wilmarth understood the questions he was being asked, citing specific burglaries and items that were taken. Thus, though Klemas admitted "it was probable that [Wilmarth] had controlled substances in his system," he ultimately felt "Wilmarth was sober enough to conduct an interview" Given

this information, we find that the omitted information, that Wilmarth considered himself to be high at the time of the interview, would not have cast doubt on the existence of probable cause. Ramon also failed to show that the omission was intentional or with reckless disregard for the truth.

IV. Double Hearsay

Ramon also argues that the information on the application for the search warrant was double hearsay and that the magistrate was unable to make a determination regarding Wilmarth's credibility. In evaluating an application for a search warrant, the magistrate is to consider the totality of the circumstances in making

a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband . . . will be found in a particular place.

Bishop, 387 N.W.2d at 557 (citing *Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983)). Caution should be exercised in issuing a warrant based almost solely upon double hearsay. *Niehaus*, 452 N.W.2d at 190. The magistrate must be presented with information that would allow an assessment of the credibility of both Wilmarth and Klemas. *Id.*

Factors tending to enhance informant credibility 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.

Id.

The totality of the circumstances supports the magistrate's finding of probable cause and establishes Wilmarth's veracity. Tyler observed a substantial portion of Wilmarth's interview, eliminating the double hearsay issue. Also, the application contained sufficient information to allow the magistrate to make a determination regarding Wilmarth's credibility. Wilmarth was a named informant who provided a substantial amount of information against his own penal interest. Wilmarth provided detailed information that was not public knowledge, naming specific items that were stolen. The application provided ample information to allow the magistrate to make a credibility determination regarding Wilmarth.

V. Conclusion

We find that the information in the application allowed the magistrate to make a determination of Wilmarth's veracity and that the district court had a substantial basis to conclude that probable cause existed. Thus, the district court did not err in denying Ramon's motion to suppress.

AFFIRMED.