

IN THE COURT OF APPEALS OF IOWA

No. 9-534 / 08-1444
Filed August 19, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TRAVIS RAY MCPEEK,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell (suppression hearing) and John D. Ackerman (trial/sentencing), Judges.

The defendant appeals from the denial of his motion to suppress and conviction by the district court. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Patrick Jennings, County Attorney, and Amy L. Ellis, Assistant County Attorney, for appellee.

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

EISENHAUER, J.

Travis McPeek argues the district court erred in overruling his motion to suppress evidence seized pursuant to a search warrant. We affirm.

I. Background Facts and Proceedings.

In July 2007, Sioux City Police investigated the passing of five forged checks. As a result of their investigation, the police applied for a search warrant for Travis's residence. The officer's attachment to the search warrant application states two Wal-Mart surveillance tapes and a Tobacco Hut tape show what "appears to be the same female on camera committing the forgeries." In the Tobacco Hut tape, the female was accompanied by "a white male with a goatee and a hat," but the officer "could not identify these suspects from the video alone." In both Wal-Mart tapes, the female suspect was met outside "by a white male driving a Chevy Astro Panel Van with a distinctive logo on the sides."

The warrant application further explains the investigating officer requested help from other officers in locating the van. In response, a sergeant told the investigating officer to check "Travis McPeek for this van and said he delivers meat." When the police arrived at Travis's residence, they discovered "[t]he van parked at [Travis's] house is the same van on the video." The officers took a picture of the van. Next to the van in the driveway was a second vehicle registered to Katrina McPeek. Katrina's mug shot appears "to match the person seen on the video committing these forgeries." Based upon the above

application, the search warrant was issued authorizing the officers to search Travis's residence for evidence relating to the uttering of forged checks.

When the warrant was executed, the officers observed marijuana in the basement. The officers stopped the search and a second search warrant was obtained. Evidence discovered during the execution of the second warrant led to Travis being charged with manufacturing a controlled substance.

Travis filed a motion to suppress the evidence arguing the application for the first search warrant failed to establish probable cause. The district court denied the motion to suppress, stating:

Put simply, the court believes probable cause is warranted . . . by the simple fact that the officers were informed [Travis] was in possession of a van with a distinctive logo that matched the footage taken of the van at a local Wal-Mart and the visual comparison between Katrina McPeek and the woman on the videotape.

Trial to the court on the minutes of testimony resulted in Travis being found guilty of manufacturing a controlled substance—marijuana. Travis now appeals the district court's decision and contends the search warrant violated his federal and state constitutional rights. He alleges the warrant application should have been denied because "it fails to establish a sufficient nexus between the van, Katrina McPeek, and [Travis's] residence. Neither did the information supply the nexus between the individuals depicted in the surveillance videos and [Travis]."

II. Standard of Review.

When a defendant's motion to suppress is based on constitutional violations, our review is de novo in light of the totality of the circumstances. *State*

v. McConnelee, 690 N.W.2d 27, 30 (Iowa 2004). We “assess the entire record, including evidence presented during the suppression hearing.” *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004). We are not bound by the district court’s factual determinations, but give deference to the court’s credibility findings. *Id.*

III. Probable Cause.

A search warrant must be supported by probable cause. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997). A totality of the circumstances standard is used to determine whether probable cause has been established. *State v. Davis*, 679 N.W.2d 651, 656 (Iowa 2004). “The 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.” *Id.* The judge issuing the warrant must make a “practical, common-sense 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,’ probable cause exists.” *Gogg*, 561 N.W.2d at 363 (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983)). “In reviewing the court’s determination, we draw all reasonable inferences to support a court’s finding of probable cause.” *Davis*, 679 N.W.2d at 656. Due to our preference for warrants, any doubts are resolved in favor of their validity. *State v. Weir*, 414 N.W.2d 327, 330 (Iowa 1987).

Our review of the totality of the circumstances contained in the warrant application convinces us a sufficient basis existed to support the magistrate’s finding of probable cause to issue the search warrant. Accordingly, we adopt the

reasoning of the district court and affirm the district court's order overruling Travis's motion to suppress.

AFFIRMED.