

**IN THE COURT OF APPEALS OF IOWA**

No. 6-609 / 05-1180  
Filed November 30, 2006

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

**vs.**

**HUBERT LAWRENCE HARDESTY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Jasper County, Martha L. Mertz,  
Judge.

Defendant appeals his conviction for murder in the first degree.

**AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney  
General, Steve Johnson, County Attorney, and Scott Nicholson, Assistant County  
Attorney, for appellee.

Heard by Huitink, P.J., and Vogel, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**ROBINSON, S.J.****I. Background Facts & Proceedings**

Linda McQuerrey lived in a trailer park near Hubbell Avenue in Des Moines. Hubert ("Bob") Hardesty was a frequent visitor at her home. Hardesty was described as a white male in his sixties with gray hair and glasses. He drove a 1988 gray Mercury Marquis. Hardesty, who was a married man, was having a sexual relationship with McQuerrey.

On June 19, 2004, McQuerrey's neighbors observed Hardesty's vehicle parked in front of McQuerrey's home at about 5:00 p.m. Robin Hull saw Hardesty walk from his vehicle to the trailer, and then walk back to his car. Another neighbor, Lesly Sprague, observed McQuerrey leaving the trailer park as the passenger in a green or gray older model Mercury or Oldsmobile.

Michael House saw Hardesty's car drive into Ashton Park in Jasper County around 5:00 p.m. The vehicle was driven by a white male and had a passenger. Jay Boomershine, who was picnicking in the park with his family, saw a tall, white, elderly man with whitish-gray hair washing something at a water pump. The man had a larger, darker-colored vehicle. Cynthia Corbin, who was in the park to pick raspberries, specifically identified Hardesty as the man who almost hit her car in the park. She observed he was in the car alone. At about 7:00 p.m. that evening, McQuerrey's body was found in Ashton Park. She had been stabbed several times and her throat was cut.

An agent from the Division of Criminal Investigation (DCI) observed Hardesty's vehicle in the trailer park at noon the next day, June 20, 2004. A police officer who was conducting surveillance at McQuerrey's home on the

evening of June 20 saw Hardesty's vehicle parked in the trailer park. He noted that Hardesty had started to walk toward McQuerrey's trailer, but stopped when he saw the police vehicle, turned around, and left.

On June 21, 2004, police officers obtained a search warrant for Hardesty's home in Des Moines. They seized four boxes of "Extreme Edge" brand knives. One of the boxes had been opened and was empty. The remaining three boxes contained knives with eight-inch serrated blades and forked tips. The forked tip of the knives matched the stab wounds to McQuerrey's abdomen. Also, the cut to McQuerrey's throat had been made with a serrated blade.

While the search warrant was being executed, Hardesty agreed to accompany officers to the police station. He was informed of his *Miranda* rights. Hardesty initially denied knowing McQuerrey, but then admitted to the affair. He also initially denied being in the trailer park on June 19. He then stated he may have driven through, but did not stop. He gave several different versions of his activities and whereabouts on June 19. In general, Hardesty stated he took a nap from 2:00 to 4:30 p.m., and his wife and step-daughter were home when he got up. He stated he left about 5:00 to look for pop cans. He stated he was home between 6:30 and 7:30, at which time he played chess on the computer, and watched television.

Hardesty's wife and step-daughter testified they left home about 3:40 p.m. on June 19, and returned at 7:15. They stated Hardesty was not home when they arrived, but the washing machine was running. Hardesty returned about ten to fifteen minutes later. Hardesty's computer showed it had not been used between 3:36 and 7:50 p.m.

A blood stain matching McQuerrey's DNA profile was found on the carpet of the passenger compartment in Hardesty's vehicle. In addition, blood splatters matching McQuerrey's DNA profile were found on Hardesty's shoes. Hardesty had fresh wounds on his hands, and other blood stains found in the vehicle and on Hardesty's clothing were identified as his.

Hardesty was charged with murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2(1) (2003). He filed a motion to suppress the evidence obtained as a result of the search warrant, claiming the warrant was not supported by probable cause. The district court determined officers reasonably believed Hardesty was either involved with or had knowledge of the circumstances surrounding McQuerrey's death. The court noted Hardesty's vehicle had been seen parked at McQuerrey's home and entering Ashton Park. McQuerrey was seen in a vehicle matching the description of Hardesty's vehicle. The court denied the motion to suppress.

Hardesty sought to introduce evidence ostensibly to indicate the crime could have been committed by another person, Matt Carlson. He asserted that McQuerrey and Carlson were engaged in a sexual relationship and evidence of the relationship should be presented to the jury. The district court determined Hardesty was only conjecturing that Carlson might have committed the offense, and did not permit him to introduce this evidence.

A jury found Hardesty guilty of first-degree murder. He now appeals.

## **II. Search Warrant**

Hardesty claims the search warrant was not supported by probable cause. The Fourth Amendment requires probable cause to support a search warrant.

*State v. Shanahan*, 712 N.W.2d 121, 131 (Iowa 2006). A challenge to a search warrant on constitutional grounds is reviewed de novo. *State v. Davis*, 679 N.W.2d 651, 655-56 (Iowa 2004). “We do not make an independent determination of probable cause, but only determine whether the issuing court had a substantial basis for finding the existence of probable cause.” *Id.* at 656. We consider only that information, reduced to writing, which was presented to the judge who issued the search warrant. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997).

To determine if there is probable cause, a court considers “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.” *Id.* Our supreme court has stated:

The task of the judge issuing the search warrant is “to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit” presented to the judge, there is a fair probability that law enforcement authorities will find evidence of a crime at a particular place. A finding of probable cause depends on “a nexus between criminal activity, the things to be seized and the place to be searched.”

*Davis*, 679 N.W.2d at 656 (citations omitted). We draw all reasonable inferences to support a judge’s finding of probable cause. *Shanahan*, 712 N.W.2d at 132. In close cases, we resolve doubts in favor of the search warrant’s validity. *State v. Skola*, 634 N.W.2d 687, 689 (Iowa Ct. App. 2001).

The search warrant application stated McQuerrey had been seen leaving the trailer park on June 19, 2004, with an older gentleman with white hair and glasses. This met Hardesty’s physical description. McQuerrey’s neighbors often saw a particular car parked near her home and described this car. Officers saw

a car matching this description in the trailer park on June 20, and traced this car to Hardesty. Patrons at Ashton Park had also observed this car shortly before McQuerrey's body was discovered. Based on this information, the district court issued the search warrant for Hardesty's home and vehicle.

We determine the search warrant was supported by probable cause. The application sets forth a nexus between Hardesty, criminal activity, and the places to be searched. McQuerrey was seen leaving in a vehicle linked to Hardesty, and his vehicle was linked to Ashton Park, where her body was found. We conclude the district court properly denied Hardesty's motion to suppress the evidence obtained in the search.

### **III. Incrimination of Another Person**

Hardesty contends the district court should not have precluded him from presenting evidence to the jury pointing out Carlson's relationship to McQuerrey. The State filed a motion in limine seeking to prohibit Hardesty from presenting evidence that McQuerrey was acquainted with Carlson, or that Carlson could have been responsible for McQuerrey's death. Hardesty resisted the motion, and sought to introduce the evidence. The district court determined it would "not allow the Defendant to point a finger at Carlson absent some evidence showing motive, overt acts, opportunity, threats or other circumstances connecting Carlson to the crime."

An issue regarding the admissibility of evidence is reviewed for an abuse of discretion. *State v. Wilson*, 406 N.W.2d 442, 447 (Iowa 1987). We will reverse the district court's determination on the issue of admissibility only when we find a clear abuse of discretion. *Id.*

Evidence offered by a defendant tending to incriminate another must be confined to substantive facts and create more than a mere suspicion that such other person committed the offense. *State v. Campbell*, 714 N.W.2d 622, 630 (Iowa 2006); *State v. Farmer*, 492 N.W.2d 239, 242 (Iowa Ct. App. 1992). Where a defendant raises only a suspicion that another committed the crime, the evidence is properly excluded. See *Wilson*, 406 N.W.2d at 447. Here, Hardesty proffered no credible evidence which could even be considered as to raise a suspicion that Carlson committed the offense. We conclude the district court did not abuse its discretion in excluding the evidence relating to Carlson given the record made.

#### **IV. Ineffective Assistance**

Hardesty asserts that if error was not preserved as to the issues addressed above, then he is claiming he received ineffective assistance of counsel. We have addressed these issues on the merits, and therefore, as a matter of law, defendant's conviction is affirmed without preserving the ineffective assistance of counsel claim. See *State v. Graves*, 663 N.W.2d 860, 869 (Iowa 2003).

We affirm Hardesty's conviction for first-degree murder.

**AFFIRMED.**