

IN THE COURT OF APPEALS OF IOWA

No. 2-382 / 91-699

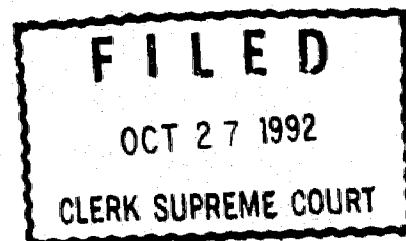
STATE OF IOWA,

Appellee,

vs.

GLEN MUZINGO,

Appellant.



Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge.

Muzingo appeals his convictions following a jury trial
for attempted murder, arson in the first degree and willful
injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin
Cmelik, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Julie A.
Halligan, Assistant Attorney General; Denver D. Dillard,
County Attorney; and Todd Tripp, Assistant County Attorney,
for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

On April 15, 1990, a bomb exploded in a car occupied by Terry Muzingo. The explosion severed her arm and caused several other injuries. Terry was the estranged wife of Glen Muzingo, the defendant.

Glen Muzingo was arrested and charged with attempted murder, arson in the first degree, and willful injury.

On March 6, 1991, the case proceeded to trial and concluded with a verdict of guilty on all three counts. The district court sentenced Glen to consecutive indeterminate sentences of twenty-five, twenty-five, and ten years. Glen appeals.

Scope of Review.

Our scope of review on this constitutional question is de novo. State v. Leto, 305 N.W.2d 482, 484 (Iowa 1981). We look to the totality of circumstances surrounding the issuance of search warrants. State v. Seiler, 342 N.W.2d 264, 266 (Iowa 1983).

Discussion.

Muzingo contends, and the State concedes, it lacked probable cause to arrest the defendant. Following the unlawful arrest of Muzingo, the State conducted a search of Muzingo's vehicle and discovered "solder," a substance believed to have been used in making the explosive device. Law enforcement officials included the discovery of the solder in its affidavit used to obtain a search warrant for Muzingo's vehicle and residence. The State concedes the

search warrant application should not have referred to the illegally-seized solder. Thus, the fighting issue in this case is whether, after excising the reference to the solder, probable cause existed to support the issuance of the warrant. See State v. Groff, 323 N.W.2d 204, 206 (Iowa 1982).

In determining whether there is probable cause to issue a warrant, the test is whether a person of reasonable prudence would believe a crime has been committed on the premises to be searched or evidence of a crime would be located there. State v. Todd, 468 N.W.2d 462, 466 (Iowa 1991). The supporting affidavit need not contain sufficient information to sustain a conviction. State v. Leto, 305 N.W.2d 482, 486 (Iowa 1981). Doubtful or marginal questions are usually resolved by the preference to be accorded warrants. Todd, 468 N.W.2d at 466.

The affidavit supporting the warrant stated Muzingo had previously assaulted and injured his wife. It included attached reports of the assault. The affidavit also stated Muzingo had keys to his wife's car which was crucial since the vehicle had been locked and there were no indications of forcible entry. The affiant further noted a consent search of Muzingo's mother's residence produced Pyrodex powder and containers for AA batteries. The affidavit also stated a neighbor of Muzingo's believed he heard Muzingo leave his residence at 4:30 the morning of the explosion.

We hold this information was sufficient to support a finding of probable cause to issue the search warrant.

Because we find probable cause to support the issuance of the warrant without the inclusion of the "solder," we hold the district court was correct in refusing Muzingo's suppression motion. The items would have been "inevitably discovered" through lawful means and thus, suppression is not required. See State v. Williams, 285 N.W.2d 248 (Iowa 1979); State v. Voncik, 436 N.W.2d 350 (Iowa 1989).

We affirm the trial court's denial of the suppression motion.

AFFIRMED.