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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IO

STATE OF IOWA,	)	
Appellee,	)	Filed April 28, 1978
v.	)	
CLARENCE HUBBS,	)	466/60413
Appellant.	)	

Appeal from Scott District Court - Nathan Grant, Judge.

Defendant appeals judgment and sentence following conviction for receiving stolen property. Affirmed.

Donald E. Doyle, of Davenport, for appellant.

Richard C. Turner, Attorney General, Faison Sessoms, Assistant Attorney General, and A. Fred Berger, Jr., Scott County Attorney, for appellee.

Submitted to Allbee, C.J., Snell, Oxberger and Carter, JJ.; Donielson, J., takes no part in the decision.

PER CURIAM

Defendant appeals from judgment and sentence entered against him following his conviction of the public offense of receiving stolen property, contrary to § 712.1, The Code 1975. His appeal presents three assignments of error, which he contends require reversal. We consider each point separately.

I. Failure to Suppress Fruits of Search. Defendant first asks us to determine that the fruits of a search of his residence by law enforcement officers pursuant to warrant should have been suppressed. This issue was preserved by timely motion to suppress made and overruled in the trial court. The reason asserted by defendant for suppressing this search-related evidence is an alleged invalidity of the warrant due to inadequate determination by the magistrate of the reliability of an informant. In addressing this issue, we note that the warrant in question was not issued solely on information provided by an informant. The sworn application for the warrant was also based upon the personal observations of a police officer who had seen the property (containing identifying markings indicating that it was property reported to have been stolen) at defendant's residence. In neither the trial court nor on appeal has defendant contended that the officer was not where he had a right to be when such observations were made.[1] This evidence alone was enough to satisfy probable cause requirements for the issuance of the warrant. State v. Sheridan, 247 N.W.2d 232, 235 (Iowa 1976). It is therefore not necessary that we consider whether the reliability of the informant was sufficiently established in order to sustain the warrant. There was no error in overruling the motion to suppress.

II. Presence of Counsel at Execution of Search Warrant. Defendant's second contention concerns denial by the trial court of his motion to strike testimony that defendant's lawyer was present when the search warrant was executed. In State v. Nelson, 234 N.W.2d 368, 372-73 (Iowa 1975) the admission of similar evidence was held to be improper and prejudicial and to require reversal. But in **Nelson** the error was clearly preserved in the trial court. In the present case we must conclude it was not.

[1] The sworn application for the search warrant stated that at the time these observations were made by the officer in defendant's residence, he was accompanying federal officers in the execution of a federal search warrant.

The relevant portion of the record is as follows:

> By Mr. Sissel, assistant county attorney:
>
> Q. Did you participate in the serving of the search warrant?
>
> A. I was present when it was served. I believe it was — the actual warrant was turned over to Steve Henson, who is an agent for the B.C.I.
>
> Q. And he proceeded then --
>
> A. He then served it on Clarence Hubbs.
>
> Q. Is [sic] see. And Mr. Hubbs was there when that search warrant was served?
>
> A. Yes.
>
> Q. Did he have present with him anyone else?
>
> A. Attorney Tom Kelly was there at the time.
>
> Mr. Doyle (defendant's counsel): I'm going to object to that as being incompetent, irrelevant and immaterial to the issue at hand.
>
> The Court: I didn't hear your objection.
>
> Mr. Doyle: Incompetent, irrelevant and immaterial to the issue at hand.
>
> The Court: As to who was with him, you mean?
>
> Mr. Doyle: Yes, sir.
>
> The Court: He has already answered.
>
> Mr. Doyle: I move it be stricken then.
>
> The Court: Overruled.

Noticeably absent in the foregoing colloquy is any reason or excuse on the part of defendant's counsel for his failure to make timely objection to the question. Such failure precludes our finding error in the trial court's denial of the motion to strike the testimony after the witness had answered. See, e.g., State v. Smith, 248 Iowa 603, 610, 81 N.W.2d 657 (1957); State v. Woodmansee, 212 Iowa 596, 613-14, 233 N.W. 725 (1931); Jackson v. Chicago, M., St. P. & P. R. Co., 238 Iowa 1253, 1262-63, 30 N.W.2d 97 (1947); M. Ladd & R. L. Carlson, Cases and Materials on Evidence 115-119 (1972).

III. Motion for Mistrial Based Upon Prejudicial Press Coverage. Defendant's final contention relates to the overruling of his motion for mistrial made at the conclusion of the State's evidence. The grounds of the motion concern an allegedly prejudicial newspaper article published during the trial which defendant claims denied him a fair trial.

The defendant did not offer the newspaper article into evidence in support of his motion for mistrial. Nor is the article contained in the record on appeal. We must therefore conclude that the defendant has failed to demonstrate whether the article "raises serious questions of possible prejudice." See State v. Burt, 249 N.W.2d 651, 654 (Iowa 1977). We are therefore precluded from finding reversible error in the denial of the motion for mistrial.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.