FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed October 25, 1983
vs.)
GEORGE W. BLACKMAN, SR.,) 3-281 / 69368
Defendant-Appellant.)

Appeal from Pottawattamie District Court - Paul H. Sulhoff, Judge.

Defendant appeals from his conviction of conspiracy to commit a felony under Iowa Code sections 706.1 and 706.3 (1981). REVERSED AND REMANDED FOR NEW TRIAL.

Richard D. Crotty, Council Bluffs, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Michael K. Jordan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell and Hayden, JJ.

HAYDEN, J.

Defendant appeals from his conviction of conspiracy to commit a felony under Iowa Code sections 706.1 and 706.3 (1981). We reverse and remand for a new trial.

Defendant and several other persons planned to steal a valuable collection of antique watches. One of the participants, Thomas Williamson, was a confidential police informant. Williamson was provided with an electronic listening device which allowed the police to learn the details of the crime several days in advance. The police warned the victim who removed the most valuable watches from the collection and arranged for his house to be unoccupied on the night the burglary was planned. The house was burglarized by several of the participants who returned to defendant's house to meet with the prospective buyer. Soon after the buyer arrived the police, who were surrounding the house, lost contact with the informant. They then burst into defendant's home and arrested some of the occupants, including defendant. Officers observed and seized two suitcases of watches. Then one of the officers left and secured a search warrant. After searching the house police found approximately $4,000 in cash in the basement.

Defendant asserts on appeal: (1) there were no exigent circumstances justifying the warrantless entry into the house; (2) the affidavit in support of a search warrant did not contain sufficient facts to establish probable cause for the issuance of the search warrant; and (3) the court should have granted defendant's motion for a mistrial since four jurors read an allegedly prejudicial newspaper article about the case.

When a criminal defendant asserts that basic constitutional safeguards have been violated, we make an independent evaluation of the totality of the circumstances. This is equivalent to a **de novo** review. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975).

Absent exigent circumstances, a nonconsensual warrantless entry into a private home to effect an arrest is unconstitutional. Payton v. New York, 445 U.S. 573, 583, 100 S. Ct. 1371, 1378, 63 L.Ed.2d 639, 649 (1980); State v. Holtz, 300 N.W.2d 888, 892 (Iowa 1981). Exigent circumstances usually involve danger, risk of escape, or loss of evidence. State v. Luloff, 325 N.W.2d 103, 105 (Iowa 1982).

In this case there is no allegation that the evidence was about to be destroyed or that the occupants of the house could have escaped. The State asserts that the police officers reasonably believed the informant to be in danger. The circumstances justifying the entry are alleged to be: (a) the police officers lost contact with the informant; (b) there was a possibility that one of the people in the house was armed; and (c) the buyer, when examining the watches, might have noticed that the more valuable ones were missing from the collection.

The loss of contact with the informant, however, had been expected by the police officers. They were aware of the ordinary life of the listening device's batteries. At the time the device stopped working the batteries had been operating longer than usual. When the signal grew weak and eventually stopped, the police had no reason to suspect that the cause was due to any problem other than dead batteries. Furthermore, the police officers had instructed the informant to turn off the device whenever possible to conserve the batteries. It seems strange that the officers would allow the informant to turn off the device and be alone with the suspected criminals for an indefinite time and yet were so concerned about his safety when the batteries of the device went dead.

The State's claims that exigent circumstances existed since one of the persons in the house might be armed and because the buyer might miss some of the watches are also weak. There is always the possibility that a suspected criminal might be armed. However, there was no reason to believe that the informant was in danger. Williamson had associated with these people for at least four days without incident. The suspicion of the police that one of the occupants

of the house would suddenly draw a gun on the informant at that particular time was unreasonable. Likewise, even if the buyer had missed some of the watches, there was no reason to believe that the informant would be immediately suspected and endangered.

Since there were no exigent circumstances, the warrantless entry into defendant's house was unlawful. Evidence obtained while the police were unlawfully on the premises should have been excluded at trial. Moreover, the illegal entry renders evidence seized later pursuant to a belated search warrant inadmissible as well. State v. Smith, 178 N.W.2d 329, 333 (Iowa 1970).

We do not need to consider defendant's other assertions of error since this case must be remanded for a new trial.

REVERSED AND REMANDED.