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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-069 / 91-301

STATE OF IOWA,

Appellee,

1140

vs.

JOHN VICTOR COFFMAN,

Appellant.

Appeal from the Iowa District Court for Mills County, Keith Burgett, Judge.

Coffman appeals his convictions, following a jury trial, for theft in the second degree and possession of explosive material. **AFFIRMED.**

Michael J. Poepsel, Omaha, for appellant.

Bonnie J. Campbell, Attorney General, Julie Ann Halligan, Assistant Attorney General, and Connie Anstey, County Attorney, for appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

John Coffman failed to report to the county jail to serve a fifteen-day sentence for driving while his license was under suspension. Therefore, a mittimus was issued for Coffman's arrest.

The sheriff went to Coffman's residence to execute the mittimus and arrest Coffman. The sheriff was accompanied by seven other officers, allegedly because he feared the arrest could turn into a violent confrontation. The sheriff had learned Coffman frequently carried weapons. He had an extensive record of assault arrests. In addition, the sheriff knew Coffman was a member of the "Hell's Angels." The sheriff was also aware Coffman's home was frequented by other Hell's Angels members, one a fugitive sought by the F.B.I.

The officers found Coffman in the yard of his mobile home and arrested him there. Some of the officers then entered Coffman's trailer through its open door because they believed others might be inside. The officers found no other persons inside the trailer, but they saw a white powdery substance which they believed to be a drug. The officers then obtained a warrant to search Coffman's trailer and outbuildings for drugs and drug paraphernalia. The officers found no drugs; however, they saw several items which they believed to be stolen. The officers then obtained a second warrant to search for stolen property. During the second search the officers found and seized

various equipment and tools which later proved to be stolen property. They also found some blasting caps.

As a result of this search, criminal charges were filed against Coffman. A jury found him guilty of theft in the second degree and possession of explosive materials. Coffman appeals from these convictions.

Coffman contends the district court should have suppressed all evidence resulting from the searches of his home and outbuildings. He argues the officers' initial warrantless entry into his house was not justified under any exception to the warrant requirement. Therefore, both of the subsequent search warrants were fatally tainted because they were based on information obtained during the invalid warrantless entry. Coffman also contends the first warranted search exceeded the scope of the first warrant and was therefore an impermissible exploratory search. He argues the second warrant was impermissibly tainted because it was based on information obtained during this exploratory search.

When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975); State v. Jeffries, 417 N.W.2d 237, 239 (Iowa App. 1987).

Warrantless searches and seizures are unreasonable unless they fall within one of the exceptions to the

warrant requirement. State v. Vincik, 436 N.W.2d 350, 353 (Iowa 1989). "One of the 'well-recognized exceptions' to the requirement of a search warrant is the so-called 'cursory safety check exception.'" State v. Holland, 389 N.W.2d 375, 381 (Iowa 1986) (quoting United States v. Kolodziej, 706 F.2d 590, 596 (5th Cir. 1983)). Under this exception,

> [a]rresting officers have a right to conduct a quick and cursory check of the arrestee's lodging immediately subsequent to arrest--even if the arrest is near the door but outside the lodging--where they have reasonable grounds to believe that there are other persons present inside who might present a security risk.

Id. (quoting Kolodziej, 706 F.2d at 596) (citations omitted).

We are convinced the facts in this case establish the officers making the arrest were operating under the assumption their safety was in danger. Defendant demonstrated he was not willing to cooperate with the authorities by failing to appear at the jail as ordered. The officers were aware Coffman had a record for assault and weapons offenses. They were also aware of Coffman's affiliation with the Hell's Angels and believed another member of the organization, a fugitive wanted by the F.B.I., might be inside Coffman's trailer. Coffman's home was known to be frequented by Hell's Angels members. Finally, the officers standing in the defendant's yard were essentially "sitting ducks" for any person who might be inside the trailer.

Given these circumstances, we determine it was reasonable for the officers to believe there was a safety threat. We conclude there was an exigent circumstance excusing the requirement of a search warrant. See id. The officers' presence inside the defendant's home was thus justified, rendering the plain view doctrine applicable. See id.

Based on the officers' observations made during the cursory safety check, a search warrant for controlled substances and drug paraphernalia was issued. Although no drugs were found during the search, the officers discovered the defendant's residence was a "warehouse of goods." During the suppression hearing one officer testified he saw the following inside the defendant's home: several televisions and VCR's, stereo equipment, boxes filled with power tools and boat motors, and two mailbags which were stamped with the words "U.S. property" and contained numerous old and new hand tools. Inside the garage the officers saw boats, motors, stacked toolboxes full of tools, air conditioners, generators, and a heat pump. Some of this equipment was new, and the wires and tubing had been pinched with wire cutters. Next to the garage the officers saw a motorcycle, several boats, a camping trailer, snowmobiles, a John Deere tractor, and a three-wheeler. With the exception of the John Deere tractor and the snowmobiles, the items referred to above were not seized until a second search warrant was issued

targeting those items. The officers did, however, run a check on the serial numbers from the tractor and the snowmobiles and discovered the tractor and two of the three snowmobiles were stolen property.

Defendant contends the officers' search exceeded the limits of the search warrant and therefore constituted an impermissible exploratory search in violation of the fourth amendment. The State argues the plain view doctrine justifies the seizure of the tractor and snowmobiles without a search warrant.

Evidence may be seized under the plain view doctrine if the intrusion into an otherwise protected area is justified and the object's incriminating nature is immediately apparent. Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990). Relying on United States v. Clark, 531 F.2d 928, 932 (8th Cir. 1976), Coffman contends the search was not justified under the plain view doctrine. In Clark federal agents were acting pursuant to a warrant which authorized a search for controlled substances only. Id. at 931. Despite this limitation, the agents recorded serial numbers of some of the defendant's personal and business property, including motorcycles and shop equipment, and his television and stereo equipment. Id. The agents traced the serial number of a pistol and discovered several possible violations of federal firearms statutes. Id. at 930. The court found the recordation of the serial number of the pistol, as well as the other

property, was unreasonable because the incriminating nature of the evidence was not immediately apparent. Id. at 932.

Unlike the property in the present case, the property in Clark was not inherently suspicious. Here, massive numbers and various types of motorized equipment, video and stereo equipment, and tools were found. Some tools were engraved with a name other than the defendants. Serial numbers had been removed from the stereo equipment. Wires and tubing had been cut from various items in a suspicious manner. The officers knew the defendant was unemployed, yet he had three snowmobiles and a new tractor parked in his yard.

Given these circumstances, we conclude the officers had reasonable cause to believe the tractor and snowmobiles were stolen property. Checking the serial numbers to confirm their reasonable belief does not negate the fact the incriminating nature of these items was readily apparent under the circumstances. We conclude the evidence was properly seized and admitted into evidence under the plain view exception. Any information gained under the plain view exception was properly used as a basis for the second search warrant.

AFFIRMED.