IN THE COURT OF APPEALS OF IOWA

No. 9-594 / 89-215

STATE OF IOWA,

Appellee,

vs.

THOMAS HENDRICKSON,

Appellant.

FILED
MAR 27 1990
CLERK SUPREME COURT

304

Appeal from the Iowa District Court for Story County, Timothy J. Finn and M.D. Seiser, Judges.

Defendant appeals a judgment and sentence entered by the trial court, following a jury trial, finding him guilty of two counts of burglary in the second degree and of being an habitual offender. **AFFIRMED.**

Glenn C. Sedgwick of Goodwin and Sedgwick, Ames, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Mary K. Richards, Story County Attorney, Douglas R. Marek, Assistant Story County Attorney, for appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ. Habhab, J., takes no part.

OXBERGER, C.J.

Thomas Hendrickson (Hendrickson) appeals a judgment and sentence entered by the trial court, following a jury trial, finding him guilty of two counts of burglary in the second degree and of being an habitual offender. Hendrickson asserts the police warrantless search of his rental storage unit by looking into it from another rental unit was violative of fourth amendment right to privacy, and that therefore all evidence seized as a result of a subsequent search pursuant to a warrant should be suppressed. We affirm the decision of the trial court.

In September 1988, two Story County farm homes were burglarized. Numerous items, such as a microwave, television, VCR, golf clubs, sewing machine, and electronic keyboard were taken from the residences. A subsequent police investigation revealed no fingerprints at the scene, but a set of tire tracks was found.

Several days later the Story County sheriff's office received a teletype from the Webster County sheriff's office inquiring as to whether certain property had been stolen, since a number of items seen being placed in a storage facility in Fort Dodge matched the description of those stolen in Story County. Detectives traveled to Fort Dodge and proceeded to Diversified Storage, where the alleged stolen items were seen being stored.

The manager of the facility assisted the authorities in looking at a storage stall which had been rented to the defendant Thomas Hendrickson by cutting the wire above an adjacent, empty stall and looking over the top into Hendrickson's stall by using a flashlight. A number of items located in the storage bin matched the descriptions of the stolen articles. The police officers subsequently obtained a search warrant, and ultimately arrested Hendrickson. Tests run on Hendrickson's car revealed tire treads matching the ones found at the scenes of the crimes.

Prior to trial, Hendrickson filed a motion to suppress all evidence on the ground that the evidence was obtained pursuant to an illegal search, and that his fourth amendment right to privacy had been violated. The trial court denied the motion on the basis that the police looked into the stall from an area in which they had a right to be in, and therefore did not violate Hendrickson's fourth amendment rights.

At trial, Lucille Larson, owner and operator of the storage facility, testified that on Sunday, September 11, 1988, a man came to the storage facility requesting to rent a storage bin. Larson testified the man was driving a blue Cadillac, and appeared quite anxious to rent. Larson watched the man sign a rental agreement and unload items into the stall. Larson had become suspicious and contacted police.

Greg Carlson, manager of the facility, testified that he went into an empty adjacent storage stall, climbed onto a ladder, cut a hole in the chicken-wire ceiling, looked into Hendrickson's stall, and, by using a flashlight, took an inventory of the items in the stall. Carlson never physically entered Hendrickson's stall.

The police testified that a search of the Hendrickson house revealed a large number of stolen items. Hendrickson's car was also searched, where additional stolen items were found.

The jury ultimately found Hendrickson guilty, and adjudged him to be a habitual offender. The trial court sentenced him to two consecutive fifteen year terms of imprisonment. Hendrickson has appealed.

"When there is an alleged denial of constitutional rights, we make our own evaluation of the totality of the circumstances in a de novo style review." State v. Showalter, 427 N.W.2d 166, 168 (Iowa 1988).

Hendrickson contends that his fourth amendment right to privacy was violated when Carlson and the police looked into his storage stall, and therefore all evidence obtained from the illegal search should be suppressed. Hendrickson argues that there was no showing of exigent circumstances which required Carlson or the police to peer into the storage stall. Hendrickson asserts that the items were not in plain view, and that the "acrobatics" used by police to

look in the stall was an attempt to covertly side-step a search warrant.

The State argues that the plain view doctrine applies, since the police were in an area where they had permission to be, and from the vantage point of those areas the police could match the description of the stolen items with those in the stall. The State points out nothing in Hendrickson's stall was touched in order to enable an inspection of its contents.

The fourth amendment protects people from unreasonable government intrusions into their legitimate expectation of privacy. See California v. Ciraolo, 476 U.S. 207, 212, 106 S. Ct. 1809, 1812, 90 L. Ed. 2d 210, 216 (1986). The correct test of legitimacy is not whether the individual has chosen to conceal some private activity, but "whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment." Id. (quoting Oliver v. United States, 466 U.S. 170, 181-83, 104 S. Ct. 1735, 1741, 80 L. Ed. 2d 214, 227 (1984)). The analysis involves a two-part inquiry: "first, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" Ciraolo, 476 U.S. at 211, 106 S. Ct. at 1811, 90 L. Ed. 2d at 215. See also State v. Baker, 441 N.W.2d 388, 390-91 (Iowa App. 1989). In applying this two-part test we

balance the degree of intrusion against the promotion of proper governmental interest. Ciraolo, 476 U.S. at 211, 106 S. Ct. at 1811, 90 L. Ed. 2d at 215.

We first turn to the question whether Hendrickson manifested a subjective expectation of privacy in the storage unit. Hendrickson testified that he had an expectation of privacy in the storage unit. He further testified that he provided his own lock to the unit. Greg Carlson, the office manager of the facility, testified that the lock on Hendrickson's storage unit was not one that the company sold to its renters. Mr. Carlson further testified that he was fairly certain that Hendrickson provided his own lock although he was not present when Hendrickson initially rented the unit.

We note here that there is a somewhat lesser expectation of privacy "where the structure in question is divided up into separate units." 1 W. LaFave, Search and Seizure 2.3(e), at 405 (2nd ed. 1987). We do not believe that Hendrickson deserves any increased expectation of privacy simply because he furnished his own lock to secure the storage unit. Consequently, we believe Hendrickson only had a limited expectation of privacy in the storage unit.

Next, we must determine whether Hendrickson's "expectation is one which society recognizes as objectively reasonable and legitimate." Showalter, 427 N.W.2d at 170.

"The Fourth Amendment applies to non-residential buildings to the extent they are not exposed to the public." State v. Tarantino, 368 S.E.2d 588, 591 (N.C. 1988). The storage facility in which Hendrickson stored all of the stolen items consisted of a series of stalls within a large commercial storage shed. The facility had a large stall down the middle of the unit, with individual stalls on either side. Each individual stall had an overhead garage door access from the outside. The ceiling over the storage units is made of chicken wire. Hendrickson rented stall number 56. Storage unit number 56 measured eight (8) feet by ten (10) feet in size.

Storage unit number 55 was adjacent to Hendrickson's unit. This storage unit had chicken wire over the ceiling and was not rented to anyone. The other adjacent storage unit was rented to someone else and had no chicken wire over the ceiling. Hendrickson testified that even though he did not inspect the unit at the time that he signed the lease, he was aware that the only ceiling directly on the unit consisted of the chicken wire and he also testified that he was aware that the long storage unit next to his unit had no such wire on it. We believe the physical layout of the storage facility and Hendrickson's knowledge of that layout serves to eliminate any reasonable expectation of privacy Hendrickson had in the storage unit. See State v. Tarantino, 368 S.E.2d 588, 591 (N.C.

1988) ("presence of tiny cracks near the floor on the interior wall of a second-floor porch is not the kind of exposure which serves to eliminate a reasonable expectation of privacy").

In United States v. Hufford, 539 F.2d 32, 35 (9th Cir. 1976), a government agent entered the rental unit adjacent to the defendant's unit, with the renter's permission, and observed the defendant's unit through a crack in the wall and a missing piece of sheet rock. Id. at 33. The Hufford court agreed with the district court's conclusion that the agent's observations did not violate the fourth amendment because his "view of the rental garage from the adjacent stall was permissible since he observed what was in plain view and did not trespass." Id. at 35.

In United States v. Bellina, 665 F.2d 1335, 1345 (4th Cir. 1981), patrol officers conducted observations of a plane that had landed at an airport under suspicious circumstances. The Bellina court concluded that a defendant's legitimate expectation of privacy was not infringed upon when an officer observed the interior of the plane by standing on a stepladder to look into the plane. Id. The Bellina court noted that the observations the officer conducted were from a vantage point where the officer had a right to be. Id.

In the case at bar, the manager of the storage facility assisted the authorities in looking into Hendrickson's

storage unit. The manager took a stepladder into storage unit number 55 which was adjacent to Hendrickson's storage unit. As previously noted, this unit was empty and unrented. The manager climbed up the ladder and cut back approximately eight inches of the chicken wire making up the ceiling and looked over the top into Hendrickson's stall by using a flashlight. He then reported his observations to authorities, and Detective Bearden then made similar observations. The police received permission to enter onto the premises to make their observations. At no time was there an entry made into Hendrickson's storage unit.

The district court stated: "All that the police did here was to look down into the Defendant's storage unit from a location where they had the right to be. As such, their action was not violative of the Defendant's Fourth Amendment rights." We agree with the conclusion of the district court. The police were in a place where they had a right to be. From that vantage point, they observed a number of items that matched the description of items stolen in recent burglaries. We find their observations to fall within the plain view doctrine. We find no error by the district court in denying Hendrickson's motion to suppress. We affirm the decision of the district court in all respects.

AFFIRMED.