

IN THE COURT OF APPEALS OF IOWA

No. 6-714 / 95-2228

000460

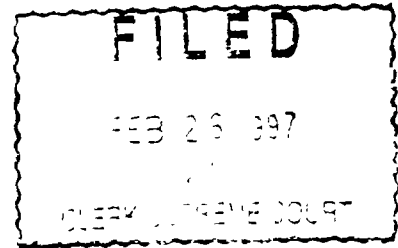
STATE OF IOWA,

Appellee,

vs.

KENNETH RAY SHARP,

Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

The defendant appeals from judgment and sentence entered for first-degree kidnaping in violation of the Iowa Code section 710.1 and 710.2 (1995).

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, and Paul L. Martin, County Attorney, for appellee.

Heard by Sackett, P.J., Cady, and Huitink, JJ.

CADY, J.

Kenneth Sharp appeals from judgment and sentence entered for first-degree kidnaping in violation of the Iowa Code section 710.1 and 710.2 (1995). He contends the trial court erred in failing to suppress a knife seized from his residence during the execution of a search warrant. He further contends there was insufficient corroboration of an accomplice's testimony.

On August 9, 1995, Kenneth Sharp and Mark Hoffman were jointly charged by trial information with the first-degree kidnaping of Joan Skala. The information alleged the two men kidnaped and sexually assaulted Skala after meeting her at a bar in Mason City in the early morning hours of August 4, 1995. Hoffman pleaded guilty to an amended charge of third-degree sexual abuse in exchange for his trial testimony against Sharp.

Sharp filed a motion to suppress a knife found at his residence during the execution of a search warrant. The warrant did not describe a knife or other weapon. When law enforcement officers arrived to execute the search warrant, however, they found the knife sticking out beneath a pillow on the Sharp's bed. Sharp was completely unclothed and appeared as if he just woke up.

The trial court determined the knife was properly seized as evidence in "plain view" and denied the motion. It rejected Sharp's argument that the incriminating nature of the knife was not immediately apparent. It noted "the information supporting the search warrant alleged Joan Skala had been the victim of a "brutal

sexual assault,” and reasoned “a reasonable person in the position of the seizing officer ha[d] enough facts to believe that the knife may be evidence connected to the sexual assault.”

At trial, Skala testified she left the bar with Hoffman and Sharp in Hoffman’s pickup truck. Although she was intoxicated, Skala recalled Sharp was driving the truck and eventually told her to undress. Hoffman then threw her clothing, rings, and purse out the window. She also recalled being assaulted by “someone” in the grass. After stopping by a bridge, Sharp told Skala he would hide her for three days because someone wanted to kill her. He also threatened to rape her child. Hoffman then drove to Sharp’s residence, and Sharp took Skala into his bedroom, threatened her with a knife, and sexually assaulted her. Sharp later telephoned Candace Prather, Skala’s friend, and arranged a meeting place. Prather testified Skala told her Sharp and a man named “Mark” raped her.

Hoffman testified he drove the pickup from the bar to a rural area at Sharp’s direction. After stopping, Sharp repeatedly struck Skala, removed her clothing, and tied her to the tailgate of the pickup. Hoffman then detailed Sharp’s repeated sexual assaults on Skala. Hoffman admitted he briefly participated in the sexual assault. Hoffman stated Sharp threatened to keep her at his residence for three days and rape her child.

The knife seized from Sharp’s residence was admitted into evidence. Law enforcement officers testified Sharp accused Hoffman of physically and sexually

assaulting Skala. Sharp denied any participation in the assaults, but admitted he was present. He also admitted to starting to initiate intercourse with Skala out in the country, but stopped before ejaculation. The forensic evidence matched stains on Sharp's jeans and t-shirt with Skala's DNA profile.

The jury returned a guilty verdict. The court imposed a mandatory term of life imprisonment after denying Sharp's motions for new trial and arrest of judgment.

Sharp appeals. He contends the district court improperly admitted the knife into evidence at trial. He concedes officers lawfully came upon the knife pursuant to a valid warrant, but argues the second prong of the "plain view" exception to the warrant requirement was not met because the incriminating nature of the knife was not immediately apparent. Sharp argues (1) officers had no knowledge a knife was used against Skala prior to the search and (2) a knife is not inherently incriminating. He also contends the testimony of Hoffman was not sufficiently corroborated because it was inconsistent with Skala's testimony.

I. Motion to Suppress

We review de novo the trial court's ruling on Sharp's motion to suppress. *See State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995). This review permits an independent evaluation of the totality of the circumstances as shown by the entire record, including the evidence introduced at trial as well as that adduced at the hearing on the motion. *State v. Vincik*, 436 N.W.2d 350, 353 (Iowa 1989).

Warrantless searches and seizures are unreasonable unless they fall within one of the carefully drawn exceptions to the warrant requirement. *Vincik*, 436 N.W.2d at 353. The plain view doctrine is a recognized exception. *State v. Chrisman*, 514 N.W.2d 57, 60 (Iowa 1994)(citing *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971); *State v. Oliver*, 341 N.W.2d 744, 745 (Iowa 1983)). Under this exception the seizure of an object found in plain view is justified if two requirements are met: (1) the intrusion of the place was lawful, and (2) the incriminating nature of the object was immediately apparent. *Id.* (citing *Horton v. California*, 496 U.S. 123, 136, 110 S. Ct. 2301, 2308, 110 L. Ed. 2d 112, 123 (1990)(eliminating a further requirement the discovery of the item be inadvertent)). The State has the burden to prove the applicability of the plain view exception. *Id.*

Sharp concedes the first requirement for the plain view exception to the warrant requirement was met. Thus, the lawfulness of the seizure of the knife turns on whether the incriminating nature of the object was immediately apparent. *See id.*

Sharp claims the incriminating nature of the knife was not immediately apparent to the police because they had no reason to believe a knife was used in the assault. The warrant made no mention of a knife and the victim did not mention a knife had been used in the attack prior to execution of the search warrant. Finally, the victim's injuries were not consistent with the involvement of a knife.

We conclude the State met its burden of showing the incriminating nature of the knife was immediately apparent to the officers executing the search warrant. The

officers knew Skala had been badly beaten by her assailants, and brutally raped. Although Skala did not mention a knife to the police prior to execution of the warrant, she did tell the officers she was assaulted in a room which contained a baby's crib. The knife was found with the blade open protruding from beneath a pillow on a bed located in a room with a baby's crib.

The timing of the search also contributed to the incriminating nature of the knife. The officers executed the warrant on Sharp's residence a short time after Skala reported the attack. Sharp was caught by surprise. He was naked and apparently had just been awakened by the officers. Based on Sharp's physical state, the time frame, and the nature of the allegations, it was reasonable to immediately conclude a knife discovered in the bed was related to the crime under investigation.

II. Accomplice Testimony

Sharp further contends Hoffman was an accomplice and his testimony was not sufficiently corroborated. Our standard of review is on errors of law. Iowa R. App. P. 4; *State v. Jones*, 511 N.W.2d 400, 404 (Iowa App. 1993).

Rule 20(3) of the Iowa Rules of Criminal Procedure provides:

A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Corroborating testimony must support some material part of the accomplice's testimony, thereby tending to connect the defendant to the commission of the crime

and support the credibility of the accomplice. *State v. Hoeck*, 547 N.W.2d 852, 859 (Iowa App. 1996). Corroborative evidence need not be strong nor entirely inconsistent with innocence. *State v. Dickerson*, 313 N.W.2d 526, 529 (Iowa 1981). The State need not establish corroborative evidence beyond a reasonable doubt. *Hoeck*, 547 N.W.2d at 852. Further, the evidence may be direct or circumstantial and need not confirm each material fact of the accomplice's testimony. *Id.* The existence of corroborative evidence is a question of law for the court, but its sufficiency is a question of fact for the jury. *State v. Jones*, 355 N.W.2d 874, 880 (Iowa 1984).

We find sufficient evidence existed to satisfy the corroboration requirement for Hoffman's testimony. Hoffman testified Sharp was clothed while sexually assaulting Skala in the back of the truck. This testimony was corroborated by DNA tests which revealed the existence of the Skala's epithelial cells, cells which are located in the linings of any of the moist membranes of the body, around the zipper area of the blue jeans and black t-shirt found at Sharp's house.

Additionally, Sharp's own admissions corroborate Hoffman's testimony. *See State v. Bizzett*, 212 N.W.2d 466, 468 (Iowa 1973)(defendant may provide the necessary corroboration for accomplice testimony). Sharp admitted he was with Hoffman and Skala in the countryside, and in a taped interview made shortly after his was arrest, admitted he "started to" penetrate the victim but "just couldn't."

Furthermore, with the exception of that portion of Hoffman's testimony which incriminated Sharp, Sharp generally agreed with Hoffman's version of the

events during the evening. His admissions made in the recorded interview played for the jury sufficiently corroborated Hoffman's testimony. *See State v. Martin*, 274 N.W.2d 348 (Iowa 1979).

AFFIRMED.

Huitink, J., concurs; Sackett, P.J., specially concurs without opinion.