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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed June 24, 1977
v.)
ARLING DAVID SPRINKEL,) 192/59561
Appellant.)

Appeal from Pottawattamie District Court - Harold L. Martin, Judge.

Defendant appeals conviction of terrorizing the inhabitants of a dwelling house challenging the legality of the seizure of certain evidence from an apartment and car. Affirmed.

Troyce A. Wheeler, of Council Bluffs, for appellant.

Richard C. Turner, Attorney General, Mark S. Beckman, Assistant Attorney General, and Lyle Rodenburg, Pottawattamie County Attorney.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

ALLBEE, C.J. 222

Defendant, Arling David Sprinkel, appeals his conviction for terrorizing the inhabitants of a dwelling house as defined by section 714.2, The Code. Sprinkel's related two assignments of error are that trial court erred in admitting certain evidence seized from his apartment and car in violation of the 4th amendment.

At approximately 3:00 A.M. on November 18, 1975, a shotgun blast blew out the storm door of Lela Reichart, 303 McGee, Council Bluffs, Iowa. Al White, an off-duty police officer and neighbor of Reichart, telephoned police headquarters and described a light colored fastback coupe automobile with rectangular shaped red taillights as leaving the area immediately after the blast. White also described the vehicle's direction as south on Benton Street toward Broadway. Immediately thereafter, officer Jeffrey Nelson, a patrolman, spotted a vehicle matching White's description at the intersection of Broadway and Benton. Nelson followed the vehicle until it turned into a driveway for some apartments above a cleaning establishment. Shortly thereafter, officer Larsen, another patrolman, arrived to assist Nelson in the investigation. The two examined the automobiles in the parking lot and only a light colored Duster fit White's description. The officers felt the hood of the car and determined it had been recently driven. Officer Nelson remained with the car while officer Larsen proceeded to the apartments. Officer Nelson shined his flashlight into the interior of the car where he saw several empty shotgun shells lying on the front seat. After Al White arrived and tentatively identified the Duster as the same car as the one in the vicinity of the shooting, officer Nelson entered the car and seized the shells as evidence.

Meanwhile, officer Larsen approached the only apartment with lights on, which happened to be defendant's, and knocked on its door. Miss Denise Fischer, a roommate of defendant, answered the door and after some questions informed Larsen that she was the owner of the Duster in the parking lot and that Sprinkel had been using it. After some evasive answers, Miss Fischer admitted Sprinkel was in the apartment. Officer Larsen testified that as Miss Fischer went to speak to Sprinkel the door slowly swayed open giving him a view of the interior of the apartment. The officer noticed that behind an opaque curtain a barrel of a shotgun was touching the floor apparently with someone holding it. The officer entered the apartment and asked to see the weapon. Sprinkel attempted to ram a rag on a cleaning rod down its barrel and as a result the officer seized it from him. After determining it had been recently fired, he placed Sprinkel under arrest. Miss Fischer testified that the officer pushed the door open and entered the apartment uninvited before seeing Sprinkel.

Following an evidentiary hearing, trial court overruled defendant's motion to suppress the shotgun and shells and, consequently, they were admitted into evidence during his trial. Defendant appeals.

I. Seizure of shotgun.

Defendant's argument that the shotgun was unconstitutionally seized from him has two bases of attack: (1) the search does not come within any recognized exceptions to the warrantless search rules of the 4th amendment, *see* State v. Schlenker, 234 N.W.2d 142, 144 (Iowa 1975); and (2) even if an exception should apply, the seizure was without probable cause and thus unconstitutional.

We believe the instant warrantless search can be justified by two exceptions: hot pursuit or search incident to lawful

arrest. *See* Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967); State v. Harvey, 242 N.W.2d 330, 338-341 (Iowa 1976); State v. Dixon, 241 N.W.2d 21 (Iowa 1976); State v. Johnson, 232 N.W.2d 477 (Iowa 1975).

Following the shooting incident, the police had an unbroken chain of circumstantial evidence which ultimately led to defendant's door. Any break in evidence which occurred when officer Larsen happened to choose defendant's apartment, out of several in the area, was immediately reestablished by Miss Fischer's statements. When the officer saw the barrel of a shotgun below an opaque curtain, he clearly had probable cause to arrest defendant. *See* State v. Harvey, 242 N.W.2d 330, 339-340 (Iowa 1976). The officer's entry of the apartment to effectuate the arrest falls within guidelines established in State v. Johnson, supra at 480. The fact defendant was at that moment attempting to destroy evidence further adds to the reasonableness of the police officer's action in seizing the weapon. *See* Cupp v. Murphy, 412 U.S. 291, 93 S.Ct. 2000, 36 L.Ed.2d 900 (1973). The fact the actual arrest occurred after the seizure of the weapon is not determinative of the lawfulness of the seizure. State v. Harvey, supra. The seizure of the shotgun from Sprinkel was well within the parameter of the 4th amendment.

II. Search of car.

Defendant's contention that the seizure of the shotgun shells from his car was unconstitutional is also without merit. Defendant concedes police may constitutionally search a vehicle if probable cause and exigent circumstances exist. *See* Texas v. White, 423 U.S. 67, 96 S.Ct. 304, 46 L.Ed.2d 209 (1975); Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970); State v. Dixon, 241 N.W.2d 21 (Iowa 1976); State v. McReynolds, 195 N.W.2d 102, (Iowa 1972). Given the chain of evidence of

which the officers had knowledge linking the car to the commission of a crime, probable cause existed for its search. *See* Chambers v. Maroney, supra; State v. Dixon, supra. Considering the lateness of the hour, the understaffed officers at the scene, the mobility of the vehicle, and the driver of the vehicle still being at large, exigent circumstances existed such as to excuse the officer's failure to procure a warrant. *See* Texas v. White, supra; Chambers v. Maroney, supra, State v. Dixon, supra; State v. McReynolds, supra.

The search of the car and seizure of the shells was not violative of the 4th amendment.

Trial court's judgment hereby is affirmed.