

IN THE COURT OF APPEALS OF IOWA

No. 9-425 / 08-1132
Filed July 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA DANIEL FLEMING,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, John C. Nelson,
Judge.

Defendant appeals arguing a search warrant was invalid. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney
General, Patrick Jennings, County Attorney, and Jayme Kirsch, Assistant County
Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

This appeal relates to the validity of a search. After a traffic stop on November 25, 2007, the car's occupants informed the police they were on their way to a house to purchase drugs from Andrew Nearman. The police verified Nearman was the owner of the house, a single-family residence, and obtained a search warrant the same day. Joshua Fleming was detained in the dining room when the warrant was executed and subsequently stipulated he was a resident of Nearman's house.

Fleming used the house's address on correspondence. Nearman, Fleming, and a third party shared a common entrance, living room, dining room, and kitchen. Fleming had his own bedroom, and a small amount of marijuana was found in Fleming's bedroom. Fleming moved to suppress the evidence arguing the officers, "after learning of Fleming's separate occupancy of the bedroom," needed to obtain a new warrant for this separate room and their bedroom search was not authorized or justified. The motion was denied.

At trial, Fleming testified he had a rental agreement with Nearman and he had exclusive possession of the bedroom. In upholding the seizure of the evidence from Fleming's bedroom, the court ruled:

This is not a situation akin to a standard landlord/tenant arrangement—the house involved is a single family residential dwelling titled solely in the name of Andrew Nearman. [Fleming] did not have an address different than that of Mr. Nearman. There has been no evidence presented that the room [Fleming] claims to be his exclusive bedroom has a number associated with it or that it can be locked and/or is locked regularly. There was no evidence presented to show that Mr. Nearman had a rental certificate from the city to allow himself to legally be a landlord . . . nor was a written lease ever provided

The search warrant that issued contemplated and allowed for a search of the entire single family dwelling where [Fleming] resided. . . . [Fleming's] privacy interests, whatever they may have been, were protected by the warrant application process and under the circumstances a search warrant allowing for a search of the entire house was appropriate.

Fleming appeals his conviction and sentence arguing his constitutional rights were violated when the court failed to grant his motion to suppress. Fleming requests a dismissal "due to the illegal search." We review constitutional issues de novo. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993).

We believe the legality of the Fleming warrant and search is supported by the Iowa Supreme Court's analysis in *State v. Lehr*, 258 N.W.2d 158 (Iowa 1977). Defendant Lehr was the lessee of an upstairs apartment occupied by three other men and consisting of a rear stairway, back porch, living room, dining room, kitchen, bathroom, and four bedrooms. *Lehr*, 258 N.W.2d at 159. The police were told one of Lehr's roommates was selling drugs out of the apartment. *Id.* A warrant for the search of the apartment was issued, and drugs were recovered in numerous areas of the apartment, including Lehr's bedroom. *Id.*

On appeal, Lehr argued the search warrant and the search conducted were illegal because the warrant should have been limited to a search of his roommate and the roommate's part of the apartment. *Id.* at 160. In rejecting Lehr's claim, the court ruled: "Under the circumstances here and the living arrangements of the four men in the apartment, we hold that the district judge properly issued a warrant for search of the apartment." *Id.*

Likewise, under the living arrangements here, a single-family residence where Fleming produced no evidence of multiple mailboxes, multiple addresses,

multiple buzzers, or multiple utility bills, and where Fleming had use of the common areas of the house as demonstrated by his detention in the dining room, the court properly issued a warrant for search of the entire house, and the officers acted legally in executing the search. See *United States v. Canestri*, 518 F.2d 269, 273 (2nd Cir. 1975) (holding a warrant directing the entire house be searched included a locked storeroom, otherwise “the purposes of a search warrant could be frustrated by the mere declaration of the owner of a one-family residence that one of the rooms therein ‘belongs’ to a party not named in the warrant”); *People v. Gorg*, 321 P.2d 143, 148 (Cal. Ct. App. 1958) (rejecting claim a warrant issued in the name of one tenant does not authorize the officers to search those parts of the premises not occupied by the person named in the warrant where the three bedrooms opened into shared living room, kitchen, bath, and halls making all of the rooms one living unit); see also *People v. Bell*, 290 N.E.2d 214, 217 (Ill. 1972) (holding warrant authorizing a search of entire first-floor apartment not overly broad where the apartment was one unit for residential use and the defendant had access to its various parts).

AFFIRMED.