IN THE COURT OF APPEALS OF IOWA

No. 9-225 / 08-0867
Filed June 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEPHEN CRAIG LEONARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Cherokee County, Nancy L. Whittenburg, Judge.

Stephen Leonard appeals from the district court's denial of his application for the return of seized property. **REVERSED AND REMANDED.**

Jack Bjornstad, Spirit Lake, for appellant.

Stephen Leonard, Anamosa, pro se.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney General, Ryan Kolpin, County Attorney, and Douglas S. Phillips, Special Prosecutor, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

In 1995, the Cherokee Iowa Police Department obtained and executed two search warrants on Stephen Leonard's home. Within a month, Leonard applied for the return of property seized under the first search warrant. Thirteen years later, Leonard filed an application for the return of property seized under the second search warrant. He alleged that he did not learn about the execution of the second search warrant until August 2007.

Leonard sought a hearing on his second application. The State filed a resistance, stating the property had been returned to a "fiduciary" of Leonard at his request and there was no need for a hearing. Leonard responded that the State's resistance raised facts pertaining to the first search warrant, not the second.

The district court did not schedule a hearing on Leonard's second application for the return of seized property. The court denied the application, stating "[t]here is no credible evidence that the defendant was not informed in 1995 of the property seized at that time." The court also noted that, according to the State's resistance, the property was returned.

On appeal, Leonard contends he was entitled to a hearing by statute and under the United States and Iowa Constitutions. The State concedes that, "[t]he statutory law applicable in 1995 when the property at issue was seized does not contain a statute of limitations or any other temporal requirement regarding when a property claimant must file an application for return of seized property." The State maintains, however, that the equitable doctrine of laches, which precludes consideration of stale claims, supports the district court's summary dismissal of

Leonard's application. *See State v. Moret*, 504 N.W.2d 452, 453 (Iowa 1993) ("Essentially, the doctrine [of laches] applies to those situations in which a party has delayed prosecution of a claim to the prejudice of the party against whom the claim is made.").

The problem with this argument is that it was not preserved for review. *See DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002) ("[I]t is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider."). The prosecutor did not mention the doctrine of laches in the resistance to Leonard's application, nor did the district court cite this doctrine in its dismissal order. While the court stated that the seizure took place in 1995, neither the doctrine of laches nor the principle of staleness underlying this doctrine was cited or discussed. For that reason, we decline to consider the State's ground for affirmance.

Leonard's application was filed under Iowa Code chapter 809 (2007), governing disposition of seized property. That chapter requires the court to set a hearing on an application for the return of seized property unless (1) "no specific grounds are set out in the application for return," (2) "the grounds set out are insufficient as a matter of law," or (3) seized property is returned to the owner. Iowa Code §§ 809.3, 809.4, 809.5(1).

The first exception to the hearing requirement was not applicable, as Leonard's application set forth a detailed and specific ground for relief.

Turning to the second exception, the application alleged that Leonard "was never served a copy of this warrant or given notice of the seizure of property." As noted, the district court said that "no credible evidence" supported

this ground. This statement is effectively a concession that the sufficiency of this ground could not be decided as a matter of law. Therefore, the second exception to the hearing requirement also did not apply.

The third exception addresses the return of seized property. The State asserted that the property was returned. Leonard, however, disputed this assertion. Therefore, whether the property was returned was a fact issue that required a hearing for resolution.

As the cited exceptions to the hearing requirement did not apply, Leonard was entitled to a hearing on his second application. Iowa Code § 809.4. Because one was not afforded, we reverse the district court and remand for a hearing on his second application for return of seized property. *See State v. Ludtke*, 446 N.W.2d 797 (Iowa 1989) (holding that under predecessor statute "the legislature did not intend that a notice of seizure would trigger abandonment or establish a time within which claims must be filed;" for that, a "notice of release or notice of forfeiture" was necessary).

In light of our conclusion, we find it unnecessary to reach the constitutional argument raised by Leonard. *State v. Quintero*, 480 N.W.2d 50, 51 (Iowa 1992) ("We need not, and therefore should not, invoke the Iowa Constitution in resolving the present appeal; we have consistently refrained from answering constitutional questions when the issue can be otherwise resolved. This has long been our rule.").

REVERSED AND REMANDED.