COURT OF APPEALS
DECISION
DATED AND RELEASED

March 27, 1996

No. 95-2911-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

AMY MC GEE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Racine County: WAYNE J. MARIK, Judge. *Affirmed*.

BROWN, J. Amy McGee claims that the police exceeded the scope of their search warrant. She argues that evidence of stereo equipment with altered and missing serial numbers was not lawfully gathered by police executing a search warrant aimed at illegal drugs and related paraphernalia. We conclude that the identifying marks of this equipment were nonetheless in "plain view" of the police and uphold the trial court's ruling to admit this

evidence. We thus affirm her conviction on one count of alteration of property identification marks.

On December 1, 1993, the police executed a "no knock" warrant at McGee's home suspecting that this property was being used for illegal drug sales. During their search, the police noticed that the house contained an inordinate amount of stereo and electronic equipment. Moreover, when they searched this equipment for drugs, the police noticed that some of the components were missing serial numbers and that others had altered serial numbers. This evidence served as the basis for the charge against McGee.

Before turning to the merits of McGee's argument, we note that she has not fulfilled her responsibility to insure that the subject search warrant was included in the appellate record. *See* ***Fiumefreddo v. McLean***, 174 Wis.2d 10, 26-27, 496 N.W.2d 226, 232 (Ct. App. 1993); *see also* RULE 809.15(1)(a)9, STATS. Since McGee's appeal is so related to the language of the search warrant, she is fortunate that the trial court provided a good description of the warrant in its oral ruling. Otherwise, we would have been required to simply assume that this missing document supported the trial court's conclusion. *See* ***Fiumefreddo***, 174 Wis.2d at 27, 496 N.W.2d at 232.

We now turn to the merits. The warrant authorized a search of McGee's home for "cocaine, cocaine base, related paraphernalia, firearms, gang related material, bank records, documents and other items which can establish

who is in control of the premises." Although the police testified that it is common for drug dealers to take stereo and other electronic equipment in trade for drugs, the warrant failed to mention it. McGee thus argues that the "warrant was void of any specific authority" to search for the serial number evidence.

The State responds that the serial number evidence was within the "plain view" of the officers. Since the warrant authorized the police to search for drugs, and the officers had knowledge that drug dealers sometimes hide their wares in electronic equipment, the officers could legitimately be expected to see this evidence in "plain view" while they looked for drugs which could have been as small as a pea. The issues framed present a question of law that we review independently of the trial court. *See* ***State v. Guzman***, 166 Wis.2d 577, 586, 480 N.W.2d 446, 448, *cert. denied*, 504 U.S. 978 (1992).

In ***State v. Guy***, 172 Wis.2d 86, 101-02, 492 N.W.2d 311, 317 (1992), *cert. denied*, 113 S. Ct. 3020 (1993), the supreme court outlined the three-element test that the State must meet to justify a search under the plain view doctrine.

> (1) the evidence must be in plain view;
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> (2) the officer must have a prior justification for being in the position from which [he or] she discovers the evidence in plain view; and
>
> (3) the evidence seized in itself or in itself with facts known to the officer at the time of the seizure, must provide

> probable cause to believe that there is a connection between the evidence and criminal activity.

Id. (quoted source and alterations omitted). We conclude that the officers' spotting of the serial number evidence meets this test.

The first two elements pertain to the issue of how the police came upon the challenged evidence. Since McGee concedes in her briefs that the police were "acting pursuant to a valid warrant," and she does not contend that the police could not have possibly seen the serial number tags (or lack thereof) while they looked through the equipment for possibly pea-sized pieces of illegal drugs, we see no dispute over whether the State has met the first two elements.

In regards to the third element, we conclude that the police, immediately after they saw that some of this equipment had no serial numbers, could conclude that it was evidence of "criminal activity." *See* ***Guy***, 172 Wis.2d at 102, 492 N.W.2d at 317-18.

The State charged McGee with altering property identification marks. *See* § 943.37, STATS. Although this offense requires that the defendant intended to prevent identification of the property, *see* ***id.***, the statutory language of the offense sets out a presumption that a person who possesses two or more items of personal property with altered serial numbers knows that the property has been unlawfully altered and that he or she intended for it to be altered. *See* § 943.37(3). Because the police found thirteen pieces of electronic equipment with altered serial numbers, we are satisfied that the police had probable cause to believe that this equipment was related to the offense charged.

We thus reject McGee's attempt to characterize this search as the kind of "exploratory rummaging in a person's belongings" disapproved of by the Eighth Circuit in ***United States v. Clark***, 531 F.2d 928, 931 (8th Cir. 1976)(quoted source omitted). There the government similarly contended that the serial number from a firearm was in "plain view" to South Dakota police officers who had been searching for illegal drugs. *See* ***id.*** And like this case, the appellate issue narrowed to whether the police had probable cause to believe that the serial number evidence they claimed was in "plain view" provided probable cause to believe that a crime was committed. *See* ***id.***[1]

The ***Clark*** court, however, rejected the government's claim on this point because the South Dakota police did not immediately suspect that the firearm had been illegally transported. Indeed, the police did not know anything about the weapon until they sent the information to federal authorities who conducted a trace. *See* ***id***.

We are thus satisfied that ***Clark*** is distinguishable from McGee's situation. Unlike the South Dakota officers who had to wait for the federal authorities to tell them that the weapon was evidence of a crime, the officers who found the stereo equipment at McGee's house could instantly identify that it was tied to criminal activity. McGee's attempt to apply ***Clark*** fails.

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[1] The court in ***United States v. Clark***, 531 F.2d 928, 932 (8th Cir. 1976), specifically inquired whether the "incriminating nature of the evidence was immediately apparent." This test has been equated to whether the police had probable cause to believe that the evidence in "plain view" was incriminating. *See* ***State v. Guy***, 172 Wis.2d 86, 101, 492 N.W.2d 311, 317 (1992), *cert. denied*, 113 S. Ct. 3020 (1993).

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.