FILED
DEC 28 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

RICHARD ALAN MUELLER,

Appellant.

Filed December 28, 1977

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59963

Appeal from Webster District Court - Francis E. Tierney, Magistrate

Defendant appeals his conviction for O.M.V.U.I., in violation of § 321.281, The Code, asserting error in the admission of certain evidence. Affirmed.

Richard C. Lunn, of Fort Dodge, for appellant.

Richard C. Turner, Attorney General, Lona Hansen, Assistant Attorney General, and William J. Thatcher, Webster County Attorney, for appellee.

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

PER CURIAM

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Defendant, Richard Alan Mueller, appeals his conviction for O.M.V.U.I., under § 321.281, The Code. He raises three points which he insists require reversal. Because we are not persuaded by any of his assertions, we affirm.

Defendant first suggests that Chief Klein failed to arrest him, and that because there was no arrest, "no proper foundation can be laid for the testimony admitted by the State to the jury." We note that defendant's brief fails to comply with rule 14(a)(5), Rules of Appellate Procedure, because it provides inadequate citation to the pertinent parts of the record. Thus it is unclear which portions of the State's evidence defendant now refers to. Defendant's objection at trial (Tr. 10-11.) leads us to believe that this contention is aimed at the testimony of Chief Klein regarding his observations at the accident scene. The fact that an arrest had not occurred does not prevent a police officer from testifying to his observations of a defendant. See, e.g., Cupp v. Murphy, 412 U.S. 291, 93 S.Ct. 2000, 36 L.Ed.2d 900 (1973) (officers allowed to testify regarding taking of fingernail scrapings from defendant; no arrest occurred because police believed themselves to be without probable cause); Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (officer McFadden testified to movements of Terry and Chilton which occurred prior to arrest).

Defendant also appears to complain of the introduction of certain of his statements made prior to the time when Highway Patrol Sergeant Wignall gave him the warning required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The only information from such statements related to the jury was that defendant had strained his neck. This is not the kind of situation to which Miranda v. Arizona applies. See State v. McDonald, 190 N.W.2d 402 (Iowa 1971).

During the cross-examination of Chief Klein, the Chief acknowledged that he asked defendant if defendant had been drinking. Defendant's answer was not given. In any event, defendant cannot complain of testimony which he himself elicited. Defendant's first contentions are without merit.

Defendant next claims that the **Miranda** warning given was defective because it failed to tell him that if he wished to consult with an attorney at any time during the interrogation, the questioning must cease. Such advice is not mandated by Miranda v. Arizona. Michigan v. Mosley, 423 U.S. 96, 100, n. 6, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975);

State v. Cooper, 217 N.W.2d 589, 592 (Iowa 1974). The requirement that questioning cease upon a request for counsel is a limitation on police, see Michigan v. Mosley, supra, 423 U.S. at 110, n. 2 (White, J., concurring), but advising a defendant of that limit is not required.

Because the arrest and the warning were not deficient, we need not consider defendant's "fruit of the poisonous tree" contention.

AFFIRMED.