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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

157

STATE OF IOWA,

Plaintiff-Appellee,

vs.

STEVEN EDWARD LACKLAND,

Defendant-Appellant.

Filed June 29, 1982

2-157
66960

Appeal from Black Hawk District Court, Dennis D. Damsgaard, Judge.

Defendant appeals his conviction for robbery in the first degree in violation of section 711.2, The Code. AFFIRMED.

Stanford J. Patterson of Patterson Law Firm, Waterloo, for appellant.

Thomas J. Miller, Attorney General, and Michael Jordan, Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Carter and Snell, JJ.

PER CURIAM

Defendant appeals his conviction for robbery in the first degree in violation of section 711.2, The Code. He contends the trial court: (1) abused its discretion in denying his challenge for cause of a juror who stated defendant "must be guilty of something"; (2) erred in admitting into evidence a certain photograph of defendant; and (3) erred in not ordering a psychiatric evaluation of defendant pursuant to his request under section 812.3, The Code. We affirm.

Defendant was charged by information with the December 29, 1980, first-degree robbery of one Nicholas Scott. Defendant filed notice of his intent to claim diminished responsibility and/or intoxication as his defenses. The trial resulted in a jury verdict of guilty on the offense charged. On May 8, 1981, the trial court sentenced him to a term of not more than twenty-five years, but in no event to serve less than five years. Defendant's motion in arrest of judgment, which alleged the same issues as are now on appeal, was overruled. This appeal followed.

I. Defendant first claims the trial court abused its discretion in overruling one of his challenges for cause of a juror who, in response to defendant's attorney's questions, allegedly said in effect that defendant "must be guilty of something." Unfortunately, the record does not contain what transpired, but the trial court later indicated its feeling that such response was elicited by the leading questions of defendant's attorney. The court also made the following statements when the issue was being discussed below: "I asked them, first of all, would they keep an open mind and listen to the evidence and, secondly, after they heard the evidence would they apply the law and render a verdict. They both answered affirmatively and I felt at that point they were competant (sic) jurors."

On this record, we cannot conclude that reversible error has been committed. These facts do not present the more extreme kind of statements and feelings expressed by a potential juror as were condemned in State v. Beckwith, 242 Iowa 228, 46 N.W.2d 20 (1951). In that case, one of the jurors stated "that he thought he could not disregard the opinions he had formed and be fair and impartial and that he would be unconsciously influenced by those opinions." 242 Iowa at 237, 46 N.W.2d at 25. This case presents no such indication that the challenged jurors were going to steadfastly adhere to any preconceived notion of defendant's guilt. In addition, defendant's attorney's apparent use of leading questions casts further doubt on the intensity of the jurors' alleged convictions regarding defendant's guilt. See State v. Williams, 285 N.W.2d 248, 267 (Iowa 1979). Finally, the jurors' insistence that they would "keep an open mind and listen to the evidence" leads us to believe that the impact of the complained-of statement was negligible at most.

We are mindful of the admonition that "there is no need for close rulings on the qualifications of jurors in criminal cases. '[T]rial courts should use the utmost caution in overruling challenges for cause in criminal cases when there appears to be a fair question as to their soundness.' " Williams, 285 N.W.2d at 267, quoting Beckwith, 242 Iowa at 238, 46 N.W.2d at 26. We simply decide that the facts in this case on this issue do not call for reversal of defendant's conviction.

II. Next, defendant asserts trial court error in admitting into evidence a photographic lineup by which two witnesses identified defendant as the one who committed the robbery. He claims the photographs are clearly "mug shots" which indicate a prior criminal record to his prejudice.

We disagree. This same issue was raised in State v. Redding, 169 N.W.2d 788 (Iowa 1969) where the court held that such photographic evidence is admissible for the purpose of showing prior identification of the defendant. 169 N.W.2d at 791 et seq. and authorities cited therein. Nor is this evidence inadmissible because the photo appears to be a police "mug shot." The Redding court dealt with this issue as well: "[t]he state made no attempt to show before the jury, except perhaps incidentally, defendant had been arrested, much less convicted, upon any charge other than that now considered." 169 N.W.2d at 792. The photograph found to be admissible in Redding clearly stated it was a Waterloo police department photograph. The evidence here shows no such information. There is no indication the State here used the challenged photograph for any reason other than to show prior identification. See also State v. Cuevas, 288 N.W.2d 525, 530 (Iowa 1980); State v. Terrill, 241 N.W.2d 16, 20 (Iowa 1976); Redding, 169 N.W.2d at 792-94.

The Redding court noted that some jurisdictions have distinguished for admissibility purposes between photographs taken in prison (indicating felony convictions) and those taken in police stations. 169 N.W.2d at 794. There is certainly no indication that the photograph in this case was taken in a prison. The testimony at trial sheds no light at all on the source of the evidence; during the testimony of Richard Boesen, a Waterloo detective, the following exchange occurred:

> Q. Prior to showing that photograph to Mr. Scott, did you give him any indication about the photographs, what they were?
> A. We just asked him to look through the photographs and see if he could recognize anyone as the subject who robbed him that night.

The only indication that the photograph was taken in a police station is the fact that defendant is shown standing by a wall which contains various marks

apparently indicating one's height. We do not believe that circumstance would neeessarily lead a jury to concluding that defendant had a prior criminal record or that he had even been arrested. Trial court did not err in allowing the introduction of this evidence.

III. Finally, defendant argues that the trial court erred in not ordering a psychiatric evaluation which was requested by him regarding alleged past mental problems. Instead, the trial court ordered a preliminary screening evaluation to determine whether defendant's request should be granted. Dr. Lloyd Spencer, who conducted the preliminary screening, concluded that defendant had no mental disorder "with the possible exception of a mild generalized anxiety disorder which, however, maybe secondary to his prolonged drinking." As a result, no full-fledged evaluation was ordered.

Defendant claims that he was entitled to a psychiatric evaluation on the basis of section 812.3, The Code:

> If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder which prevents him or her from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, further proceedings must be suspended and a hearing had upon the question.

We conclude that no such hearing was required in this case. The only indication of any mental disorder were the bare allegations contained in defendant's application. Dr. Spencer concluded that defendant was aware of the consequences of his actions and "understands the nature of the charges against him and understands the court proceedings which lie ahead." Defendant presented no evidence of any mental disorder whatsoever. Under these circumstances, we find no evidence "from which a reasonable person would believe a substantial question of the defendant's competency exists." State v. Kempf, 282 N.W.2d 704, 706 (Iowa 1979).

Defendant's conviction is affirmed.

AFFIRMED.