FILED
SEP 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA 641

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DENNIS EUGENE CARREL,

Defendant-Appellant.

Filed September 23, 1980

0-201
63692

Appeal from Polk District Court - Harry Perkins, Judge.

Defendant appeals his conviction of first-degree robbery in violation of sections 711.1 and 711.2, The Code 1979. AFFIRMED.

Martha Shepard of Polk County-Des Moines Offender Advocate Office, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Julie Pottorff, Assistant Attorney General; and Dan Johnston, Polk County Attorney; for plaintiff-appellee.

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

Defendant appeals his conviction of first-degree robbery in violation of sections 711.1 and 711.2, The Code 1979. He contends the trial court erred in overruling his motion for mistrial based on a police officer's testimony regarding defendants' exercise of his constitutional right to remain silent. We affirm.

During the State's direct examination of Ralph Roth, Jr., a Des Moines police officer, he testified he advised defendant of his Miranda rights and that defendant understood those rights. The following then occurred:

> Q. Did he tell you that he would speak with you about the robbery at all?
>
> A. No, sir. He didn't want nothing talked about that.

Defendant's counsel objected to the quoted testimony and moved that it be stricken. Trial court sustained the motion. Later, in chambers, defendant moved for a mistrial on the ground the jury should not know of his exercise of his right to remain silent. Trial court overruled the motion and subsequently instructed the jury to disregard the challenged testimony.

The issue we must consider is whether there was an abuse of discretion in the denial of the motion for mistrial. Ordinarily, the trial court has considerable discretion in deciding the propriety of such a motion. State v. Burrell, 255 N.W.2d 119, 122-23 (Iowa 1977). Issues quite similar to the one now presented were determined in Burrell and State v. Peterson, 189 N.W.2d 891, 895-97 (Iowa 1971). In both of these cases, it was determined that the issue presented does not involve the application of the harmless error rule. This is because the evidence complained of was not erroneously admitted—it was promptly stricken from the record. The issue then becomes whether some prejudicial effect remained with the jury in spite of the admonition which was given. Burrell, 255 N.W.2d at 122; State v. Fuhrmann, 257 N.W.2d 619, 623 (Iowa 1977); State v. Johnson, 243 N.W.2d 598, 605 (Iowa 1976).

As stated in State v. Bolds, 244 Iowa 278, 282, 55 N.W.2d 534, 535-36 (1953);

> * * * Jurors have sworn to try the case in accordance with law and the instructions of the court, and it is only in extreme cases that we can presume they have disregarded their oaths and ignored the strong direction of the court which told them they must not consider stricken testimony.

We cannot conclude that the impression created by the single question and answer complained of in the present case is sufficient within the context of the entire trial to cause the jury to disregard the court's instruction. Under such circumstances, denial of the motion for mistrial was not an abuse of discretion.

AFFIRMED.