FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )
Plaintiff-Appellee, ) Filed September 20, 1979
vs. )
PHILLIP J. POWERS, ) 184/62086
Defendant-Appellant. )

Appeal from Polk District Court - Ray Hanrahan, Judge.

Defendant appeals his conviction of assault with intent to do great bodily injury in violation of section 694.6, The Code 1977, alleging improper admission of a prior inconsistent statement and that prosecutor improperly exploited defendant's exercise of right to remain silent. - Affirmed.

John C. Wellman, Polk County Offender Advocate Office, Des Moines, for Defendant-Appellant.

Thomas J. Miller, Attorney General of Iowa, and Dan Johnston, Polk County Attorney, for Plaintiff-Appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction of assault with intent to do great bodily injury in violation of section 694.6, The Code 1977, alleging that the trial court erred in allowing a police officer's testimony about a prior inconsistent statement allegedly made by defendant and obtained in violation of defendant's Miranda rights to be used at trial to impeach defendant's trial testimony. Defendant contends that the police officer's testimony should not have been allowed because the officer could not recall the exact wording of defendant's statement and because the issue to which the inconsistent statements were directed was not raised by defendant's direct testimony. Defendant also alleges that the trial court erred by overruling defendant's motion for a mistrial which was based on an alleged improper comment by the prosecutor on defendant's exercise of his right to remain silent. We affirm.

At trial, defendant testified on direct examination that he did not intend to murder the victim, but only intended to scare him. On cross-examination, the prosecutor asked defendant if he had made a particular statement to a police officer and defendant denied making such a statement. On rebuttal, the prosecution called the police officer, who testified about defendant's alleged prior inconsistent statement, concededly obtained in violation of defendant's Miranda rights. Defendant objected to the use of this testimony for impeachment purposes on the ground that the officer could not recall the exact statement made by defendant. The trial court overruled the objection. After the police officer testified about defendant's alleged prior inconsistent statement, the prosecutor asked him if there was any further conversation with defendant along those lines and the officer gave a negative response. At that point, defendant moved for a mistrial on the ground that the question by the prosecutor elicited an improper comment on defendant's exercise of his right to remain silent. The trial court overruled the motion.

I. Evidence that would be inadmissible in the prosecution's case in chief may be used for impeachment purposes if its trustworthiness satisfies legal standards. Harris v. New York, 401 U.S. 222, 224-26, 91 S. Ct. 643, 645-46, 28 L. Ed. 2d 1, 4-5 (1971). Defendant argues that since the officer testifying about defendant's alleged inconsistent statement could not recall defendant's exact words, the "trustworthiness" of the

statement did not satisfy "legal standards". However, such an argument misconstrues the meaning of the Supreme Court's statement, since "trustworthiness" as used by the Supreme Court in Harris, goes to the voluntariness of the statements rather than their accuracy or credibility. 49 Tex. L. Rev. 1119, 1124 (1971); see State v. Washington, 257 N.W.2d 890, 895 (Iowa 1977). If we were to accept defendant's argument, we would accord to the trial judge the determination of a witness' credibility that has been traditionally reserved for the jury. State v. Metcalf, 260 N.W.2d 857, 860 (Iowa 1977); State v. McCullough, 226 N.W.2d 216, 217 (Iowa 1975). Furthermore, the inability of the police officer to recite defendant's alleged inconsistent statement verbatim is not determinative of the credibility of the evidence. "As a general principle, it is to be understood that this inconsistency is to be determined, not by individual words or phrases alone, but by the whole impression or effect of what has been said or done." 3A J. Wigmore, Evidence § 1040, at 1048 (J. Chadbourne rev. 1970) (emphasis original) quoted in State v. Hephner, 161 N.W.2d 714, 719 (Iowa 1968). "The best judicial opinion does not insist on any degree of positiveness in the recollection, but accepts whatever the witness feels able to present." 3 J. Wigmore, Evidence § 726, at 72 (J. Chadbourne rev. 1970). Consequently, we do not believe that the trial court erred by allowing the police officer to testify about defendant's alleged prior inconsistent statement.

Defendant also claims that the trial court erred by allowing the police officer to testify about defendant's prior statement when the issue to which the inconsistent statement was directed was not raised in defendant's direct testimony. We note that defendant failed to mention this ground for objection at trial, and thus failed to preserve error. Defendant cannot base his objection on one ground at trial and assert additional grounds for the first time on appeal. State v. Jackson, 259 N.W.2d 796, 799 (Iowa 1977).

II. Defendant contends that the prosecutor improperly elicited a comment on defendant's exercise of his right to remain silent by asking the police officer if there was any further conversation with the defendant along the lines that produced the alleged inconsistent statement to which the officer responded negatively. Defendant properly cites Doyle v. Ohio, 426 U.S. 610, 618-19, 96 S. Ct. 2240, 2244-45, 49 L. Ed. 2d 91, 98 (1976) for the proposition that an arrested person's silence may not be used to

impeach an explanation subsequently offered at trial. However, we do not believe Doyle should be dispositive of this case. Here, the prosecutor was not attempting to exploit a total silence by defendant once advised of his rights. After having ascertained that defendant engaged in certain small talk with a police officer, the prosecutor was merely asking whether anything was said beyond what had already been testified to. As in the cases of State v. Johnson, 272 N.W.2d 480, 483 (Iowa 1978) and State v. Canada, 212 N.W.2d 430, 434-35 (Iowa 1973), our reading of the record reveals no attempt by the prosecution to use a police officer's statement in and of itself to draw an unfavorable inference concerning defendant's guilt or innocence, and there was no unfair comment on defendant's exercise of his right to remain silent. Finding no error, we affirm the decision of the trial court.

AFFIRMED.