

SEP 21 1978

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
	)	Filed September 21, 1978
Appellee,	)	
vs.	)	
	)	620
DANIEL P. RICE,	)	<u>61466</u>
	)	
Appellant.	)	

Appeal from Des Moines District Court - D. B. Hendrickson, Judge

Defendant appeals conviction for breaking and entering asserting error in overruling his motion for mistrial based upon an alleged violation of the motion in limine ruling. - Affirmed.

Rodney Wittkamp, of Wittkamp & Waples, Burlington, for Appellant.

Richard C. Turner, Attorney General of Iowa, Ray Sullins, Assistant Attorney General, and Steven S. Hoth, Des Moines County Attorney, for Appellee.

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

Defendant Daniel Rice appeals his conviction by jury of the crime of breaking and entering in violation of § 702.2, The Code. Prior to trial, defendant filed a motion in limine to prevent testimony concerning his prior conviction for bank robbery; the motion was sustained by the trial court. Subsequently, Kilpatrick, an accomplice testifying on behalf of the State, stated that a shotgun was taken from the home, that defendant knew where it was kept and that he, Kilpatrick, heard it was used in a bank robbery. At the close of Kilpatrick's direct testimony, defendant moved for a mistrial based upon a violation of the motion in limine. The trial court overruled Rice's motion.

Rice raises only one issue on appeal, that the trial court erred in overruling his motion for mistrial. Initially, the State argues defendant has failed to preserve error because Rice did not object to Kilpatrick's statement concerning the bank robbery at the earliest opportunity when the ground first became apparent. See *State v. Winkist*, 247 N.W.2d 256, 259 (Iowa 1976). Secondly, the State argues that even if sufficiently preserved, the trial court did not err in admitting the evidence or in overruling Rice's motion for mistrial.

A failure to make timely objection or motion to strike showing reason for delayed objection will ordinarily preclude a party from later claiming error in the admission of testimony. *State v. Shimon*, 182 N.W.2d 113, 115 (Iowa 1970). In the instant case, Rice made no objection following Kilpatrick's statement regarding the alleged use of the shotgun in a bank robbery. Neither did he subsequently move to strike the testimony at the time he made his motion for mistrial. Error was not preserved.

Secondly, a trial court has considerable discretion in ruling on motions for mistrial and a reviewing court will not reverse absent an abuse of that discretion. *State v. Blackwell*, 238 N.W.2d 131, 138-39 (Iowa 1976). In the instant case, the evidence prohibited by the motion in limine related to Rice's prior conviction for bank robbery. Kilpatrick's testimony concerned only his knowledge of the subsequent disposition of the shotgun. He did not testify as to Rice's involvement in the bank robbery or to any other offenses committed by Rice. The motion in limine was not violated. We find the trial court did not abuse its discretion in overruling defendant's motion for mistrial. *Blackwell*, supra.

AFFIRMED.