

IN THE COURT OF APPEALS OF IOWA

No. 9-268 / 88-759

FILED

OCT 05 1989

CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

THOMAS ALLEN POOL,

Defendant-Appellant.

689

Appeal from the Iowa District Court for Washington
County, Robert Bates, Judge.

Defendant appeals from his conviction, following a jury
trial, of first-degree theft and criminal trespass.

AFFIRMED.

Raymond E. Rogers, State Appellate Defender, and
Barbara M. Anderson, Assistant State Public Defender, for
defendant-appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett,
Assistant Attorney General; and Barbara A. Edmondson,
Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden and Habhab,
JJ.

PER CURIAM

Defendant Thomas Pool appeals his conviction, following a jury trial, of first-degree theft and criminal trespass. He contends the district court erred in denying his motion for mistrial. We affirm.

Thomas Pool, the defendant, came to trial charged with second-degree burglary and first-degree theft following the break-in of a home in Wellman, Iowa, and the theft of property from it. Larry Smith, an alleged accomplice who had previously pleaded guilty to similar charges, testified for the State. He said the two men had been together during the entire day in question and had burglarized the house around noon. Pool, who denied participating in any burglary, said that Smith may have gone out by himself to buy cigarettes at a convenience store, and at that time Smith committed the burglary alone. Pool had previously given this version of events to a deputy sheriff investigating the case, and the deputy so stated on the witness stand.

In her closing argument, the prosecuting attorney misstated the deputy's testimony. She said he had testified that Pool told him he had accompanied Smith to the convenience store. Pool, however, did not lodge an objection at the time of the misstatement. Instead, Pool's counsel waited until the conclusion of the State's closing argument before bringing the misstatement to the trial

court's attention. Pool then requested permission to give a surrebuttal argument to correct the mistake, but it was denied. His subsequent motion for a mistrial was also denied.

Defendant failed to lodge an objection to the prosecutor's statement during closing argument. Instead, defendant purposefully chose to wait until the conclusion of the State's closing argument before calling the court's attention to the prosecutor's statement. In order to preserve for review the alleged misconduct of the prosecuting attorney, defendant had the duty to object at the time of closing argument to the statement of the prosecuting attorney. See State v. Plowman, 386 N.W.2d 546, 551 (Iowa App. 1986); State v. Dahlstrom, 224 N.W.2d 443, 449 (Iowa 1974); State v. Whitfield, 212 N.W.2d 402, 406 (Iowa 1973). Therefore, the issue was not preserved for review.

AFFIRMED.