



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed December 30, 1981
vs.	)	
CRAIG CHRISTOPHER SUDDUTH,	)	<u>1-277</u>
Defendant-Appellant.	)	65230

Appeal from Polk District Court - Dale S. Missildine, Judge.

Defendant appeals from his conviction for escape from custody in violation of Section 719.4(1), The Code 1979, asserting that: (1) he did not knowingly and voluntarily waive his Miranda rights and that evidence concerning certain statements he made should therefore not have been admitted; (2) a mistrial should have been declared when it was stated that he was in custody for robbery in the first degree; (3) he and another defense witness should not have been cross-examined concerning their prior felony records when no hearing was held to determine whether such evidence was admissible; and (4) the court should have instructed the jury on the defense of necessity. AFFIRMED.

Robert A. Wright of Wright & Wright, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Merle Wilna Fleming, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Carter, and Johnson, JJ. Snell, J., takes no part.

PER CURIAM

Defendant appeals from his conviction for escape from custody in violation of section 719.4(1), The Code 1979, asserting that: (1) he did not knowingly and voluntarily waive his Miranda rights and that evidence concerning certain statements he made should therefore not have been admitted; (2) a mistrial should have been declared when it was stated that he was in custody for robbery in the first degree; (3) he and another defense witness should not have been cross-examined concerning their prior felony records when no hearing was held to determine whether such evidence was admissible; and (4) the court should have instructed the jury on the defense of necessity. We affirm.

When a constitutional issue is presented, evidence relevant to that issue is reviewed de novo. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975). In all other respects, our review is limited to correction of errors at law. Iowa R. App. P. 4.

I.

On November 3, 1979, defendant unsuccessfully attempted to escape from the custody of a Polk County Deputy Sheriff. Defendant was recaptured and given his Miranda rights during booking at about 11:40 a.m. At about 2:20 p.m., Detective Turck went to talk with the defendant. Defendant was again advised of his Miranda rights, but remained silent when asked if he understood them. The detective was permitted to testify concerning a subsequent conversation he had with defendant, despite defendant's objection that the testimony lacked proper foundation.

In response to a question about the defendant's attempted escape, the deputy sheriff volunteered the fact that defendant was being committed for robbery in the first degree when the escape attempt occurred. Upon timely objection by the defendant, the answer was stricken and the jury was admonished to disregard it. It was later stipulated that defendant was properly in custody of a law enforcement officer. A motion for mistrial based on the statement was made at the close of the state's evidence and overruled.

During cross-examination by the state, the defendant and another defense witness were both asked whether they had ever been convicted of a felony. In both instances the court overruled objections based on the failure to hold a hearing for the purpose of determining whether the record of their felony convictions constituted admissible evidence.

Defendant testified that he had been threatened and abused while in jail, and that he had complained to guards about his treatment. The court refused his request for an instruction on the defense of necessity. Defendant was found guilty on April 1, 1980, and he was sentenced to prison for a term not to exceed five years on April 15, 1980. This appeal was filed on June 13, 1980.

II.

Defendant asserts that the trial court erred in overruling defendant's objections to Detective Turek's testimony regarding conversations between the detective and the defendant because the state failed to prove by a preponderance of the evidence that defendant waived his constitutional right to remain silent and that such a waiver was knowing, intelligent, and voluntary. The defendant did not file any pre-trial motions or seek an in-chambers hearing on the Miranda issue during trial. Defendant merely objected to admission of Detective Turek's testimony on the ground that there was no proper foundation. The state argues that defendant's objection was not sufficiently specific to require that the state assume the burden to prove voluntariness. We agree and affirm under the rationale of State v. Washington, 257 N.W.2d 890, 895 (Iowa 1977), set forth below:

Every ground of exception which is not particularly specified is to be considered as abandoned. State v. Droste, 232 N.W.2d 483, 487 (Iowa 1975). One attempting to exclude evidence, whether by objection or motion, has a duty to indicate the specific grounds so as to alert the court to the question raised and enable opposing counsel to take proper corrective measures to remedy the defect, if possible. State v. Williams, 207 N.W.2d 98, 110 (Iowa 1973). When this is not done, there is no proper basis for reversal unless the grounds of the objection are obvious. State v. Grady, 183 N.W.2d 707, 719 (Iowa 1971).

We find the objection made was not obvious, and did not alert the court or opposing counsel to the fact that defendant would claim that the voluntariness of a Miranda waiver was being challenged.

II.

Defendant claims the trial court erred by refusing to grant his motion for a mistrial. We disagree and affirm the trial court. The defendant objected when a deputy sheriff volunteered the fact that defendant was being committed for robbery in the first degree when the escape attempt occurred. This answer was stricken; the jury was admonished; and it was stipulated that the defendant was properly in custody of a law enforcement officer.

A motion for mistrial must be made when the grounds "first become apparent." State v. Cornelius, 293 N.W.2d 267, 269 (Iowa 1980); State v. Ware, 205 N.W.2d 700, 702 (Iowa 1973). The defendant did not make his motion until the State rested its case. We find defendant failed to preserve error when he neglected to move for a mistrial at the time the allegedly prejudicial information was first volunteered by the deputy sheriff.

III.

Defendant argues that the trial court erred by refusing to grant his motion for mistrial when defendant and another defense witness were both asked during cross-examination about how many times they had been convicted of a felony without first holding a hearing as required by State v. Martin, 217 N.W.2d 536 (Iowa 1974). "When the issue is appropriately raised the judge must exercise sound judicial discretion in the matter." Id. at 544. The defendant never requested a Martin hearing at the pre-trial stage or at any time during the course of the trial. Instead, defendant insisted that he was entitled to a mistrial because the hearing he had failed to request was not held. We find the issue was not appropriately raised when defendant moved for a mistrial and affirm.

In addition, defendant failed to preserve error when he failed to show the nature of the prior felonies. When such a showing is lacking, as here, there is no way for the trial court to balance the danger of unfair prejudice to defendant against the probative value of the evidence as required by Martin, or for this court to review it. State v. Fields, 223 N.W.2d 197, 198 (Iowa 1974).

IV.

Defendant's final argument is that the trial court erred by refusing to grant defendant's request for a jury instruction on the defense of necessity to a charge of escape from custody. We find that the trial court correctly denied defendant's request in this case. Defendant failed to satisfy the criteria set forth in State v. Reese, 272 N.W.2d 863, 866 (Iowa 1978), when he only made general allegations of abuse and failed to show any history of futile complaints.

AFFIRMED.