FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	February 26, 1986
vs.	)	5-586 85-92
SAUNDERS EUGENE PIKE,	)	
Defendant-Appellant.	)	

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Appeal from the Iowa District Court for Polk County (No. 26156), Gene L. Needles, Judge.

Defendant appeals from conviction and judgment of theft, third degree, on the grounds the trial court abused its discretion when it failed to grant his motion for a mistrial. **AFFIRMED.**

Deborah A. Goins, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Elizabeth E. Ciebell, Assistant Attorney General; and Odell McGhee, Assistant Polk County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

OXBERGER, C.J.

Defendant appeals from the trial court's refusal to grant a mistrial when one of two criminal counts against him was dismissed. We affirm.

The defendant, Saunders Eugene Pike, was charged in Count I with theft in the second degree. This charge resulted from allegations Pike had pawned a stolen camera and equipment at a Des Moines pawn shop. Count II charged him with theft in the third degree, alleging he tried to pawn a stolen cassette radio player that same day at a different pawn shop. At trial, the owner of the second pawn shop could not identify Pike and, contrary to trial information minutes, stated he was not involved in the transaction pawning the cassette player. This charge was dismissed. The first count was reduced to theft in the third degree. The jury returned a guilty verdict on Count I.

The defendant moved for a mistrial twice on the grounds that the jury improperly heard the information regarding the second count. The court refused the motion, but submitted a cautionary instruction to the jury telling them to disregard the information involving the second charge.

The defendant says that the prejudice which resulted form the jury hearing this information is not the type that can be cured with a cautionary instruction. He also asserts this is evidence of other crimes which cannot be admitted without clear proof the defendant was involved in the other crimes. State v. Leto, 305 N.W.2d 48, 490 (Iowa 1981).

The trial court has considerable discretion in determining whether to grant a mistrial. State v. Trudo, 253 N.W.2d 101, 106 (Iowa) cert. denied, 434 U.S. 903, 54 L. Edf. 2d 189, 98 S. Ct. 299 (1977). Such abuse occurs only when the discretion was exercised for grounds clearly untenable or to an extent clearly unreasonable. Id. The prejudicial effect of improper testimony may be avoided

through giving a cautionary instruction. State v. Mattingly, 220 N.W.2d 865, 870 (Iowa 1974). In addition, the State is allowed to charge multiple offenses. Iowa R. Crim. P. 6(1). It is up to the defendant to request a motion to sever if he feels he will be prejudiced by a trial on all counts charged. State v. Trudo, at 104. No such motion to sever was made here.

Considering the court's discretion allowed in ruling on the motion, that a cautionary instruction was given, and the ability of the State to charge multiple offenses, we find the trial court did not abuse its discretion in overruling the motion for mistrial.

We also do not agree that this is a situation where evidence of other crimes was improperly admitted. We are persuaded by the State's argument that that occurs only where testimony involved charges for which the defendant is not on trial. See State v. Johnson, 183 N.W.2d 194, 198 (Iowa 1971).

AFFIRMED.