FILED
AUG 0 6 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-292 / 92-397

STATE OF IOWA,
Plaintiff-Appellee,

vs.

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ERIC BONITA PEPPERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge.

Eric Bonita Peppers appeals from his conviction, following a jury trial, of second-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(2) (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Hall, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SACKETT, J.

000852

Defendant-appellant Eric Bonita Peppers was charged with second-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(2) (1991), after clothing allegedly taken from a J.C. Penney store in Cedar Rapids was found in the motor vehicle he was driving. Defendant, who was convicted of the charge following a jury trial, appeals contending (1) the trial court should have granted his motion for mistrial when the State introduced into evidence articles of clothing that were not from the J.C. Penney store and had not been referred to in the minutes of testimony, and (2) the trial court should have granted his motion to suppress evidence he alleges was illegally seized from his vehicle. We affirm.

The car defendant was driving was stopped by a deputy sheriff and a state trooper who had observed it being driven in an erratic manner. On being stopped, defendant and the passengers in the car were asked for proof of their identification. Defendant gave the officers a false name and told them he was not carrying identification. A passenger in the back seat opened a gym bag looking for identification. When the bag was opened, one of the officers saw there was clothing in the bag with the price tags attached. One of the officers asked defendant if there was identification in his trunk, and defendant voluntarily opened the trunk. The officers saw two large bags in the trunk bearing the Younkers' name. There was

000853

clothing in the Younkers' bags with J.C. Penney's sales tags attached. Defendant told the officers the items were Christmas presents. Defendant was asked to produce a sales receipt and he told the officers the clothing had been in the trunk for several days, belonged to another, and he did not have sales receipts. Defendant gave the officers permission to search the car. The officers found a checkbook and identification with a photograph showing defendant's name to be Eric Bonita Peppers. The officers checked with the department of transportation, found out defendant did not have a valid driver's license, and arrested defendant for driving while barred. The officers told defendant they would keep the clothing until he could produce receipts showing he had purchased the clothing. Defendant told the officers he intended to wear the clothing to a funeral the next day.

Defendant first contends he should have been granted a mistrial when the State introduced at trial six sweatshirts found in the defendant's car that did not come from the Cedar Rapids J.C. Penney store. Tags on the six sweatshirts indicate they came from T-Galaxy. The six sweatshirts were not identified in the minutes of testimony filed with the trial information.

The minutes of testimony filed with the trial information said the State sought to establish the clothing found in the defendant's car had been stolen from a J.C. Penney store in Cedar Rapids. During trial when the State

000854

presented the six sweatshirts in question, the sweatshirts were identified as not coming from the J.C. Penney store in Cedar Rapids. Defendant made motions for mistrial. He contended the minutes of testimony did not alert him to the facts the clothing would be introduced at trial and he was prejudiced by their introduction because the sweatshirts tended to show he had stolen merchandise from other places.

The trial court has wide discretion in granting or denying a motion for mistrial. State v. Brown, 397 N.W.2d 689, 699 (Iowa 1986). State v. Brotherton, 384 N.W.2d 375, 381 (Iowa 1986); We will find the trial court abused its discretion only when a defendant shows prejudice which prevents him or her from having a fair trial. Brotherton, 384 N.W.2d at 381; see also State v. Trudo, 253 N.W.2d 101, 106 (Iowa 1977).

Defendant contends the minutes of testimony apprised him only of clothing the State alleged was stolen from a J.C. Penney store in Cedar Rapids and did not mention any clothing found in the vehicle that did not belong to that store.

The State contends the minutes of testimony provided a full and fair statement of the expected testimony. The State contends although the minutes state the items seized had come from the J.C. Penney store, the minutes also state the clothing was found in Younkers' bags which should put defendant on notice that a store in addition to J.C. Penney was involved.

Whether the testimony is within the scope of the minutes must be decided on a case-by-case basis. State v. Walker, 281 N.W.2d 612, 614 (Iowa 1979). The minutes need not list each detail a witness will testify, but they must provide defendant with a full and fair statement sufficient to alert him or her to the source and nature of the information against him or her. State v. Lord, 341 N.W.2d 741, 743 (Iowa 1983). We agree with defendant that the minutes of testimony failed to apprise him merchandise bearing tags from T-Galaxy would be introduced in evidence.

However, even if the evidence was not properly specified in the minutes of testimony, defendant must show he suffered prejudice by the introduction. Defendant contends the evidence of the six sweatshirts improperly claim to involve irrelevant and prejudicial evidence of other thefts by defendant. The State argues the evidence was not prejudicial because there was overwhelming evidence against defendant that leather jackets, a suit, a tie, a dress shirt, and children's clothing were found in defendant's vehicle. Defendant has failed to show prejudice.

Defendant next claims the items of clothing should have been suppressed. Defendant admits he consented to the search of his vehicle. His contention is when the officers seized the clothing, they had no more than a suspicion the clothing had been stolen. Defendant contends the fact he gave the officer a false name and the price tags on the

000856

clothing appeared to have two parts was not evidence the merchandise was stolen because the J.C. Penney store scans tags and does not remove them when clothing is sold. He therefore contends the seizure based on mere suspicion was not reasonable. He contends the mere fact price tags were still attached to the clothing was not an unusual circumstance and was not sufficient evidence to establish a reasonable basis to determine the clothing was stolen. He further argues the possession of the clothing had nothing to do with defendant's stop and arrest for driving without a license. He argues while the officer asked for a receipt he could not produce, the officer testified he did not decide to keep the clothing until he had talked to personnel in several retail establishments and learned the clothing might have been stolen from a Cedar Rapids J.C. Penney store.

We agree with defendant that the mere presence of sales tags on merchandise outside a store setting is not evidence it had been stolen. However, the fact defendant gave a false name, a substantial amount of clothing with sales tags still attached was found in a gym bag and in sacks bearing the name of a store other than where the merchandise was marketed, when coupled with defendant's voluntary statements, first, that he had been Christmas shopping, then, that the merchandise belonged to someone else, and finally, that he needed it to wear to a funeral the next day gave the officers probable cause to believe

000857

the clothing was taken and the trial court properly overruled defendant's motion to suppress the evidence.

AFFIRMED.