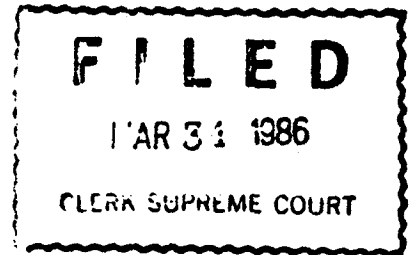


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed March 31, 1986

357

vs.

)

5-654
85-457

ROGER JULIAN RENFRO,

)

Defendant-Appellant.

)

Appeal from the Iowa District Court for Wapello County (No. CL 4531-1184)

- Max H. Ruschmeyer, Judge.

The defendant appeals from his conviction for carrying a weapon. A violation of Iowa Code section 724.4. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Christie J. Scase, Assistant Attorney General; and Michael E. Howard, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

DONIELSON, P.J.

The defendant appeals from his conviction for carrying a weapon. A violation of Iowa Code section 724.4.

The defendant contends the district court erred by admitting testimony which allegedly exceeded the scope of the minutes of testimony. The testimony in question is the statement of an arresting officer that the gun seized from the defendant's pocket was loaded. The State asserts that the officer's testimony did not exceed the scope of the minutes, which stated the officer would testify about the arrest, the custody of the seized gun, and "any other observations . . . and any other facts and circumstances relevant herein."

While admitting evidence that goes beyond the scope of testimony is reversible error; State v. Olsen, 293 N.W.2d 216, 220-21 (Iowa 1980), cert. Denied, 449 U.S. 993, 101 S. Ct. 530, 66 L.Ed.2d 290 (1980); State v. Walker, 281 N.W.2d 612, 614-15 (Iowa 1979). We are unable to find such evidence was beyond scope of the minutes of testimony in this case.

Iowa law provides:

Whether testimony is within the scope of the minutes must be decided on a case by case basis. The minutes need not list each detail to which a witness will testify, but they must provide defendant with a full and fair statement sufficient to alert him to the source and nature of the information against him.

State v. Ellis, 350 N.W.2d 178, 187 (Iowa 1984)(Citations omitted).

At trial, the officers testified during examination by the State as follows:

Q. (By Mr. Edward) I show you what has been marked for identification purposes as Plaintiff's Exhibit No. 1. Could you tell us what that is?

A. This is the hand gun we took off of Mr. Renfro.

Q. And how can you identify that?

A. It has an evidence tag on it that I put on it.

Q. When did you so mark it?

A. Be at the police station sometime after the arrest.

Q. When did you first see this weapon?

A. When I reached in his pocket and took it out.

Q. And what did you do—what did you do with the weapon after you obtained it?

A. Stuck it into my belt and handcuffed Mr. Renfro.

Q. Is this weapon in substantially the same condition right now as when you first saw it?

A. Yes, it is, except—no, it isn't.

Q. How was it different?

MR. DETLIE: Objection, your Honor. That exceeds the scope of the Minutes of Evidence.

THE COURT: Overruled.

Q. (By Mr. Edward) How is this different than the night that you first obtained it?

A. It was fully loaded.

Q. And

A. Correct that statement. It was—it had six cartridges in it. One was spent. There was five good cartridges in it.

Q. And who removed those cartridges?

A. I did.

Q. Where did you remove those cartridges?

A. At the police station.

Q. And has this gun been in your custody since obtaining it on October 16th, 1984?

A. Yes, it has.

MR. HOWARD: Offer at this time Plaintiff's Exhibit No. 1.

The minutes fairly appraised defendant of the testimony to be expected. The officer's testimony regarding his removal of the bullets was consistent with the overall nature of the minutes of his testimony because he testified to the arrest and attendant circumstances. The defendant was adequately alerted to the source and nature of the evidence used against him.

This testimony was properly admitted.

AFFIRMED.