FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,)
vs.)
JOSEPH MICHAEL BROWN,)
Appellant.)

Filed November 22, 1978

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Appeal from Black Hawk District Court - Carroll E. Engelkes, Judge.

Defendant appeals conviction for violation of § 204.401(1)(b), possession with intent to deliver, and imposition of sentence. - Affirmed.

Alfredo G. Parrish, Des Moines, for Appellant.

Richard C. Turner, Attorney General of Iowa, Raymond W. Sullins, Assistant Attorney General and David H. Correll, Black Hawk County Attorney, for Appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant Joseph Brown appeals conviction of possession of a controlled substance with intent to deliver in violation of § 204.401(1)(b), The Code 1977, and sentence imposed thereon. We affirm.

The only issue relied on for reversal of Brown's conviction is trial court's alleged error in denying his motion for mistrial on the grounds that trial court improperly interposed an objection during cross examination of a State's witness. The record shows that defense counsel questioned Special Agent McCleary as follows: "Q. But the impression you were giving yesterday was that the exact terminology was in your report, wasn't it?" The State objected to this inquiry as repetitive. Trial court then responded, "Well, I am having difficulty with the form of the question which asks this witness to comment upon what impression was given by his testimony. The impression is gained by other people who hear his testimony and it calls for him to render an opinion as to what other people's impression was from his testimony, and that calls for the opinion and conclusion of the witness and I'm sustaining the objection on that ground." Thereafter, out of the jury's presence, defendant moved for mistrial and argued that the court's action prevented him from receiving a fair trial because it created an impression of partiality. Trial court denied the motion, withdrew his objection in the jury's presence, and allowed the witness to answer.

We recognize that the trial court should avoid objecting to questions posed by counsel. State v. Thornburgh, 220 N.W.2d 579, 585 (Iowa 1974). In the instant case, however, the court was not objecting on its own motion, and it attempted to cure the error by withdrawing the objection and permitting the witness to respond. Finding no prejudicial misconduct on the part of the trial court, we affirm defendant's conviction. See State v. O'Kelly, 211 N.W.2d 589, 597 (Iowa 1973).

Prior to sentencing, defendant filed an application for treatment for drug dependency pursuant to § 204.409(2), The Code. After conducting a post-trial hearing, trial court denied defendant's application and imposed sentence. Defendant contends that trial court abused its discretion in withholding treatment. Our review of an alleged abuse of discretion is extremely limited. E.g., State v. Warner, 229 N.W.2d 776, 783 (Iowa 1975). From the testimony elicited at the hearing, trial court could have found that defendant was neither addicted to, dependent on, nor a chronic abuser of any controlled substance. We find no abuse of discretion. State v. Horton, 231 N.W.2d 36 (Iowa 1975).

AFFIRMED.