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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed October 25, 1983
vs.)
HAROLD L. TRAYWICK,) 3-212/68702
Defendant-Appellant.)

Appeal from Scott District Court - David J. Sohr, Judge.

Defendant appeals from the judgment entered upon his conviction of possession of burglary tools and burglary in the second degree. AFFIRMED.

Charles Harrington, Appellate Defender, and Fern S. Shupeck, Assisant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Michael K. Jordan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

PER CURIAM

Defendant appeals from the judgment entered upon his conviction of possession of burglary tools and burglary in the second degree. Defendant contends the trial court should have suppressed evidence illegally seized from his car following a stop for traffic infractions. Defendant also asserts that the prosecutor improperly commented, during voire dire, upon his possible refusal to testify and that he was erroneously prevented from cross-examining a police officer about the officer's suspension for allegedly using excessive force in the arrest of a prisoner. We affirm.

Officer William Thomas of the Davenport Police Department observed an automobile bearing Illinois license plates traveling in downtown Davenport on the evening of January 5, 1982. The automobile had several equipment violations which included an improperly affixed license plate, misaligned headlights, a cracked windshield and a broken taillight. Officer Thomas stopped the automobile and approached the vehicle, shining his flashlight inside. The officer noticed the defendant attempting to stuff an object later identified as a pry tool between the seat cushions of the front seat. Officer Thomas recognized the driver to be the defendant after he approached the car. The defendant was known to the officer from past encounters and the officer knew that defendant had previously been arrested on burglary charges.

While standing alongside the vehicle, the police officer noticed what appeared to be a partially open jewelry box containing women's jewelry lying on the back seat of the automobile. The defendant got out of the vehicle and was informed of the various equipment violations. When the defendant was unable to produce a driver's license, he was placed under arrest and confined in the back seat of the officer's squad car.

Officer Thomas, after calling for a wrecker to tow the vehicle, made a thorough search of the interior of the vehicle. He found a pry tool with fresh

marks on its business end, a jewelry box containing mostly women's jewelry, two wallets identified by names not traceable to the defendant, and a watch identified by a name not traceable to the defendant. These items were later traced to a burglary committed earlier in a nearby town. The fact that the burglary had occurred was unknown to the officer at the time the stop was made.

Generally, our review of criminal proceedings is at law for correction of errors. Iowa R. App. P. 4. However, on issues concerning violation of constitutional safeguards, we find the facts **de novo.** State v. Lamp, 322 N.W.2d 48, 50 (Iowa 1982).

I. The primary thrust of defendant's appeal is that the trial court erred in refusing to grant his motion to suppress evidence seized at the time of defendant's arrest. A warrantless search is presumed to be unreasonable, thus unconstitutional. Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576, 585 (1967). To withstand constitutional scrutiny, therefore, the State must show the case comes within a recognized exception to the warrant requirement. Id.; Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2032, 29 L. Ed. 2d 564, 576 (1971). Defendant contends that the search of the automobile in the present case does not fall within the search incident to arrest exception of New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), because the scope of the serach was not strictly tied to and justified by the circumstances which rendered its initiation permissible. In short, defendant argues that the stop for a traffic violation does not justify the extensive search undertaken in this case. Defendant also contends that even if the serach was incident to a lawful arrest, the arrest was merely a pretext and that the seizure of the jewelry box was not permissible under the "plain view" doctrine of Harris v. United States, 390 U.S. 234, 88 S. Ct. 992, 19 L. Ed. 2d 1067 (1968).

We find, as did the trial court, that this case is controlled by the Belton doctrine as approved in State v. Olsen, 315 N.W.2d 1 (Iowa 1982). The court in

Belton established the rule that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." New York v. Belton, 453 U.S. at 460, 101 S. Ct. at 2864, 69 L. Ed. 2d at 775. This also included the contents of containers found within the passenger compartment. Id. The purpose for establishing this "bright-line" rule was to establish a single, familiar standard to guide police officers in determining their scope of authority and to individuals in determining the scope of their protection. Id., 453 U.S. at 459-60, 101 S. Ct. at 2864, 69 L. Ed. 2d at 774. Defendant's suggestion that the extent of the search must bear a reasonable relation to the traffic violation would require a case-by-case analysis to determine the legality of the search. While that task is not an impossible one, requiring it would defeat the purpose of the Belton decision. See State v. Olsen, 315 N.W.2d at 4. "A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts, and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.' " LaFave, "Case-By-Case Adjudication" Versus "Standard Procedures": The Robinson Dilemma, 1974 S. Ct. Rev. 127, 141, quoted in New York v. Belton, 453 U.S. at 458, 101 S. Ct. at 2863, 69 L. Ed. 2d at 773-74. A police officer, therefore, may conduct a Belton search where there has been a lawful custodial arrest for a traffic violation.

We believe the search in the case at bar was conducted legally after a lawful custodial arrest was made. Defendant, however, contends that the arrest was pretextual so that the officer could then conduct a search incident to an arrest. We have reviewed the record in this case and have found no evidence of pretext on the part of Officer Thomas. It is not disputed that the equipment violations existed. The police officer had no knowledge of a recent burglary. Moreover, he did not know the defendant was the occupant of the vehicle until after the lawful

stop had been made. The arrest for traffic violations, in this case, was not pretextual.

Because we have found the search and seizure constitutionally permissible as a search incident to an arrest, we do not reach the issue of the seizure of the jewel box under the "plain view" doctrine.

II. Defendant next contends the trial court should have granted his motion for a mistrial after the prosecutor, during jury selection, indicated that the only person who would know what actually happened at the scene of the crime is the person who committed it. The prosecutor was attempting to explain to the jury the difference between circumstantial and direct evidence. The only record of the comment is based on the defense counsel's recollection. The trial court's recollection of the event is that the comment was in no way associated with the facts of the case or with defendant and his right to remain silent. The trial court believed it to be "simply an explanation of the difference between circumstantial and direct evidence, which the Court instructs the jury on." Moreover, the trial court found that defendant suffered no prejudice from the questioning of the potential juror.

A comment which draws an inference or focuses the jury's attention on the defendant's failure to testify is unconstitutional. State v. Nelson, 234 N.W.2d 368, 371 (Iowa 1975). Trial courts, however, have considerable discretion in granting or denying motions for a mistrial. State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976). Trial court's ruling is presumed to be correct unless the record shows otherwise. State v. Ryder, 315 N.W.2d 786, 789 (Iowa 1982). Upon the record in this case, no error has been shown.

III. The defendant also contends that the trial court unduly limited his cross-examination of Officer Thomas in violation of defendant's right of confrontation under the sixth amendment. The defendant sought to cross-examine Officer Thomas as to a recent five day suspension for using unnecessary force in

handling a prisioner in the booking cage. Officer Thomas denied participation in the event. The matter was on appeal before the Davenport Civil Service Commission. The defendant asserted at the trial court level that the suspension was for a lie by omission because the officer allegedly failed to report the incident. The trial court granted the State's motion in limine based upon the fact the matter was still pending and to allow inquiry into the matter would require speculation by the fact finder as to the possible outcome of the appeal. Defendant asserts on appeal that the incident resulting in Officer Thomas's suspension is relevant to the officer's credibility as a law enforcement official since it directly reflected on his professional judgment and competency.

The right to confront witnesses includes the right to cross-examine. State v. Sheffey, 250 N.W.2d 51, 54 (Iowa 1977). Cross-examination is a valuable right, essential to a fair trial, one which is to be jealously guarded. Id. at 54-55. The extent and scope of cross-examination lie largely within the sound discretion of the trial court. Id. at 54-55. The trial court's decision will be disturbed only when such discretion has been obviously abused. State v. Clark, 325 N.W.2d 381, 383 (Iowa 1982).

Cross-examination on specific misconduct is a proper way to discredit witnesses. Id.; State v. Johnson, 219 N.W.2d 690, 695 (Iowa 1974). Assuming that the ground for allowance of cross-examination asserted by the defendant at trial was sufficient to preserve the ground asserted on appeal, we believe the trial court did not abuse its discretion. Introduction of the alleged incident resulting in Officer Thomas's suspension would have unduely confused the jury. The jury would have been required to speculate as to possible outcome of the appeal to determine the weight to give to Officer Thomas's testimony. We do not find an abuse of discretion upon this record.

AFFIRMED.