FILED
MAY 28 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed May 28, 1985
vs.	)	
STEVEN LOUIS CAREY,	)	5-135 84-793
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Clay County - Tom Hamilton, Judge.

Defendant appeals from judgment and sentence for delivery of a simulated controlled substance, in violation of Iowa Code section 204.401(2)(a) (1983). AFFIRMED.

Charles L. Harrington, Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Valencia McCown, Assistant Attorney General, for plaintiff-appellee.

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

DONIELSON, J.

Defendant appeals from judgment and sentence for delivery of a controlled substance, in violation of Iowa Code section 204.401(2)(a). He asserts that the trial court erred in two respects: (1) admitting evidence that he possessed amphetamine when he was arrested; and (2) considering his possession of a blank motor vehicle title in sentencing. We affirm.

The defendant, Steven Carey, allegedly delivered powdered sugar and aspirin to Robert Henderson, a D.C.I. agent, representing the substances to be heroine and cocaine. Although Carey admitted to all elements of the crime, he presented two defenses: that he was unaware that his actions were illegal and that he was entrapped by Henderson.

On cross-examination, the prosecutor questioned Carey about a small package found in his wallet at the time of his arrest. Carey denied knowing what was in the package. On rebuttal, Henderson testified that he seized a small plastic bag from Carey's wallet at the time Carey was arrested. The package contained a white powdery substance. The State then offered a stipulation between the parties that the substance was analyzed and found to be .14 grams of amphetamine. Defense counsel explained that the stipulation was subject to an objection on the grounds of irrelevancy, immateriality, and prejudicial effect. The prosecutor then explained that the stipulation was offered to rebut Carey's assertion that he did not use drugs. Then the court stated: "All right. Well, I think I know where you're going now. You may proceed."

Defendant claims that the trial court erred in admitting this evidence since it was irrelevant. The State, while not disputing this point, argues that error was not preserved and, in the alternative, that any error was harmless.

Initially, we consider the question of whether error was preserved. It is the State's contention that the defendant failed to make a proper objection and failed

to demand a ruling; thus, it is argued that we should not reach the merits of his argument.

After examining the record, we conclude that defendant's objection was sufficient to preserve error. As pointed out, trial counsel used the terms "irrelevant, immaterial, and prejudicial" in urging exclusion of the challenged evidence. Although general in nature, this type of objection sets forth a distinct and substantial ground for exclusion. See State v. Clay, 213 N.W.2d 473, 476-77 (Iowa 1973). It is our opinion that the trial court and opposing counsel were sufficiently alerted to the question raised by the objection and now urged on appeal.

We also conclude that defense counsel's failure to demand a ruling does not prevent us from considering the claim. "The omission of an express ruling is not necessarily fatal to an appeal; in some cases, the ruling may be apparent from the circumstances." State v. Walker, 304 N.W.2d 193, 195 (Iowa 1981). In the instant case, we believe the trial court's response to the objection was tantamount to a ruling. After defense counsel lodged the objection and the prosecutor explained why the evidence was being offered, the court specifically told the prosecutor to proceed. While it would have been more appropriate for defense counsel to request a formal ruling, under the circumstances his reluctance to do so is understandable. See id. at 196. Accordingly, we reach the merits of defendant's claim.

It is apparent from the record that it was improper for the trial court to allow evidence that defendant possessed amphetamine when he was arrested. Since it had no relevance to the crime charged, the fact that the defendant may have had amphetamine is a collateral matter and therefore would not be proper grounds for impeachment. State v. Odem, 322 N.W.2d 43, 45-46 (Iowa 1982). However, we are inclined to agree with the State's assertion that there was nothing so prejudicial as to constitute reversible error.

The defendant's conviction is supported by overwhelming evidence in the

record; in fact, the defendant admitted to all the elements of the crime charged. Furthermore, as the trial court indicated, both defenses asserted at trial were meritless. Defendant's claim that he was unaware of his actions simply has no bearing on the elements of the crime charged. See Iowa Code § 701.6 (1985). Additionally, Carey's defense of entrapment must fail due to his testimony that he knew or suspected that Henderson was a law enforcement officer. In light of this, it cannot be said that the defendant was injuriously affected by the alleged error, or that the error resulted in a miscarriage of justice.

Carey's second assignment of error is that the trial court abused its sentencing discretion in considering his possession of a blank motor vehicle title. In sentencing the defendant, the trial court stated the following:

> I don't know that the fact that you had a blank Oklahoma Certificate of Title makes a whole lot of difference, but I would say that there probably aren't a great many people running around with something like this in their billfolds. But irrespective of that, it all goes to the weight of your situation.

The defendant contends that in making this statement the court violated the principles set forth in State v. Black, 324 N.W.2d 313, 315-16 (Iowa 1982). We disagree.

In Black, the supreme court stated that it was an abuse of discretion to rely on additional, unproven, unprosecuted charges in making a sentencing determination. Id., see also State v. Messer, 306 N.W.2d 731, 732-33 (Iowa 1981). Both Black and Messer involved situations where the defendant was originally charged with certain offenses which were dropped during plea bargaining. In these cases the trial court considered the charges in sentencing the defendant, although no facts in the record showed that the charges were valid. The case before this court is factually distinguishable since Carey was never charged with any crime relating to the blank motor vehicle title. Unlike in Black, the trial court considered a factual circumstance as evidenced in the record; it did not consider an unproven

charge. Thus, we conclude that the defendant's reliance on Black and similar cases is misplaced and the sentence should be allowed to stand.

AFFIRMED.