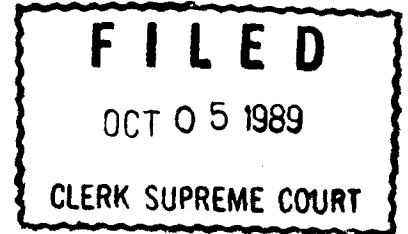


IN THE COURT OF APPEALS OF IOWA

No. 9-322 / 88-1079



STATE OF IOWA,

Appellee,

674

vs.

JAMEEL RAY MITCHELL,

Appellant.

Appeal from the Iowa District Court for Scott County,
Margaret S. Briles, Judge.

Defendant appeals his conviction for the crimes of
burglary in the second degree, theft in the second degree,
and possession of burglar's tools. **AFFIRMED.**

William L. Wegman, State Public Defender, and Linda Del
Gallo, Assistant Public Defender, for appellant.

Thomas J. Miller, Attorney General of Iowa, and Bruce
Kempkes, Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab,
JJ.

HABHAB, J.

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Defendant Jameel Ray Mitchell appeals his conviction of burglary in the second degree, theft in the second degree, and possession of burglar's tools. Prior to and during his trial defendant sought to suppress certain oral incriminating statements he allegedly made to police officers after his arrest.

As it relates to defendant's oral statements, the record reveals that on the morning of the trial the State provided defense counsel with a police report which referred to the incriminating statements made by the defendant to police officers. Defense counsel was unaware of the oral statements prior to that time; and the prosecutor first learned of the statements on the Friday prior to defendant's trial.

Defendant moved to suppress the "alleged statement made orally" to the police officers. The defendant took the position that he at no time made any oral statements to any police officers. The trial court ruled that defendant's statements could not be used during the State's case in chief. In so ruling, the trial court excluded the defendant's statement from the prosecution's case-in-chief on the grounds (a) it should have been produced for the defendant and (b) it should have been specified in the minutes of testimony. The court, however, ruled that if the State desired to use the oral statements on rebuttal,

an evidentiary hearing would be held to determine its admissibility.

The State did not use the oral statements in its case-in-chief. After the State rested, the defendant placed his codefendant's wife, Dorothy Johnson, on the witness stand. Dorothy alone gave testimony for the defense. She essentially testified that the defendant could not have committed the crimes charged because he had been playing cards at the time in question in Indiana. The defendant did not take the witness stand.

After the defendant rested, a hearing was held to determine whether the prosecution could rebut the alibi defense with testimony of the police officer concerning the defendant's oral admissions as to his involvement in the burglary. The main thrust of defendant's position in excluding this testimony is that he did not make such statements to the police officer. As noted hereafter, the trial court permitted the testimony, reasoning that whether such statements were made or not made rose to credibility and should be resolved by the jury.

Defendant asserts on appeal that the aforementioned statements were obtained by law enforcement officers in violation of his sixth amendment right to counsel. The State argues that defendant failed to raise this issue in the district court. We affirm defendant's conviction.

Since the issue involved here concerns constitutional questions, our review is de novo. See State v. Jackson, 380 N.W.2d 420, 421 (Iowa 1986). The general rule is that issues, even those involving constitutional questions, which are not raised in the district court cannot for the first time be raised on appeal. State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983); State v. Taylor, 310 N.W.2d 174, 178 (Iowa 1981). As the Iowa Supreme Court noted in Tobin: [t]he orderly, fair, and efficient administration of the adversary system requires that litigants not be permitted to present one case at trial and a different one on appeal." 333 N.W.2d at 844.

Defendant asserts that law enforcement officers violated his sixth amendment right to counsel by initiating questioning subsequent to his invocation of that right. See Michigan v. Jackson, 475 U.S. 625, 636, 106 S. Ct. 1404, 1411, 89 L. Ed. 2d 631, 642 (1986). Defendant, however, made no such objection in the district court. Rather, defendant argued that the law enforcement officers were fabricating the statements which they attributed to him. This is evidenced by the following discussion between the trial court and defense counsel:

THE COURT: In view of the testimony of the Defendant, the issue of the giving or not giving of the Miranda warning is really not an issue. What is an issue is that he didn't make--he flatly denies making the statement.

MS. ALEXANDER: That's correct.

THE COURT: And that's an issue we're just simply going to have to present to the jury under the circumstances, if the State persists. The question isn't whether he was given his warning or wasn't given his warning, the question isn't whether he was advised--or whether he asked for his attorney and was denied it, the issue now is did he make the statement. That's at least my view of the law, and consequently--that's the only issue we have, and I'm not passing on that, I think it's sufficient to go to the jury, and the jury can weigh the credibility and determine whether or not--who they wish to believe.

Defendant argues that Michigan v. Jackson, 475 U.S. 625, 636, 106 S. Ct. 1404, 1411, 89 L. Ed. 2d 631, 642 (1986), which embodied the fifth amendment principle of Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378, 386-87 (1981), supports his position:

We . . . hold that, if police initiate interrogation after a defendant's assertion, at an arraignment or proceeding, of his right to counsel, any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid.

However, the trial court heard no such "initiation" argument or citation of authority. The critical issue of the suppression hearing was not who initiated the conversations leading to defendant's inculpatory statement, but whether he ever made a statement to the officers. They testified that he did; he testified that he did not. Since defendant failed to specifically raise the initiation issue in the trial court, it is considered abandoned. See State v. Washington, 257 N.W.2d 890, 895 (Iowa 1977).

Furthermore, defendant's use of a dragnet objection is patently invalid in meeting his burden to object with the requisite specificity. See id. Having found that defendant failed to preserve error via specific objections at trial, we affirm. Having so ruled, we need not decide whether the district court properly permitted the prosecution to use the defendant's inculpatory statement for the purpose of impeaching the alibi testimony given by his codefendant's wife.

AFFIRMED.