FILED
MAR 29 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

MILFORD LEE SMITH,

Appellant.

Filed March 29, 1978

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Appeal from Polk District Court - Anthony M. Critelli, Judge.

Defendant appeals his conviction and sentence for robbery with aggravation. Affirmed.

Joseph L. Marks, of Marks, Flagg, Hockett & Marks, of Des Moines, for appellant.

Richard C. Turner, Attorney General, J. Susan Carney, Assistant Attorney General, and Dan Johnston, Polk County Attorney, for appellee.

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

PER CURIAM

Defendant appeals from judgment and sentence following conviction of robbery with aggravation contrary to § 711.2, The Code. The appeal presents two issues: (1) whether the trial court erred in overruling defendant's several motions for mistrial; and (2) whether the trial court erred in overruling defendant's hearsay objection to certain testimony by a State's witness. We find no reversible error with respect to either issue and affirm the judgment of the trial court.

I. At trial defendant made four separate motions for mistrial based upon unresponsive answers volunteered by Mr. Armstrong, one of the victims of the robbery, while testifying as a State's witness. In all, six unresponsive answers are involved.

One of the unresponsive answers objected to by defendant was made during the State's direct examination of the witness. Under such circumstances defendant's objection, based only on the unresponsive nature of the answer, avails him of nothing. He was required to state a valid objection to the admissibility of the evidence. State v. Johnson, 244 N.W.2d 809, 812 (Iowa 1976); State v. Smiley, 201 N.W.2d 730, 731 (Iowa 1972).

The other unresponsive answers occurred during the cross-examination of the witness by defendant's counsel. On three of these occasions the trial court, pursuant to defendant's motion ordered the answers stricken and admonished the jury to disregard them. On another occasion defendant made no request that the answer be stricken. On only one occasion during the cross-examination of the witness did the trial court deny defendant's motion to strike an unresponsive answer.

While we believe that on the latter occasion the trial court might well have stricken the answer on the basis that the cross-examiner should be permitted to control the general area of testimony elicited upon such examination, his failure to do so was not prejudicial. Neither that answer nor any of the other unresponsive answers which form the basis for defendant's motion for mistrial contained matters suggestive of prejudice to the defendant's right to a fair trial. The various motions for mistrial were properly overruled. See State v. Mattingly, 220 N.W.2d 865, 870 (Iowa 1974); State v. Peterson, 189 N.W.2d 891, 896-97 (Iowa 1971).

II. We next consider defendant's contention that the trial court erred in overruling his hearsay objection to certain testimony given by a police officer testifying

for the State. This testimony related to the manner in which Mrs. Armstrong, one of the victims of the robbery, described the perpetrators of the robbery to the police shortly after the crime was committed. The declarant, Mrs. Armstrong, had previously testified for the State during defendant's trial and had been cross-examined by defendant's counsel concerning how she had described the perpetrators of the robbery to the police.

The officer's testimony concerning Mrs. Armstrong's description of the perpetrators differs somewhat from her trial testimony detailing her prior description. Because the content of the description which had been given by Mrs. Armstrong had been made an issue in the case, we do not believe the officer's testimony was excludible as hearsay. See State v. Miller, 204 N.W.2d 834, 843 (Iowa 1973). Moreover, the declarant's availability for cross-examination on the nature of the description fully accorded defendant his sixth amendment rights of confrontation. California v. Green, 399 U.S. 149 (1970); State v. Miller, supra at 843. The trial court did not commit reversible error in admitting this evidence.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.