



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed March 9, 1988
vs.	)	477
KIRBY ALAN TAYLOR,	)	<u>8-15</u>
Defendant-Appellant.	)	87-512

Appeal from the Iowa District Court for Polk County (No. 32696),
Theodore H. Miller, Judge.

Defendant appeals from the judgment of conviction and sentence of false
use of a financial instrument in the first degree. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, and B. John Burns, Assis-
tant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney
General; and Odell McGhee, Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

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Defendant appeals from the judgment of conviction and sentence of false use of a financial instrument in the first degree imposed after a jury trial in district court. We affirm.

Defendant Kirby Alan Taylor was charged with false use of a financial instrument (FUPI) in the first degree, in violation of Iowa Code sections 715.1(1), 715.2, and 715.6. Carolyn Chesterman testified that two blank checks were stolen from her home on August 1, 1986. She asked her bank to stop payment on the checks. A man identified as defendant presented one of the checks made out in the amount of \$475 to the bank on August 1, 1986. When the bank delayed cashing the check, the man left the bank. Defendant and a companion were apprehended by police in a nearby parking lot. A jury found defendant guilty of the crime charged. He was sentenced to a term of incarceration not to exceed five years.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

During the trial, police officer Richard Brannen explained that defendant was found rubbing painted numerals off his license plate, which changed his license number. After being identified by bank employees, defendant was arrested. Defendant's counsel objected to questions concerning the circumstances of defendant's arrest on relevance grounds. This objection was overruled. Counsel then objected to the police officer's testimony on hearsay grounds. The following record on this line of inquiry is set forth as follows:

Q. [by the State] My last question I think was did you get a call reference an incident that happened at on or about 63rd and Hickman? A. Yes, I did.

Q. And tell us what happened? A. I was summoned to the Krueger's Amoco--Krueger's Quik Six is its proper name--which is located on the southwest corner of the intersection of 63rd and Hickman regarding two suspicious subjects in a vehicle.

BY MR. OLIVERA: Your Honor, we are going to object to that on the basis of hearsay because there is no way that this person—that this witness could have known that except that somebody told him that. We would ask the Court to have that stricken from the record and admonish the jury to disregard that.

THE COURT: You are admonished to disregard what obviously appears to be obvious that he heard about something and that becomes hearsay, jury, so disregard what he had been told about the license plates [sic]. That satisfy you on that?

BY MR. OLIVERA: Yes. (Emphasis added)

At the close of the State's case and at the close of the trial defendant moved for mistrial on the ground that, despite the admonition, the jury heard and was prejudiced by the comment. The motion was denied.

Defendant now appeals, claiming that the district court abused its discretion in denying his motion for a mistrial because officer Brannen's testimony was irrelevant and prejudicial. Defendant states that the evidence concerning the license plate has nothing to do with the attempt to cash the stolen check. He also alleges that the admonition was not sufficient.

We reject defendant's argument on appeal for the following reasons: (1) The record demonstrates defendant acquiesced in the court's admonition during the trial. (2) The motion for mistrial was untimely. A motion for mistrial must be made when the grounds therefor first become apparent. State v. Ware, 205 N.W.2d 700, 702 (Iowa 1973). In State v. Cornelius, 293 N.W.2d 267, 269 (Iowa 1980), the defendant successfully objected to the State's questioning on direct examination but failed to move for mistrial until after the State rested. The Iowa Supreme Court held the motion untimely. Id. (3) Generally, a trial court's action in striking the testimony from the record and admonishing the jury to disregard it will avoid any potential prejudice. State v. Peterson, 189 N.W.2d 891, 896 (Iowa 1971). (4) Trial courts have broad discretion in ruling on motions for mistrial. State v. Brown, 397 N.W.2d 689, 699 (Iowa 1986).

For all of the foregoing reasons, we affirm the judgment of the district court.

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AFFIRMED.