FILED
MAR 22 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed March 22, 1979
vs.)
RICHARD EUGENE KING,) 24 / 61928
Appellant.)

Appeal from Pottawattamie District Court - Paul H. Sulhoff, Judge.

Defendant appeals his conviction of delivery with intent to profit in violation of section 204.401(1), The Code 1977, alleging inadmissibility of a tape recording and insufficiency of the evidence to support the charge. - AFFIRMED.

C. R. Hannan, of Perkins, Sacks & Hannan, Council Bluffs, for Appellant.

Thomas J. Miller, Attorney General of Iowa, Lona Hansen, Assistant Attorney General and David E. Richter, Pottawattamie County Attorney, for Appellee.

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

PER CURIAM

Defendant appeals his conviction of delivery of marijuana with intent to profit in violation of § 204.401(1), The Code 1977. Defendant asserts that a tape recording of conversations he had with police officers was improperly admitted and that the State failed to meet its burden of proving "intent to profit." We affirm.

I. Defendant initially maintains that improper foundation precluded the admission of the audio recording. Tape recordings in Iowa are admissible if foundational evidence clearly establishes that it is accurate and trustworthy. State v. Russell, 261 N.W.2d 490, 495 (Iowa 1978). In this case, the tape was admitted upon proper foundation. Testimony from officer Borlin, one of the plainclothes officers who arrested defendant, showed that he could identify the recorder as the one used on the evening of arrest, that he was familiar with the recorder, that he was one of only three people who had access to the machine, and that he had listened to the tape and believed it was a true and accurate recording of what took place. This foundation, while minimal, was sufficient to guarantee the accuracy and trustworthiness of the recording.

Defendant further maintains that because the recording was inaudible in certain sections, its accuracy could not be assured and, thus, it should not be admissible into evidence. Recordings which are partially inaudible are generally admissible within the sound discretion of the trial court unless the unintelligible portions are so substantial that the recording is rendered untrustworthy. E.g. United States v. Jones, 540 F.2d 465, 470 (10th Cir. 1976), cert denied 429 U.S. 1101 (1977); United States v. Hearst, 412 F. Supp. 888, 889 (D.D.C.; N.D. Cal. 1976); State v. Dante, 25 Ariz. App. 150, 154, 541 P.2d 941, 945 (Ct. App. 1975) cert. denied 429 U.S. 853 (1976); People v. Karalla, 35 Mich. App. 541, 546, 192 N.W.2d 676, 678 (1971); see generally Annot. 57 A.L.R.3d 746, 752-54 (1974). Here, the inaudible portions of the tape were not substantial. Furthermore, testimony by the two arresting officers greatly supported the information provided by the tape. The tape was trustworthy and the trial court did not abuse its discretion in admitting it.

Defendant also contends that the tape is inadmissible on the ground that it was illegally seized pursuant to an unlawful, warrantless arrest. While at trial defendant did object to the introduction of the evidence on the ground that it was

incriminatory, he did not raise the particular objection he is now claiming on appeal. Matters not raised at trial, including constitutional objections, may not be raised for the first time on appeal. State v. Washington, 257 N.W.2d 890, 895 (Iowa 1977), cert. denied 435 U.S. 1008 (1978). Exceptions not particularly specified are considered abandoned. Id. In attempting to exclude evidence, defendant has a duty to indicate the specific grounds so as to alert the court to the question raised and to enable opposing counsel to take proper corrective measures to remedy the defect. Id. Because defendant did not state this particular exception at trial, he is barred from asserting it on appeal.

II. Defendant further claims that the State failed to meet its burden of proving that defendant delivered a controlled substance for profit. He maintains that the State was obliged to show the cost of the product or the cost of production to the defendant in order to prove he made a "profit" from his sale. This contention is without merit.

The events in this case occurred after the July, 1976 amendment to section 204.401, The Code. Consequently, to meet its burden in proving delivery of a controlled substance for profit, the State must offer substantial evidence from which the trier of fact could find that the deliveries were made with an intent to obtain an excess of returns over expenditures. State v. Didley, 264 N.W.2d 72, 73 (Iowa 1978). Direct evidence that defendant reaped an excess return over his expenditures is not necessary. Id.

Here substantial evidence existed to warrant a finding by the trial court of delivery for a profit. Defendant delivered a sizeable amount of marijuana at a total cost of $3200 to two individuals whom he met for the first time that evening. Testimony indicated that bartering took place on the price, that defendant stated that lowering the price a "nickel" was all that he could do, and that the final agreed price was within the range normally paid on the streets. Further testimony showed that defendant allowed inspection of a sample and that he packaged the goods himself. The evidence as a whole indicates an arms-length commercial trnsaction between two individuals and a defendant who was delivering a controlled substance with an intent to profit. Compare case at bar with Didley, 264 N.W.2d at 733. The trial court was justified in its finding.

AFFIRMED.