FILED
SEP 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

643

STATE OF IOWA,)

Plaintiff-Appellee,) Filed September 23, 1980

vs.)

KENNETH E. HAYES,) 0-204
63803

Defendant-Appellant.)

Appeal from Polk District Court - Dale S. Missildine, Judge.

Defendant appeals his conviction of second-degree burglary in violation of section 713.3, The Code. AFFIRMED.

Martha Shepard, Polk County-Des Moines Offender Advocate Office, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Julie Pottorff, Assistant Attorney General; and Dan Johnston, Polk County Attorney; for plaintiff-appellee.

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

PER CURIAM

Defendant appeals his conviction of second-degree burglary in violation of section 713.3, The Code 1979. He claims he was entitled to a mistrial when an officer testified regarding defendant's exercise of his right to remain silent and when the prosecutor made alleged references to defendant's prior criminal activity in his closing argument. We affirm.

I. During the State's redirect examination of Robert Reaney, a Des Moines police officer, the following exchange occurred:

> Q. These noises he say come from the apartment of Mr. Steve Brown or the apartment that was involved in the burglary?
>
> A. Well, I believe so, yes, in that general direction he stated. During the interview he denied being in the apartment, and when I stated that there had been a witness seen an individual believed to be Mr. Hayes going in and out of the window, that's when our conversation ceased; he didn't want to talk to me anymore" (emphasis added).

Defendant claims the latter statement was an impermissible comment on his constitutional right to remain silent; thus, a mistrial was required.

Unfortunately for defendant, he failed to preserve error on this point. After the statement was made, defendant's counsel made no objections at all, choosing to wait until the jury was excused at which time counsel moved for a mistrial. This is plainly insufficient to preserve the question for our review. "[W]hen an objection is made after the answer to a question is in the record, in order for the objection to be adequate a motion to strike must be made, application must be made to have the objection precede the answer, or an excuse offered for the delay in objecting to the evidence (citations omitted)." State v. Reese, 259 N.W.2d 771, 775 (Iowa 1977); see also State v. Jones, 271 N.W.2d 761, 767 (Iowa 1978). Since none of these requirements were satisfied, the error, if any, was waived and no ground remains which requires the granting of a mistrial.

II. During the State's closing argument, State's counsel told the jury: "[t]here's no question here, the defendant was caught red-handed this time." Defendant moved for mistrial, claiming this was prejudicial prosecutorial misconduct requiring reversal because it improperly indicated to the jury that defendant has escaped prosecution for criminal activity in the past. Defendant's motion was overruled.

Although the challenged statement was improper, we cannot agree it was so prejudicial or inflammatory as to require a mistrial. An isolated incident of misconduct will not support a mistrial where the prejudicial effect was at most conjectural. State

v. Cuevas, 288 N.W.2d 525, 536 (Iowa 1980). Trial court rulings on motions for mistrial based on prosecutorial misconduct will be reversed only upon a showing of abuse of discretion. Id. Finding no such abuse here, we affirm trial court's ruling and defendant's conviction.

AFFIRMED.