IN THE COURT OF APPEALS OF IOWA

No. 0-12 / 89-23

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

JERRY LEE ELWOOD,

Appellant.

Appeal from the Iowa District Court for Polk County, Richard Strickler, Judge.

The defendant appeals his conviction of robbery in the first degree. **AFFIRMED.**

David D. Butler, Des Moines, for appellant.

Thomas J. Miller, Attorney General; Thomas S. Tauber, Assistant Attorney General; James Smith, County Attorney; William Thomas, Assistant County Attorney, for appellee.

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

OXBERGER, C.J. 339

The defendant, Jerry Lee Elwood, appeals his conviction of robbery in the first degree in violation of Iowa Code sections 711.1 and 711.2. The basis for the criminal charge against defendant was an allegation by Lawrence Shaw that on July 10, 1988, he was robbed by the defendant and Jerry Masters, Jr.

In appealing the conviction, defendant contends that the trial court erred in (1) admitting into evidence a baseball bat and tire iron without adequate foundation; (2) refusing to grant a mistrial when the jury viewed him handcuffed and in custody of a deputy sheriff; and (3) admitting defendant's prior conviction of the crime of operating a motor vehicle without the owner's consent as impeachment evidence. We affirm.

I. **Evidence**. In presenting his issue that admission of evidence of a baseball bat and tire iron was erroneous, defendant claims "the record contains only a bare conclusion regarding chain of custody, a conclusion elicited by the prosecutor's leading question."

Assuming for the sake of argument the defendant preserved this issue for review, we find no abuse of the trial court's discretion. In State v. Limerick, 169 N.W.2d 538, 541 (Iowa 1969), the court said:

> We have consistently . . . held the evidence properly admitted as within the discretion of the trial court where the exhibits consisted of solid objects, not easily susceptible to undetected alteration . . . .

Here, the objects are solid objects not readily susceptible to alteration. Defendant does not claim alteration.

II. **Mistrial.** Defendant claims the trial court erred in refusing to grant his request for a mistrial when the jury viewed him handcuffed and in the custody of a deputy sheriff prior to trial. We have reviewed the meager record and find no abuse of the trial court's discretion. State v. Evans, 169 N.W.2d 200, 210 (Iowa 1969). Furthermore, defendant does not allege prejudice, and we find none.

III. **Impeachment Evidence.** Defendant's final appeal issue is whether the trial court erred in holding that the crime of operating a motor vehicle without the owner's consent is a crime involving dishonesty. A conviction is admissible for impeachment purposes as a crime involving dishonesty, if any of the elements of the crime in question are couched in terms expressly or implicitly involving fraud, cheating, or stealing. State v. Gavin, 328 N.W.2d 501, 502-03 (Iowa 1983).

Operating a vehicle without the owner's consent is a temporary theft as opposed to a permanent theft. We conclude a temporary theft is a theft. The trial court did not err in admitting this prior conviction as bearing on defendant's credibility.

AFFIRMED.