IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 30, 1987
vs.	)	7-205 86-974
KEVIN CHARLES PORTH,	)	
Defendant-Appellant.	)	

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Appeal from the Iowa District Court for Louisa County (No. 3946), R. David Fahey, Judge.

Defendant appeals his convictions of burglary in the second degree, operating a motor vehicle without the owner's consent, and theft in the second degree. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender for defendant-appellant.

Thomas J. Miller, Attorney General; Pamela Greenman Dahl, Assistant Attorney General; and Roger A. Huddle, Louisa County Attorney, for plaintiff-appellee.

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

OXBERGER, C.J.

This is an appeal by the defendant, Kevin Porth, of the judgment and sentence entered, following a jury trial, of convictions of burglary in the second degree in violation of Iowa Code sections 713.1 and 713.5; operating a motor vehicle without the owner's consent, in violation of Iowa Code section 714.7; and, theft in the second degree, in violation of Iowa Code sections 714.1 and 714.2(2). He asserts the trial court erred in overruling his objection to cross-examination that exceeded the scope of direct examination and involved inadmissible evidence of an uncharged crime. We affirm.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. The admission or exclusion of evidence rests within the trial court's discretion, and we will interfere with its evidentiary rulings only if an abuse of discretion has occurred. State v. Williams, 367 N.W.2d 310, 312 (Iowa App. 1985).

The defendant was charged with several crimes, including burglary and operating a motor vehicle without the owner's consent, arising out of an incident that occurred on March 13, 1986. The defendants were found with their car stuck in the mud while on the victim's farm property. The property owners discovered that several items of property were missing and attempted to apprehend the defendant. The defendant and his companion then fled the scene in a blue pick-up, which they ditched several miles from the farm. They later obtained a brown car and drove to a Casey's store and asked for directions to Muscatine.

Prior to trial, the defendant filed a Motion in Limine requesting that the State not be allowed to mention that the brown car was stolen. The court granted the motion. After the close of the State's case, the defendant chose to testify on his behalf. He described his activities during the evening, and that he tried to persuade his accomplice not to take the victim's property. The defendant then testified that after they ditched the truck, they returned to Muscatine.

No mention was made of the brown car. On cross-examination the following exchange took place:

> Q. (By the Prosecutor) Then you said you went where? A. Then went back to Casey's store.
> Q. Did you come across the paved road, a blacktop road? A. Yeah.
> Q. How did you get to Casey's?
> DEFENSE COUNSEL: Your Honor, I'm going to object to that being beyond the scope of my direct examination. We are getting into the area of the motion I filed, Subsection C, the Rules of Evidence, which I recited, which the court already ruled upon; but it's definitely beyond the scope of direct examination.
> THE COURT: Overruled.
> Q. Will you answer that, please, Mr. Porth? A. When we got to the blacktop, came across a house and the garage door was open.
> Q. What did you do then?
> DEFENSE COUNSEL: Your Honor, I'm going to object upon this and direct the witness to take the Fifth Amendment.
> THE COURT: Would you ask another question.
> Q. How did you get into Casey's, Mr. Porth?
> DEFENSE COUNSEL: I renew my objection, Your Honor, and make the same direction to my client.
> THE COURT: Do you wish to take the Fifth Amendment?
> THE WITNESS: I don't really understand what it is, but-
> THE COURT: Mr. Linn, why don't we take a recess at this point and you can talk with your client, Mr. Linn.

By overruling the defendant's objection, the court reversed its prior ruling on the defendant's Motion in Limine. The court's ruling was based on its belief that the defendant's testimony opened the subject; and therefore, the State could properly cross-examine the defendant about the theft of an automobile later that evening because it would shed light on the truth and veracity of his testimony. The defendant claims the State's questioning went beyond the scope of direct examination, was improper because it was irrelevant, it violated Iowa Rule of Evidence 404(b), and its probative value was outweighed by the danger of unfair prejudice. Defendant claims he was prejudiced by the questioning because it caused him to take the fifth amendment in front of the jury.

We find no abuse of discretion in the court's allowance of this cross-examination. The scope of cross-examination is a matter of trial court

discretion; we will reverse only for an abuse of discretion, and then only if it appears prejudice resulted. State v. Freie, 335 N.W.2d 169, 172 (Iowa 1983); State v. Holmes, 325 N.W.2d 114, 117 (Iowa 1982). When the defendant is the witness, the prosecutor is strictly confined to matters testified to in the examination in chief. Iowa R. Crim. P. 19(1); Holmes, 325 N.W.2d at 117; State v. Goff, 315 N.W.2d 768, 769 (Iowa 1982). This does not mean, however, that the "prosecutor can only parrot the questions propounded on direct." Cross-examination may deal with matters inquired into on direct, and questions fairly within the area of those matters constitute proper cross-examination. Holmes, 325 N.W.2d at 117 (quoting State v. Jensen, 189 N.W.2d 919, 923-24 (Iowa 1971)).

In the present case the defendant testified on direct to the matter of what he did after ditching the blue pick-up and his return to Muscatine. The State's questions regarding how the defendant got to Casey's, based on the earlier statements of the defendant, were fairly within the matter of his activities after ditching the pick-up and his return to Muscatine, and thus, fall properly within the scope of direct examination. Furthermore, the question, "How did you get to Casey's?" does not ask for an answer, "I drove there in a stolen vehicle." The question only seeks to learn the mode of transportation. The objection concerning evidence of other crimes is premature. We hold there was no abuse in discretion in the court's overruling of the defendant's objection.

We also reject defendant's argument that the evidence was barred by rule 404(b). The trial court ruled the evidence was admissible under the 404(b) exception relating to absence of mistake. Again, we will only reverse if there has been an abuse of discretion. The defendant testified he did not intend to participate in any criminal activity. The challenged evidence goes directly to the defendant's intent, and also shows there was no absence of mistake in the defendant's actions during the evening.

Finally, we reject defendant's rule 403 argument. The trial court specifically found the evidence would relate to the defendant's truth and veracity and the truth and veracity of his testimony. The court obviously found that the probative value substantially outweighed its danger of unfair prejudice. We agree. The defendant testified that he did not wish to become involved in any criminal activity and that he urged his accomplice not to steal the property. This testimony, in light of the evidence of the possible theft of the brown car, puts the defendant's truthfulness squarely in issue. Because it was in issue, the trial court did not err in allowing the State to cross-examine the defendant with the evidence of the brown car.

AFFIRMED.