



401

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed August 27, 1986
vs.	)	<u>6-142</u>
MICHAEL RICHARD MUSSO,	)	85-371
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Tama County (No. CR 1812) -
William L. Thomas, Judge.

Defendant appeals a jury verdict finding him guilty of first-degree robbery.
REVERSED AND REMANDED.

Charles Harrington, Chief Appellate Defender, for defendant-appellant.
Thomas J. Miller, Attorney General, and Christie J. Scase, Assistant Attorney General; Richard Vander Mey, Assistant County Attorney, for plaintiff-appellee.

Heard by Donielson, P.J., and Snell, and Hayden, JJ.

Defendant appeals from a jury verdict finding him guilty of first-degree robbery, in violation of Iowa Code section 711.1 and 711.2 (1985).

The defendant contends that 1) the trial court abused its discretion and prejudiced the defendant by improperly restricting the defendant's impeachment of a state's witness and 2) the trial court erred in admitting testimony and physical evidence that exceeded the scope of the minutes of testimony.

Our review of criminal proceedings is at law for correction of errors only. Iowa R. App. P. 4.

I.

The Gas Light Club in Tama was robbed by a man armed with a shotgun, defendant was arrested for the crime and charged with first-degree robbery. At trial the State presented a great deal of evidence purporting to establish the defendant's participation in the crime. David Hintz, the defendant's accomplice, and Bruce Nebinger, a friend of defendant and Hintz, were the primary witnesses for the State. Nebinger was impeached by defendant at trial by his admission that he had been convicted of burglary in 1979. The trial court refused to allow defendant to impeach Mr. Nebinger further by showing that he had been convicted of attempted burglary in 1974. Defendant claims this to be an abuse of discretion and is reversible error. We disagree.

In a situation where a trial court error is not of constitutional magnitude, we must consider "whether it sufficiently appears that the rights of the complaining party have been injuriously affected or that the party has suffered a miscarriage of justice." State v. Ellis, 350 N.W.2d 178, 181 (Iowa 1984).

The trial court should not pro forma permit any prior felony conviction of a witness to be disclosed, rather the judge must exercise sound judicial discretion in the matter. State v. Martin, 217 N.W.2d 536, 544 (Iowa 1974).

The evidence of Mr. Nebinger's conviction for attempted robbery was clearly admissible for impeachment purposes. Iowa Rule of Evidence 609.¹ But the court's refusal to allow this evidence was not an abuse of the trial court's broad discretion. State v. Thompkins, 318 N.W.2d 194, 199 (Iowa 1982). Furthermore, the defendant's rights were not injuriously affected by this restriction and therefore no miscarriage of justice occurred.

II.

We next examine the question of whether the minutes in the present case contain a full and fair statement of the evidence that Officer Bingham gave at trial.

Officer Bingham's minutes of testimony provided:

The witness will testify concerning his employment and that he investigated an armed robbery which took place at the Gas Light Tavern, Tama, Iowa, during the afternoon hours of Friday, August 24, 1984. The witness will testify in detail concerning the nature and extent of his investigation and as to all other relevant facts and circumstances thereto.

Shortly after arriving at the scene of the robbery, the witness observed a white camper lying in the eastern half of Harmon Street, Tama, approximately one-half block from the Gas Light Tavern. The Camper in the street bore license plate number Iowa GE 5658.

The witness will further testify in conformity with any discovery deposition he may give in the matter.

¹ Iowa Rule of Evidence 609(a) provides:

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime involving dishonesty or false statement shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime constituted a felony, aggravated misdemeanor, or other crime punishable by imprisonment in excess of one year pursuant to the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect.

Officer Bingham's deposition was incorporated by reference with the minutes of testimony. The following testimony, regarding the search of the truck, was given:

Q. What did you find in the truck? A. I didn't search the truck.

Q. Did you impound the truck? A. I believe the Sheriff's Department made the actual impound on the truck.

Q. Who searched the truck? A. I don't recall.

Q. What was found in the truck; do you know? A. I don't know.

At trial Officer Bingham testified that he searched the camper found at the scene of the crime and specifically mentioned the items found. He also testified that he searched the truck involved in the robbery approximately a month after the crime. Officer Bingham told the court that he procured a search inventory list from the D.C.I., he then used this list as the basis of his search warrant and searched the impounded vehicle. All of this testimony and the objects seized in the search were vigorously objected to by the defendant.

When asked about his failure to mention these events at the deposition Officer Bingham testified that at the deposition he did not have his notes and he was confused by defense counsel's questions.

The State must file minutes of testimony which provide a "full and fair statement of the witness's expected testimony." Iowa R. Crim. P. 5(3). There are no set criterion to determine the sufficiency of minutes, it must be decided on a case by case basis. State v. Walker, 281 N.W.2d 612, 614 (Iowa 1979). The general guidepost is that the minutes need not list every detail of a witness's testimony, but they must provide defendant with a full and fair statement sufficient to alert him to the source and nature of the information against him. State v. Lord, 341 N.W.2d 741, 743 (Iowa 1983).

In the cases in which the minutes of testimony were held to be exceeded by trial testimony, the minutes had identified a general subject matter and the witness at trial had testified to an additional subject. Walker, 281 N.W.2d at 615; State v. Olsen, 293 N.W.2d 216 (Iowa), cert. denied, 449 U.S. 993, 101, S.Ct. 530, 66 L.Ed.2d 290 (1980), and State v. Olsen, 315 N.W.2d 1 (Iowa 1982); State v. Waterbury, 307 N.W.2d 45 (Iowa 1981).

The testimony of Officer Bingham regarding the search of the truck and any evidence found in said search should have been excluded. This evidence was not within the scope of the minutes, or even within the scope of Officer Bingham's deposition. Defendant was surprised and prejudiced by this evidence.

We reverse on this issue and remand to the trial court for a new trial.

REVERSED AND REMANDED.