IN THE COURT OF APPEALS OF IOWA

No. 7-128 / 96-0219

STATE OF IOWA,
Plaintiff-Appellee,

000723

vs.

NATHAN J. PARHAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction for second-degree robbery in violation of Iowa Code sections 711.1(2) and 711.3 (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Christopher Cooklin, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Scott D. Brown, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

Defendant Nathan Parham appeals his conviction for robbery in the second degree in violation of Iowa Code sections 703.3, 711.1, and 711.3 (1995).

The record contains evidence of the following: On September 4, 1995, Tellisa Allison and Sheila Rankin left the Wayside Lounge in Gulfport, Illinois at 4:30 a.m. Both women worked as dancers at the bar. Two men they met at the bar, Davondrian Wright and Darrell Twillie, gave them a ride to their motel room in Burlington. Wright and Twillie later returned to the motel room accompanied by Parham. Allison allowed the men to enter the room. Parham was wearing a bandanna covering his forehead and the tops of his eyes. Wright pulled out a gun, cocked it, and pointed it at Allison. Parham went through Allison's purse and looked in a drawer. He then took $500 cash from Rankin's purse. Twillie pulled the telephone out of the wall and the three men left.

Based on the women's description of the car and the three men, Burlington police were able to quickly locate the suspects at a truck stop on Highway 34. The officers found a loaded gun, $780, and a bandanna in the car. Rankin and Allison identified the three men as the perpetrators.

At the police station, Parham admitted going to the motel room and taking the money from Rankin's purse. He explained that he did so because Wright had told him that Rankin and Allison owed him money. He denied knowledge of Wright

displaying a weapon. Parham testified at trial that the men were "going out to this room to collect some money from these girls." He admitted that he had "grabbed" Rankin's purse and "grabbed the money."

Parham was charged with robbery in the first degree. Following a jury trial in December 1995, Parham was convicted on the lesser charge of robbery in the second degree. In January 1996, Parham was sentenced to an indeterminate term not to exceed ten years.

Parham appeals his conviction asserting that the trial court erred when it prohibited him from cross-examining Rankin on the source of the stolen money. He argues the court's ruling precluded him from impeaching an adverse witness with prior testimony given under oath.

On evidentiary issues we review for abuse of discretion. *State v. Archivia,* 495 N.W.2d 364, 367 (Iowa App. 1992). In order to show abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

At Parham's preliminary hearing in September 1995, Rankin testified on direct examination concerning the stolen money:

> Q: And where did you get that money?
> A: The Wayside.
> Q: What was it for?
> A: Base pay for dancing the whole week.
> . . .

Q: They pay once a week?
A: Yes.
Q: Do they always pay in cash?
A: Yes.

On cross-examination, Rankin provided the following testimony:

Q: Do you sometimes work as a prostitute?
A: Yes.
Q: And were you working as a prostitute this evening?
A: Yes.

Prior to trial, the State requested the court to exclude evidence that Rankin and Allison worked as prostitutes. The court reserved ruling on the matter until trial. At trial, Rankin testified that the stolen money was her dancing wages and tips. On cross-examination, Parham's counsel attempted to impeach her with her preliminary hearing testimony:

Q: Do you recall advising Mr. Parham's attorney at that time that you were also doing other things besides working at The Wayside Inn?
A: Yes.
Q: And what was your answer at that time?

The court sustained the State's objection to the question. Rankin then testified the only place the stolen money came from was from her earnings at the Wayside Inn. Defense counsel then asked if she ever gave a statement in court that she had earned money on the night of the crime other than by working at the Wayside Inn. She answered no. The State again objected.

Parham made an offer of proof outside the presence of the jury. The court prohibited the inquiry ruling that the source of the stolen money was not relevant, the prior statement was not inconsistent with her trial testimony, and the proffered evidence was collateral to the issues of the case.

Parham argues Rankin's contradictory statements were relevant as to credibility. He submits the exclusion of the victim's prior statements improperly limited the scope of cross-examination and his ability to impeach the State's witness. If the evidence is deemed "collateral," Parham contends he should have been allowed to proceed with the questioning because the State "opened the door" on the issue and, therefore, he is entitled to contradict the evidence. He argues the jury could have concluded, based on the inconsistent statements, that the stolen money was actually owed by Rankin on a legitimate debt to Parham's companions.

Iowa Rule of Evidence 401 provides that relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less than it would be without the evidence. *State v. Waters*, 515 N.W.2d 562, 566 (Iowa App. 1994) (citing *State v. Tracy,* 482 N.W.2d 675, 680 (Iowa 1992)); Iowa R. Evid. 401. Under rule 403, evidence which is relevant may nevertheless be excluded if its probative value is outweighed by its potential prejudice. *State v. Wade,* 467 N.W.2d 283, 284 (Iowa 1991); Iowa R. Evid. 403.

We agree with the trial court that the source of the stolen money was not relevant to any element of the crime. The possibility that the money was obtained by Rankin illegally does not make the existence of any material fact in the case more or less probable.

A witness's credibility is placed in issue when that witness testifies. *State v. Havemann,* 516 N.W.2d 26, 28 (Iowa App. 1994); Iowa R. Evid. 608(b). Generally, the credibility of a witness may be attacked by any party. *State v. Nance,* 533 N.W.2d 557, 561 (Iowa 1995). A witness may be impeached by showing that he or she has made a prior inconsistent statement. *State v. Peterson,* 219 N.W.2d 665, 671 (Iowa 1974). However, it is well settled that for an inconsistent statement to be admissible, the subject of the statement must be material and not collateral to the facts of the case. *State v. Odem,* 322 N.W.2d 43, 46 (Iowa 1981) (citations omitted). Evidence meeting this criteria must either include (1) facts relevant to some issue in the case, and (2) facts discrediting the witness with respect to bias, corruption, skill, knowledge or motive to testify falsely. *State v. Blackford,* 335 N.W.2d 173, 176 (Iowa 1983). Impeachment evidence is not collateral if it could have been admitted for any purpose independent of the alleged contradiction. *Odem,* 322 N.W.2d at 46.

We have already determined the source of the money was not relevant to the case. Rankin's prostitution activities are also not relevant. Her prior testimony fails

to discredit her with respect to any pertinent issue. Accordingly, the trial court did not abuse its discretion by excluding Rankin's statement made at the preliminary hearing.

We also reject Parham's argument that the State "opened the door" to defense counsel's cross-examination by asking on direct about the source of the money. We agree with the State's argument that its purpose in inquiring about the source of the money was to demonstrate the consistency between the denominations and amount taken from the motel room and the amount found in the defendants' vehicle. The prior statement sought to be admitted by the defense concerned a collateral matter and was properly excluded by the district court.

We have considered Parham's argument in support of utilizing a rule 403 balancing approach in determining the admissibility of prior inconsistent statements. *See* Iowa R. Evid. 403. The court is required to make a finding of relevancy under the rule 403 test as well as the common law approach. Parham cannot overcome this prong under either analysis. Accordingly, we reject this argument.

In any event, we find Parham has failed to demonstrate prejudice resulting from the court's limitation on cross-examination. *See* Iowa R. Evid. 103(a) ("error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, . . ."); *see also State v. Melk,* 543 N.W.2d 297, 301 (Iowa App. 1995). The State presented overwhelming evidence of Parham's

guilt, including the postive identification of Parham by the victims as well as Parham's written statement admitting to his participation in the crime.

We affirm the conviction.

AFFIRMED.