IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

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STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
RICHARD W. HOUSTON,) 8-263 / 86-779
Defendant-Appellant.)

Appeal from the Iowa District Court for Muscatine County (Nos. 1617 A-885 and C3537-985), Linda K. Neuman, Margaret S. Briles, Max R. Werling, and James R. Havercamp, Judges.

Defendant appeals from his convictions, following two jury trials, for the crimes of first-degree theft, second-degree burglary, and possession of burglar's tools. **REVERSED AND REMANDED FOR NEW TRIAL.**

Emil Trott, Jr. of Barrett & Trott, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Stephen J. Petersen, Muscatine County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

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SCHLEGEL, J.

Defendant appeals his convictions, following two jury trials, for the crimes of first-degree theft, second-degree burglary, and possession of burglar's tools. Defendant challenges the district court's refusal to sever the charges of burglary and possession of burglar's tools for separate trials. He also challenges the sufficiency of the evidence to prove the value of the stolen property. Finally, he challenges several evidentiary rulings.

The defendant and two companions were arrested during a "sting" operation while they were trying to sell two stolen garden tractors to undercover agents. A search of the defendant's truck revealed numerous tools, including wire cutters, later linked by laboratory analysis to severed fence wires at the cemetery from which the tractors had been stolen.

The defendant was charged with three crimes: first-degree theft by exercising control over stolen property, second-degree burglary, and possession of burglar's tools. The defendant and his two companions were tried together on the first-degree theft charge. The defendant was convicted of this charge and was sentenced as a habitual offender.

In a second trial, the defendant was tried alone on the charges of burglary and possession of burglar's tools. The defendant was found guilty and convicted of these charges.

The defendant appeals from these three convictions. His appeals have been consolidated.

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

Houston contends that the trial court erred by intervening on its own motion and restricting cross-examination of State witness Hester. Hester was also a participant in the sting operation and defendant asserts that he was merely transporting the tractors at Hester's request. However, it allegedly was Hester who notified the police when he learned about defendant's possession of stolen tractors. Therefore, defense counsel tried to impeach Hester during cross-examination by showing that Hester had once been fired from a job because he was suspected of stealing from the employer. The district court did not allow this line of questioning.

Cross-examination of a State's witness should be liberally extended. Nonetheless, the scope of cross-examination is limited to (1) matters inquired into on direct examination or (2) matters which pertain to the witness's credibility, bias, ill will, hostility, or interest in the case. State v. Cuevas, 288 N.W.2d 525, 530 (Iowa 1980). The scope of permissible cross-examination lies within the sound discretion of the trial court, State v. Jackson, 259 N.W.2d 796, 800 (Iowa 1979), and will be reversed only for an abuse of discretion if prejudice

results. State v. Holmes, 325 N.W.2d 114, 117 (Iowa 1982). We believe that the trial court abused its discretion in restricting Houston's cross-examination of a key State witness.

During direct examination on November 14, 1985, Hester testified about his employment history. When asked why he left his job at Case, Hester said for personal reasons. Mr. Houston, who was representing himself, did not cross-examine Hester then, but said he would call him as a part of his own case. The next day Houston said he was no longer capable of representing himself and counsel was allowed to step in. That day, counsel for defendant chose to cross-examine Hester about his "personal reasons" for leaving Case:

> Q. Mr. Hester, would you deny that you were given the opportunity to either resign or quit, or be fired, because you were carrying on a course of conduct of theft from your fellow employees at Case? You deny that? A. I did not ever steal anything from my fellow employees at Case.
>
> Q. How about stealing from Case? A. If I would have stolen from Case, they would have prosecuted.
>
> Q. So you deny that that's the case? A. I am telling you that the Case policy was if an employee had stolen from them, they would have arrested him and charged and convicted or tried to convict.
>
> Q. So I am incorrect in saying that that's the reason you left? A. I told you I left for personal reasons.
>
> Q. I want to know if I'm incorrect; would you answer my question, please? Yes or no, am I incorrect that that's why you left? A. I

believe that it's not immaterial (sic) to this case.

THE COURT: If the witness is asking the assistance of the Court, I agree, I think--would counsel approach the bench?

(At which time, a short discussion was had out of the hearing of the reporter.)

THE COURT: This is not relevant to the case, and it's not proper cross-examination, and I'll assist the witness, who has asked for the protection of Court, by telling him he does not need to answer the questions concerning the reasons for his leaving J I Case.

Cross-examination may deal with matters inquired into on direct, and questions fairly within the area of these matters constitute proper examination. Jackson, 259 N.W.2d at 800-01. In the present case, the State raised the issue of Hester's reasons for leaving his job at Case on direct examination, without objection, and this "opened the door" for clarification by defense counsel of his reasons for leaving. State v. Pepples, 250 N.W.2d 390, 393-94 (Iowa 1977).

Moreover, whenever a witness testifies, his or her credibility is brought into issue. State v. Chambers, 370 N.W.2d 600, 602 (Iowa App. 1985). An opposing party can question this credibility by attempting to impeach a witness through proper cross-examination. State v. Droste, 232 N.W.2d 483, 489 (Iowa 1975). Here, defense counsel's line of questioning on cross-examination concerning Hester's reasons for leaving Case was an attempt to show that Hester had once been fired because he was suspected of

stealing from Case, and was thus relevant for impeachment purposes. "Although ordinarily inquiry into specific instances of conduct is not allowed, Iowa Rule of Evidence 608(b) permits such inquiry in the discretion of the court if probative of the witness's truthfulness or untruthfulness." State v. Martin, 385 N.W.2d 549, 552 (Iowa 1986).

The facts here indicate that Hester was a key witness for the State. The trial court on its own motion, unduly curbed Houston's cross-examination of Hester, and Houston was thus seriously impeded in his attempt to discredit Hester's testimony, which provided the major evidence against him. We find that the trial court abused its discretion by excluding essential matters of Houston's defense, and furthermore, that this error resulted in unfair prejudice to Houston. "Where a case is close on the facts, failure to allow questions relating to the witness's credibility must be presumed prejudicial and warrant reversal." Chambers, 370 N.W.2d at 603.

As we reverse on this ground, we need not reach defendant's remaining claims.

REVERSED AND REMANDED FOR NEW TRIAL.

Hayden, J., concurs; Donielson, P.J., dissents.

DONIELSON, J. (dissenting)

I do not agree with the majority that the trial court abused its discretion in restricting Houston's cross-examination of a key State witness. The scope of permissible cross-examination is "largely" within the trial court's discretion, State v. Jackson, 259 N.W.2d 796, 800 (Iowa 1977), and will be reversed only for an abuse of discretion and then only if it appears to prejudice the results. State v. Holmes, 325 N.W.2d 114, 117 (Iowa 1982).

The majority finds that the State "opened the door" on the line of questioning concerning the witness's reasons for leaving his job. However, the rule in Iowa is when one party introduces inadmissible evidence, with or without objection, the trial court has discretion to allow the adversary to offer otherwise inadmissible evidence on the same subject when it is fairly responsive. State v. Pepples, 250 N.W.2d 390, 394 (Iowa 1977). The witness's reasons for leaving his job were not relevant to Houston's case and were thus inadmissible. Even though the State asked about the witness's job, it is within the court's discretion to keep out further inadmissible testimony.

Similarly, the testimony was irrelevant for impeachment purposes and the trial court was within the bounds of fair discretion when it excluded this testimony. Inquiry into specific instances of conduct ordinarily is not allowed unless the trial court, in its discretion, determines the

conduct is probative of the witness's truthfulness or untruthfulness. State v. Martin, 385 N.W.2d 549, 552 (Iowa 1986). The court's ruling will be disturbed only when its discretion has been obviously abused. Id. The testimony in question does not render the inference of untruthfulness more probable than not. Therefore, the trial court did not obviously abuse its discretion excluding this testimony as irrelevant and as an improper method of impeachment.

I would affirm the trial court.