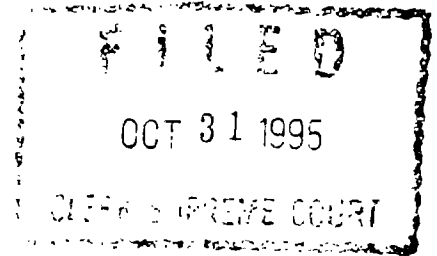


IN THE COURT OF APPEALS OF IOWA

No 5-424 / 94-0938



STATE OF IOWA,

Appellee.

vs.

PATRICIA A. McGRATH,

Appellant.

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge.

McGrath appeals her conviction, following a bench trial, for theft in the first degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sharon Ruth Stevens, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, William E. Davis, County Attorney, and Michael J. Walton, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Hayden and Cady, JJ.

HAYDEN, J.

Patricia McGrath was charged with the crime of theft in the first degree, in violation of Iowa Code section 714.2(1). She was found guilty of the crime charged and now appeals. We affirm.

Roberta Bates and Patricia McGrath became acquainted when they were both working for Taco Bell in Davenport. Bates is an elderly woman who was living alone, and she invited McGrath to live in her home.

In June 1992, Bates noticed two cameras were missing from her home. This made her suspicious, and after checking her home, she found many other items were missing. She notified the police. Police officers could find no evidence anyone had forced their way into the house. At the time, McGrath told police officers Bates was involved in an insurance scam and the items had not really been stolen.

One of Bates' cameras turned up at Boyd's Gun Shop, which is a pawn shop owned by Gene Boyd. Boyd identified McGrath as the person who had sold him the camera. He also stated McGrath had sold him many other items over a period of two years.

McGrath was then arrested. She initially denied ever being in Boyd's Gun Shop. After police officers told McGrath Boyd had identified her, she stated she had taken items she felt Bates would not miss and sold them at Boyd's Gun Shop. She stated she used the money to pay Bates' bills for her. At trial, McGrath testified she

took certain items to Boyd's Gun Shop at Bates' direction, received cash, and gave the money to Bates.

Over defendant's objection at trial, Bates testified to two incidents which occurred after McGrath's arrest. Bates testified McGrath came to her home and threatened her with a gun. Bates also testified McGrath broke into her home.

The case was tried to the court without a jury. The court stated it found Bates to be credible and McGrath not to be credible. The court specifically stated it was disregarding Bates' testimony of the two threatening encounters with McGrath after her arrest because the evidence was not relevant. The court found defendant guilty of theft in the first degree, which is theft of property exceeding \$10,000 in value. McGrath was sentenced to a term of imprisonment not to exceed ten years. She appealed.

Defendant contends the district court abused its discretion in admitting evidence of other crimes because this evidence was not relevant. She believes the court should not have permitted Bates to testify to the two incidents which occurred after her arrest.

Iowa Rule of Evidence 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The question of whether evidence of other crimes is admissible is a discretionary determination for the trial court to make. *State v. McDaniel*, 512 N.W.2d 305, 308 (Iowa 1994).

Here, the district court initially determined the evidence was relevant and allowed Bates to testify to the two incidents. However, on considering the matter, the court determined the evidence was not relevant, and specifically did not consider it. By ultimately ruling the evidence was not relevant, the court effectively sustained defendant's objection to the evidence.

In a jury trial, prompt withdrawal of testimony which is improper, with an admonition to the jury, leaves no ground for complaint except in extreme instances where it is manifest its prejudicial effect remained and influenced the verdict despite its exclusion. *State v. Johnson*, 183 N.W.2d 194, 198 (Iowa 1971). The prejudicial effect of other-crimes evidence is reduced in a bench trial. *State v. Casady*, 491 N.W.2d 782, 786 (Iowa 1992). We conclude defendant has failed to show the prejudicial effect of evidence of other crimes remained and influenced the district court despite the court's exclusion of the evidence. Therefore, because the court did not consider the improper evidence, defendant has no grounds for complaint.

We affirm defendant's conviction for theft in the first degree. Costs of this appeal are assessed to defendant.

AFFIRMED.