FILED
MAY 20 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed May 20, 1977
vs.	)	
JAMES ADOLPHUS HUGHES,	)	134 59583
Appellant.	)	

Appeal from Polk District Court - A. B. Crouch, Judge.

Conviction for Breaking and Entering in violation of Section 708.8 - Affirmed.

Robert W. Pratt, of Des Moines, for Appellant.

Richard C. Turner, Attorney General of Iowa and Dan L. Johnston, Polk County Attorney, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

SNELL, J.

Defendant, James Adolphus Hughes, appeals his conviction for breaking and entering in violation of section 708.8, The Code. He raises two issues on appeal: (1) whether the trial court erred in not granting his motion for mistrial after a witness made reference to "mug shots" and (2) whether the court erred in admitting evidence of a felony conviction.

Geverna LaMar, whose home was broken into, was called as a witness by the State and asked if she knew defendant. She answered she did not. The following colloquy then took place:

> "Q. Have you ever seen the gentleman sitting across from me before, to your knowledge?
> A. Only when the police showed me a mug shot, I guess you could call it."

Defendant immediately asked for a recess and, out of the presence of the jury, moved for mistrial. Motion was overruled.

Defendant argues the statement referring to "mug shot" so prejudiced the jury that he was denied a fair trial. A motion for mistrial is addressed to the court's sound discretion and a reviewing court interferes with that discretion only when it has been abused. State v. Conner, 241 N.W.2d 447, 455 (Iowa 1976). The trial court is present throughout the trial and is in a better position than we to gauge the effect on the jury of the witness' response. State v. Cage, 218 N.W.2d 582, 586 (Iowa 1974).

However, discretion is not unlimited. It must be fairly and impartially exercised by application of relevant guiding principles to all known or available facts to the end that justice be more nearly effectuated. State v. Ware, 205 N.W.2d 700, 702 (Iowa 1973). From a review of the record we are unable to say this evidence prejudiced the jury and denied fair trial. The trial court did not abuse its discretion in overruling defendant's motion for mistrial.

Defendant's second contention is the trial court erred in admitting into evidence a remote felony conviction for the purpose of impeachment. The trial court has discretion to admit evidence of prior felony convictions to impeach a defendant when the felony involves dishonesty or a false statement and the court determines any danger of unfair prejudice does not substantially outweigh the probative values of such prior felony convictions. State v. Martin, 217 N.W.2d 536, 542 (Iowa 1974). Such factors to be considered are the nature of the conviction, its bearing on veracity, its age and its propensity to improperly influence the jurors. Martin, *supra*.

Defendant was asked if he had ever been convicted of a felony and his answer was yes. This was the only question asked regarding defendant's prior criminal record. *Cf.* State v. Sheffey, 250 N.W.2d 51, 55-56 (Iowa 1977).

In State v. Conner, 241 N.W.2d 447, 455 (Iowa 1976), defendant raised similar arguments in regard to the admissibility of prior felony convictions. The court stated: "Defendant's explanation of the offense, which he later repeated before the jury, might affect the weight the jury would accord the evidence on the issue but did not make it inadmissible. The same is true regarding the remoteness factor." Defendant had the opportunity to explain away his prior conviction and he chose not to do so. As in *Conner*, this would only have affected the weight the jury was to give to the impeaching testimony, not its admissibility. *See also* State v. Miller, 229 N.W.2d 762, 765-70 (Iowa 1975).

We have considered whether the evidence of prior convictions should be admitted because of remoteness. The convictions were in 1967 for breaking and entering and burglary with aggravation. The trial court did not abuse its discretion in permitting the introduction of this evidence.

Affirmed.