FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed September 30, 1987
vs.	)	268
LARRY R. MORREY,	)	7-295 / 86-1702
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Scott County (No. 122818-01), Don A. Petrucelli, Judge.

The defendant appeals from his conviction for theft in the fourth degree, contending the district court erred by overruling his motion for judgment of acquittal and by allowing the State to reopen its case after the defendant's testimony. In addition, he contends his trial attorney rendered ineffective assistance by approving a procedure which permitted the defendant to testify before the State reopened its case to present certain crucial evidence. **AFFIRMED.**

Kent A. Simmons of Liebbe & Simmons, Davenport, for defendant-appellant.

Thomas J. Miller, Attorney General; David L. Dorff, Assistant Attorney General; and Virginia Barchman, Assistant Scott County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM 269

On January 31, 1986, the appellant, Larry O. Morrey, was charged by trial information with theft in the fourth degree. See Iowa Code §§ 714.1, 714.2(4) (1985). Trial to the court commenced on August 15, 1986. Morrey was found guilty as charged. He received a suspended sentence of one year, was placed on probation for that same period, and ordered to pay restitution and court costs. This appeal followed.

The issues on this appeal arise from the following sequence of events at trial. In its case-in-chief, the State presented the testimony of the owner of the property allegedly taken by Morrey and then rested. Morrey moved for acquittal on the grounds that no testimony had been presented tending to show that Morrey had taken possession of the property at issue, a necessary element of the State's case. See Iowa Code § 714.1(1) (1985); II Iowa Uniform Jury Instructions (Criminal) No. 1402 (1978). State's counsel informed the court that as a result of her discussions with defense counsel she had believed the defendant was stipulating to the element of possession. When defense counsel apprised her that such a belief was mistaken, State's counsel moved to reopen her case so as to present the testimony of police officer Allen Sylvia, who had allegedly witnessed Morrey take possession of the challenged property. Over Morrey's objection, the district court granted the State's motion to reopen its case and denied Morrey's motion for acquittal. In addition, the court allowed the State a continuance in order to accommodate the schedule of Officer Sylvia. In light of this turn of events, Morrey's counsel requested that Morrey be allowed to testify out of order and reserved the option to withdraw his testimony after Officer Sylvia testified. Morrey's testimony included an admission that he had taken the property. Following Officer Sylvia's August 21 testimony, Morrey's counsel requested Morrey's testimony be submitted for the court's consideration.

I.

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Morrey maintains the district court erred in denying his motion for acquittal. This claim is based upon his related contention that the court erred in granting the State's motions to reopen its case and for continuance. Trial courts have discretion to permit a party to reopen the record and introduce evidence which was previously omitted. State v. Moreland, 201 N.W.2d 713, 714 (Iowa 1972). Similarly, our courts have long held that in granting or denying continuances, the district court's discretion is very broad. E.g., State v. Grimme, 338 N.W.2d 142, 144 (Iowa 1983). We do not think the case at bar presents us with an abuse of discretion in either respect. As noted above, the State rested its case without the necessary testimony only because of a misunderstanding on the part of State's counsel. Defense counsel knew Officer Sylvia was a possible witness and counsel had been given a copy of Sylvia's report prior to trial. The district court operated within the allowable ambit of its discretionary authority in granting the State's motions. Consequently, we think the district court was also correct in denying Morrey's motion for acquittal. See Moreland, 201 N.W.2d at 714-15.

II.

Morrey maintains he received ineffective assistance of counsel. Our framework for review of such claims is well established. See, e.g., Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981). Morrey argues his counsel was deficient in presenting Morrey's testimony wherein he admitted to taking the property. This alleged error, he contends, "transforms the denial of the motion for acquittal from reversible error to harmless error . . . ." See State v. Holderness, 293 N.W.2d 226, 230 (Iowa 1980). This statement of Morrey's argument, taken from his brief, obviously is based upon the assumption that the district court's denial of the motion for acquittal was error. This assumption, as we held in part I,

supra, is incorrect. The evidence necessary for the State to make out its case was furnished by Officer Sylvia's testimony. Morrey's testimony to the same effect was merely cumulative. His counsel was in no way deficient for providing Morrey's side of the story. Accordingly, we reject his sixth-amendment claim.

AFFIRMED.