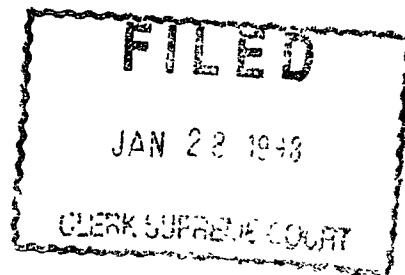


IN THE COURT OF APPEALS OF IOWA

000419

No. 7-619 / 97-0040
Filed January 28, 1998



STATE OF IOWA,
Appellee,

vs.

INDIAN CREEK CORPORATION,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

The defendant appeals the trial court's denial of its motion to compel and its
conviction for selling hogs unaccompanied by a negative brucellosis test.

AFFIRMED.

Curt Daniels, Chariton, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney
General, Steve Johnson, County Attorney, and John C. Heinicke, Assistant County
Attorney, for appellee.

Heard by Cady, C.J., and Sackett and Streit, JJ.

STREIT, J.

Defendant Indian Creek Corporation was charged with selling hogs unaccompanied by a negative brucellosis test. Indian Creek motioned to compel the deposition testimony of state veterinarian, Dr. W. D. Felker. The trial court denied the motion. Because defendant did not show Dr. Felker's testimony necessary to its defense or that prejudice resulted from the discovery ruling, we affirm the trial court's denial of Indian Creek's motion to compel and conviction.

I. Background & Facts.

Indian Creek sold 981 hogs to Monarch Enterprises. The corporation did not test the hogs for brucellosis or provide negative brucellosis test reports with the sale. Indian Creek was charged with violation of Iowa Code sections 163A.2, 163A.3, and 163A.10. Indian Creek pled not guilty.

On September 16, 1996, Indian Creek noticed the deposition of Dr. Felker, the state veterinarian. Dr. Felker was served with a subpoena the same day. He refused to be deposed. Indian Creek filed a motion to compel his deposition testimony. The motion was denied. After bench trial, Indian Creek was found guilty as charged and sentenced a \$1500 fine, a thirty percent surcharge, and court costs. Indian Creek appeals.

II. Standard of Review.

The discovery rulings of the trial court are reviewed for abuse of discretion. *Schettler v. Iowa Dist. Ct.*, 509 N.W.2d 459, 464 (Iowa 1993). An abuse of discretion

is found when the court exercises its discretion on untenable grounds or to an extent clearly unreasonable. *Id.* An abuse of discretion will not be found based on a discovery ruling unless the defendant shows his rights were prejudiced. *See State v. Babers*, 514 N.W.2d 79, 82 (Iowa 1994).

III. Defendant's Motion to Compel Dr. Felker's Testimony.

Indian Creek asserts the trial court abused its discretion in refusing to compel the deposition testimony of Dr. Felker. The defendant was entitled to depose all witnesses listed by the State. Iowa R. Crim. P. 12(1). The defendant could depose other persons upon showing "just cause necessitating the taking of the deposition." *Id.* at 12(2). To show necessity under Rule 12(2) the defendant must show the potential evidence is material and favorable to its defense. *State v. Wagner*, 410 N.W.2d 207, 213 (Iowa 1987).

Dr. Felker was not listed as a witness for the State. Therefore, Indian Creek had to show necessity in order to compel his deposition. Indian Creek argues it was necessary to take the deposition of the Dr. Felker because he had first-hand knowledge of the investigation of this case and superior knowledge of the statutes purportedly violated by Indian Creek.

There is nothing in the record indicating Dr. Felker's testimony would have been favorable or material to Indian Creek's defense. There is no reason Indian Creek could not have obtained information about the investigation of the case from the State's identified witnesses, who, like Dr. Felker, investigated Indian Creek's case.

There is no showing an interpretation of the statute could not have been gleaned from other sources, including Indian Creek's own research. It was not unreasonable or untenable for the trial court to deny the motion in light of Indian Creek's insufficient showing of necessity.

For the same reasons Indian Creek could not show necessity at the trial court, it cannot show prejudice resulted because of the trial court's ruling. Nothing in the record demonstrates the trial court's ruling resulted in the loss of favorable evidence, an inability to develop evidence, or the prevention of a vigorous defense. Without such a showing, an abuse of discretion will not be found.

AFFIRMED.