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SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed October 18, 1979

vs.)

JACK J. FRITZE,) 243
62396

Defendant-Appellant.)

Appeal from Floyd District Court - L. E. Plummer, Judge.

Defendant appeals conviction for arson in the first degree in violation of section 712.2, The Code 1977. - Reversed and remanded.

Gaylen v. Hassman, of Engelbrecht, Ackerman & Hassman, Waverly, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, Julie Pottorff, Assistant Attorney General, and Thomas A. Evans, Jr., Assistant Attorney General, for plaintiff-appellee.

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

OXBERGER, C.J.

Defendant Jack Junior Fritze appeals conviction for arson in the first degree in violation of section 712.2, The Code 1977. Reversed and remanded.

The Floyd County District Court, hearing this matter on a change of venue, found defendant guilty of first degree arson. On appeal, defendant assigns numerous errors. Since we find the trial court improperly limited defendant's cross-examination of a State's witness, we reverse and remand for new trial.

I. Defendant asserts the trial court improperly limited his cross-examination of a State's witness. The witness, defendant's former wife, testified on direct examination that the defendant had threatened to kill her with a knife because he alleged she was responsible for their divorce. She further testified on direct examination that she and the defendant had an altercation and that the defendant on prior occasions had forcibly broken open her apartment door to gain access to it. She also indicated the couple's son lived with her.

On cross-examination, defendant's counsel asked whether the defendant had demonstrated love for his son. His former wife answered "Well, if you - - I really don't know. If you consider stealing our money, our ADC, so we have nothing to live on, then I suppose that's what you call love." Defendant's counsel continued to question her on the love defendant had for his son and on the disputes the couple had on child visitation. He also sought to impeach her testimony on the alleged violent acts of the defendant. Thereupon, the trial court sustained the State's objection to the cross-examination on the ground defendant was trying to relitigate divorce matters and that line of questioning ended.

On redirect examination, the State elicited further testimony on the defendant's disposition toward violence. Details on defendant's alleged wrongful entry to the witness' apartment and on her attempts to lock him out were brought out in redirect examination. Defendant's counsel sought to discredit this testimony and the witness, as well, upon recross-examination. He offered evidence that police officer Bob Gaston had investigated a complaint by the defendant's former wife and had concluded the complaint was unfounded and phony. This evidence was rejected and in defendant's offer of proof, defense counsel stated:

> Nadine Ingersoll (defendant's former wife) in this case is — has testified on a number of occasions with respect to threats, beatings and other problems that the defendant had caused her, in order to show ill will toward —by the defendant toward her supposedly designed to show that the defendant would commit this crime against his wife and child. We would offer Mr. Gaston's testimony with respect to his investigation — to show — that was in fact an unfounded complaint and it was a phony complaint in essence.

The scope of cross-examination is a matter largely within the discretion of the trial court, State v. Cornell, 266 N.W.2d 15, 21 (Iowa 1978), and the trial court has considerable latitude to limit testimony on collateral issues alleged to affect witness credibility. See State v. Davis, 269 N.W.2d 434, 439 (Iowa 1978). However, defendant desired to use the information obtained from Officer Gaston to show the alleged conduct had not occurred. He sought to rebut the State's use of alleged prior acts and conduct as evidence of his alleged propensity toward violent conduct and should have been permitted to do so. The trial court erred in limiting his cross-examination in this respect and we reverse on that ground.

Defendant raises other issues that we discuss summarily.

II. Defendant asserts the trial court improperly limited his attempt to impeach witness Stuart Gray and that the trial court improperly commented on the issue presented at that time. We find no reversible error on this contention.

III. Defendant alleges he was denied a fair trial because reference was made to his refusal to waive his Miranda rights. Defendant's objection at trial did not sufficiently advise the trial court of the alleged error and we find the issue was not preserved for appeal.

IV. Defendant claims testimony on a prior fire was erroneously admitted. The trial court ruled the defendant "opened the door" to that testimony by questioning the fire chief about a prior conversation. We find the trial court properly allowed the State to inquire into the details of that conversation.

V. Defendant assigns error to the trial court's reopening the trial for rebuttal testimony after both sides had rested. The trial court has considerable discretion on whether to reopen a trial, State v. Hall, 235 N.W.2d 702, 724 (Iowa 1975), and did not abuse that discretion on this matter.

VI. Defendant asserts other errors. We have reviewed them and find them without merit. For the reasons stated in Part I, we reverse and remand for new trial.

REVERSED AND REMANDED.

All judges concur, except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

I dissent. The majority reverses this case on the basis of the trial court's abuse of discretion in refusing to admit into evidence the testimony of Officer Gaston. There is no discussion, however, in the majority's opinion on how defendant was prejudiced by this action of the trial court. See State v. Hicks, 245 N.W.2d 319, 321 (Iowa 1976). Other evidence of defendant's propensity toward violent conduct was in the record; the alleged incident defendant sought to rebut was merely cumulative. I also have serious doubts about the materiality of the proffered evidence since proof of defendant's violent propensities is not an element of the crime of arson. I believe the trial court acted within its discretion in refusing to delve substantially into the interpersonal problems between the defendant and his ex-wife.