



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
	)	289
Plaintiff-Appellee,	)	Filed November 26, 1986
vs.	)	
TONY DURELLE KEELING,	)	<u>6-407</u>
	)	86-299
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County (DX004708)
- William P. Evans, Associate District Judge.

Defendant appeals from his conviction for theft in the third degree.
AFFIRMED.

Charles Harrington, Chief Appellate Defender, and Linda Del Gallo,
Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Christie J. Scase, Assistant
Attorney General; and Jeffrey L. Goodman, Assistant Black Hawk County
Attorney; for plaintiff-appellee.

Considered by Donielson, P.J., Hayden, and Sackett, JJ.

HAYDEN, J.

Defendant appeals from his conviction for theft in the third degree pursuant to Iowa Code sections 714.1(4) and (3) (1985). The only issue on appeal is whether the trial court erred in overruling the defendant's objection to testimony that allegedly exceeded the minutes of testimony.

Defendant was identified as the person who brought to a repair shop a typewriter that was subsequently determined to have been stolen from a local high school. He was convicted on a charge of third-degree theft following a trial at which he testified he had purchased the typewriter from a man at a gas station in the winter of 1985.

The minutes of testimony stated a school employee was expected to testify she had checked to find the last record showing the typewriter to be in the school's possession. It was further stated the typewriter was recorded in a July 1984 inventory. At trial she initially could not recall the date of the most recent inventory listing the typewriter. On the next day, when recalled to the stand, she testified she knew an inventory had been conducted during the spring of 1985. Outside the presence of the jury defense counsel objected that the line of questioning exceeded the scope of the minutes of testimony. The court sustained the prosecutor's motion to amend the minutes and denied both defendant's motion for continuance and motion for mistrial. The witness then testified the typewriter was shown on an inventory taken in February or March, 1985.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. The trial court's findings of fact have the force of a special verdict and are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). This case is reviewed as tried in the court below. Mosebach v. Blythe, 282 N.W.2d 755, 758 (Iowa 1979). we are not bound by the trial court's determina-

tion of law and are free to decide whether the court's findings were the result of legal error. Rouse v. State, 369 N.W.2d 811, 813 (Iowa 1985).

On August 13, 1985, the Black Hawk County Attorney's Office charged defendant with third degree theft. Along with the information, minutes of testimony were filed, including the testimony of Beverly Gillespie, which provided:

This witness will testify to being employed as a secretary in the Purchasing Department for the Waterloo School System.

This witness will also testify to checking, upon the request of Officer Paul Fitzgerald, as to the last record they have of typewriter with the serial number 9488693 being recorded in the possession of East High School.

This witness will also testify to finding the aforementioned typewriter recorded in the July, 1984, inventory. She will also testify to sending a computer printout of this inventory to Officer Fitzgerald by mail.

When recalled, Beverly Gillespie testified an inventory had been conducted in the spring of 1985. This was material since defendant's testimony was he received the typewriter in January of 1985. Out of the presence of the jury the State explained when the trial began the only information it possessed was in the original minutes of testimony. On the first day of trial some confusion arose regarding Miss Gillespie's testimony, so the State told her to review her documents. The next morning she presented the evidence to the State regarding the 1985 inventory and was called to testify on rebuttal.

The State amended its minutes pursuant to Iowa Rule of Criminal Procedure 4(8), which provides in pertinent part:

a. Generally. The court may, on motion of the state, either before or during the trial, order the indictment amended so as to correct errors or omissions in matters of form or substance. Amendment is not allowed if substantial rights of the defendant are prejudiced by the amendment, or if a wholly new and different offense is charged.

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c. Amendment during trial. If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant and the defendant's counsel, and such record shall constitute sufficient notice to the defendant.

d. Continuance. When an application for amendment is sustained, no continuance or delay in trial shall be granted because of such amendment unless it appears that defendant should have additional time to prepare because of such amendment.

e. Amendment of minutes. Minutes may be amended in the same manner and to the same extent that an indictment may be amended.

The State must file minutes of testimony which provide a "full and fair statement of the witness's expected testimony." Iowa R. Crim. P. 4(6)(a). There are no set criterion to determine the sufficiency of minutes, it must be decided on a case-by-case basis. State v. Walker, 281 N.W.2d 612, 614 (Iowa 1979). The general guidepost is the minutes need not list every detail of a witness's testimony, but they must provide defendant with a full and fair statement sufficient to alert him to the source and nature of the information against him. State v. Lord, 341 N.W.2d 741, 743 (Iowa 1983). The minutes of testimony need only to alert defendant generally to the source and nature of the evidence against him. Walker, 281 N.W.2d at 614. "A defendant may thus be put on notice of the necessity of further investigation of the witness's probable testimony." Lord, 341 N.W.2d at 743.

The original minutes notified defendant Miss Gillespie would testify to the inventory kept by the high school, specifically the inventory made in July 1984. The State amended these minutes by substituting for paragraph three: "This witness will testify to discovering certain inventory records in the possession of the Waterloo School administration, relating to typewriter 9488693" and

"She will also testify to sending certain information to Officer Fitzgerald, including computer printouts, and to providing the County Attorney with evidence relating to the inventory of the Waterloo School Administration, more specifically typewriter 9488693."

We find the witness's rebuttal testimony and the amended minutes to be within the scope of the original minutes of testimony. The original minutes put defendant on alert and notified him of the expected testimony. No prejudice resulted from these amendments and therefore no continuance was warranted.

AFFIRMED.