

IN THE COURT OF APPEALS OF IOWA

No. 0-874 / 10-0175
Filed January 20, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LARRY DEANDRE RATLIFF JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn,
Judge.

Larry Ratliff appeals from his convictions and sentences for the offenses
of intimidation with a dangerous weapon and carrying weapons. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas J. Gaul and Rachel
C. Regenold, Assistant Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, Stephen H. Holmes, County Attorney, and Mary Howell Sirna and
Timothy C. Meals, Assistant County Attorneys, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J.,
takes no part.

DOYLE, J.

Following a jury trial, Larry Ratliff was convicted of the offenses of intimidation with a dangerous weapon, in violation of Iowa Code section 708.6 (2009), and carrying weapons, in violation of section 724.4(1). On appeal, Ratliff contends the district court erred in admitting a cell phone photograph. He also asserts the court imposed an illegal sentence by failing to limit the amount of his reimbursement obligation for his court-appointed attorney's fees. We affirm.

I. Background Facts and Proceedings.

On the evening of August 6, 2009, Ames High School students Kon Tong, Deng Tong, and Ruac Chotkuac were at a park playing basketball. After midnight Kon drove Deng and Ruac to a Kum & Go convenience store to purchase sodas. While at the store they observed two girls run up to the store. The girls looked at the three boys and laughed. The boys recognized one of the girls as Ratliff's girlfriend. The girls went in the store and then left. Kon drove his companions to a Swift Stop to purchase gas for the car. Kon prepaid and was pumping gas when he saw Ratliff and Jarwhan Johnson riding bicycles. Kon and his companions knew the two. There was some "bad blood" between Kon and Ratliff. As Ratliff and Johnson approached the station, Kon and his companions got in the car and started to leave. Johnson got off his bike and raised his arms and made arm movements like he wanted to start a fight. Kon pulled out of the station and stopped for a red light. As they waited at the light, Ratliff approached the car. Kon observed him raise his shirt and pull out a silver handgun. Deng and Ruac made similar observations. When he was about ten to twelve feet from the car, Ratliff began to fire shots at the passenger side of the car. Deng and

Ruac actually saw the shots being fired. Kon took off, running the red light to get away. Deng called 9-1-1. Kon eventually stopped the car and police arrived. The passenger-side door of the car was riddled with four bullet holes. A bullet was later extracted from the door.

A number of other witnesses saw the shooting, observing the shooter, the gun, and the muzzle flashes as the gun was fired at the car. Their observations were all consistent with what Kon, Deng, and Ruac saw and heard. After the shooting, witnesses saw Ratliff and Johnson abandon their bicycles and flee the scene. The two girls Kon and his companions had seen earlier at the Kum & Go were observed at the scene shortly after the shooting. They ran into the Swift Stop and asked the store clerk if he had seen two individuals run inside. The girls ran out of the store after being told two men had just run off to the south in between buildings. Witnesses described the girls as agitated, nervous, excited, and frantic. One was talking on her cell phone and was overheard by a witness to say, "Do not go back for your bikes."

Later that morning police went to Ratliff's apartment and took him into custody. Johnson and the two girls were in the apartment at the time. After securing a search warrant, police searched the apartment and found, among other things, seven live .38 Special +P bullets in a backpack and six .38 Special +P spent shell casings in a sock that had been concealed behind an air conditioner filter. Three cell phones were seized. By process of elimination, the State proved the owner of the cell phone was Ratliff's roommate, Johnson, who was believed to be the companion of Ratliff at the time of the shooting, but who was not charged with any crime for his involvement and did not appear as a

witness at trial. The phone belonging to Johnson contained a picture of a silver revolver and was date stamped July 30, 2009.¹ The handgun was never recovered.

Ratliff was charged with intimidation with a dangerous weapon in violation of Iowa Code section 708.6, a class C felony. He was also charged with carrying weapons in violation of section 724.4(1), an aggravated misdemeanor. A jury returned a verdict of guilty on both counts. Ratliff was sentenced to ten years imprisonment on the intimidation charge and two years on the weapons charge, with the sentences to run consecutively. Additionally, Ratliff was ordered to pay a fine and court costs, and to reimburse the State for the reasonable fees of his court-appointed attorney.

Ratliff appeals. He argues the district court erred in admitting the cell phone photo of a handgun, contending the foundation was insufficient. He also argues the court imposed an illegal sentence by ordering him to reimburse the State for his court-appointed attorney fees without setting a limit on the amount he had to pay.

II. Discussion.

A. Admission of the Cell Phone Photograph.

A single photograph from Johnson's cell phone was included in two exhibits admitted at trial. One exhibit was the photograph of a handgun. The other contained two photographs placed side-by-side comparing the similarities between the cell phone picture of a handgun and a picture of an Arminius 357

¹ The phone also contained a picture of Johnson handling the gun, but that photograph was not admitted at trial.

Magnum revolver from the State Crime Laboratory's firearms collection. A State Crime Laboratory criminalist testified a possible match to the gun depicted in the cell phone photograph was an Arminius revolver and that such a gun could fire .38 Special ammunition. The witnesses' descriptions of the gun used by Ratliff are consistent with the appearance of the guns depicted in the photographs.

Ratliff contends the foundation for the admission of the cell phone photograph was practically non-existent. A ruling of the admissibility of a photograph will not be overturned unless a clear abuse of discretion is found. *State v. Davidson*, 245 N.W.2d 321, 324 (Iowa 1976). A court abuses its discretion when it exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Helmers*, 753 N.W.2d 565, 567 (Iowa 2008).

Here, the evidence established the date the photograph was taken (based upon the date stamp on the photograph, which the police officer thought might be the date the photograph was taken) and that the phone took accurate pictures that could not be altered after they were taken (based upon the officer's experience with her personal phone). Because the State's foundation evidence included the officer's testimony that the photographic process (in her identical phone) produced accurate pictures, we find no abuse of discretion by the court in finding a minimally sufficient foundation for the admission of the photograph.² See *State v. Holderness*, 293 N.W.2d 226, 234 (Iowa 1980). In any event, the photograph's admission was harmless. See Iowa R. Evid. 5.103(a) ("Error may

² Ratliff does not appeal from the admission of the photograph on relevance grounds.

not be predicated upon a ruling [that] admits or excludes evidence unless a substantial right of the party is affected”). Evidence of Ratliff’s guilt in this case was overwhelming. See *State v. Martin*, 704 N.W.2d 665, 673 (Iowa 2005). Numerous witnesses observed Ratliff holding a handgun as he shot at the car, saw the muzzle flashes from the gun, and heard the shots. The physical evidence established the car had been hit by bullets from a firearm—the passenger door was riddled with bullet holes and a .38 caliber jacketed hollow point bullet was recovered from the door. Iowa Code section 708.6 only requires the State prove the defendant used a dangerous weapon; it does not require the State establish identification of *the* particular weapon used.³ The record is replete with evidence Ratliff used a dangerous weapon to strike fear in the occupants of the car. We find no reversible error on the part of the district court in admitting the cell phone photograph of a handgun.

B. Illegal Sentence.

The court appointed Ratliff a private attorney to represent him at public expense. Defense counsel filed an application to exceed the fee limit, and the court granted the motion. As part of the sentence imposed, Ratliff was required to “reimburse the State for the reasonable fees of his court-appointed attorney.”

On appeal, asserting application of *State v. Dudley*, 766 N.W.2d 606, 622 (Iowa 2009), Ratliff claims the court imposed an illegal sentence and requests a remand to the district court for a clarification of the sentencing order to limit the amount he has to pay for attorney fees. We agree with the State that Ratliff’s

³ “Dangerous weapons include but are not limited to any offensive weapon, pistol, revolver, or other firearm” Iowa Code § 702.7.

request is premature. Under the record before us, Ratliff has been ordered to pay only \$266.25 so far. That amount was for court reporter fees. No order has been entered requiring Ratliff to pay attorney fees in excess of any applicable fee limit. Should that occur, he may challenge the order at that time.

III. Conclusion.

For all the above reasons, we affirm Ratliff's convictions and sentences.

AFFIRMED.