

**IN THE COURT OF APPEALS OF IOWA**

No. 6-828 / 05-2074  
Filed December 28, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**GARY MICHAEL RITCHIE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge.

Gary Ritchie appeals his judgment and sentences for assault on a peace officer, going armed with intent, eluding, and two counts of third-degree harassment. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Greta Truman, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and John Werden, Jr., County Attorney.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Gary Michael Ritchie had an argument with neighbors that escalated. The State charged Ritchie with several crimes arising from this episode. Prior to trial, Ritchie filed a motion in limine seeking to exclude evidence of firearms and ammunition found in his home as well as testimony regarding a general threat Ritchie made in the past. The district court denied the motion. A jury found him guilty of assault on a peace officer, going armed with intent, eluding, and two counts of third-degree harassment. Iowa Code §§ 321.279, 708.1, 708.3A, 708.7, and 708.8 (2005).

On appeal, Ritchie challenges the district court's denial of his motion in limine as it related to the firearms in his home and the prior threat. He argues the evidence was not relevant and, accordingly, was not admissible.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. If irrelevant evidence is admitted, prejudice is presumed and we reverse unless the record affirmatively establishes otherwise. *State v. Sullivan*, 679 N.W.2d 19, 30 (Iowa 2004).

We need not decide whether the challenged evidence was relevant because, even if it was not, we conclude the district court's admission of the evidence was not prejudicial. Witnesses testified that Ritchie, after drinking a forty-ounce can of beer, went to his neighbor's house with a bottle of Everclear alcohol. He consumed alcohol there and got into an argument with an acquaintance of the neighbors, Jesse Cochran. In the course of the argument,

Ritchie threatened to kill Cochran and the neighbor, Harley Herron. Herron asked Ritchie to leave his home. After Ritchie returned to his house, he realized he had left his Everclear behind. He called Herron's wife several times. She told him she had dumped the alcohol. According to her, Ritchie responded, "you're going to be sorry you did that." Ritchie also called 911 and spoke to the police chief, Joel Roetman. According to Roetman, Ritchie said, "if I don't get my liquor back, I'm going to take them out, then I'm going to come looking for you." Roetman went to Ritchie's neighbor's house "to make sure that they weren't in any kind of immediate danger after the threat [Ritchie] had made." Then he went to Ritchie's house. He saw Ritchie sitting on the front steps of his house with a shotgun across his knees. He told Ritchie to put the gun down, but Ritchie did not comply. Roetman testified:

When he stood up, he went into a ready gun position, being the shotgun up and doing a racking action with the pump part of the shotgun. At that time he leveled the shotgun towards my vehicle and myself and brought it midway between his chest and his waist line, which I would call ready gun military type position for combat.

At this point, Ritchie got into a vehicle and drove off. Roetman pursued Ritchie through town with his lights, and later his sirens, activated. The pursuit continued for several miles until another police officer laid down stop sticks. With three flat tires, Ritchie exited his car, and left. The following morning, he peacefully turned himself in.

We conclude the State's case was "so overwhelming that the State would have prevailed even in the absence of the boost it received when the jury heard" the challenged evidence. *Id.* at 31. We reach this conclusion notwithstanding a different version of events presented by Ritchie.

We affirm Richie's judgment and sentences.

**AFFIRMED.**