

IN THE COURT OF APPEALS OF IOWA

No. 7-477 / 06-1195
Filed August 8, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAMALE ANTON HUNT,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

Ramale Hunt appeals his convictions for intimidation with a dangerous weapon with intent and carrying weapons. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

Ramale Hunt appeals his convictions for intimidation with a dangerous weapon with intent and carrying weapons. He contends the district court erred in denying his motion in limine to exclude his statements to a law enforcement officer about carrying and shooting firearms in Waterloo during the spring of 2004. In the alternative he argues his trial counsel was ineffective if error was not preserved on this issue. We affirm.

From the evidence presented at trial the jury could find the following facts. On May 4, 2004, a warm spring afternoon in Waterloo, Brandi Goodson and Karkisha Robinson decided to go for a walk with Goodson's four-year-old son. They drove to the Sullivan Park area and parked their car on a side street bordering the park. The two women and the boy began walking toward the railroad tracks and turned on East 4th Street. Tatiana Moore and Melissa Smith drove by and stopped to talk to Goodson and Robinson near the tracks.

As the women were talking, Goodson suddenly saw a man coming from the corner of Sumner Street with a pistol in his hand and shooting at an old, four-door, gray Chevrolet car. Goodson testified she recognized the man shooting as Ramale Hunt or Ramale Henderson because she knew his family and knew him from when they were kids. Goodson yelled at Ramale to stop shooting several times, expressing concern about her child. The man crossed Sumner Street, fired the gun three more times at the car and said "[f]uck you bitch," or "fuck your baby." The Chevrolet turned on East 4th Street from Sumner Street across the tracks swerving and nearly hitting Moore's car. The man ran back toward

Sumner Street and turned into the alley. After the man ran down the alley Moore drove off.

Shortly after the shooting, Goodson and Robinson flagged down a police officer. Goodson identified the shooter to the police as Ramale Henderson or Ramale Hunt. She further informed the police that she thought Ramale lived on East 4th with his grandmother, Lilly Henderson, in a house with a ramp out front. Robinson also identified the shooter to the police as "Mel" or Ramale and believed his last name was Henderson. Robinson testified she grew up with Ramale's cousins, and her great aunt lived next to Ramale's grandmother whom she knew lived in a yellow house on East 4th that had a ramp in front. Robinson recognized the shooter as the "Mel" she knew. Officers found five .25 caliber shell casings in the area between East 4th and Sumner and the railroad tracks. Moore also testified that after she heard the gunshots and realized where they were coming from she looked to see who was doing the shooting and was able to get a good look at the man with the gun.

Both Goodson and Robinson went to the police station on the afternoon of the shooting, provided statements, and viewed a photographic line-up. Both picked out the defendant, Ramale Hunt, from the photographic line-up as the shooter and each then testified at trial she was "100 percent" certain of her identification of Hunt. Moore also viewed a photographic line-up and picked out Hunt from the line-up as the shooter. She stated she was "50/50 percent" sure of her identification of Hunt as the shooter.

The State charged Hunt, by trial information, with intimidation with a dangerous weapon with intent, in violation of Iowa Code section 708.6 (2003), and carrying weapons, in violation of section 724.4(1). Hunt filed a written arraignment and plea of not guilty. On July 12, 2004, Hunt failed to appear for a pretrial conference and a warrant was issued for his arrest. He was arrested in May 2005, in Arizona.

Officer Michelle Blanco from Glendale, Arizona interviewed Hunt in Arizona on May 13, 2005, questioning him regarding "ongoing problems that he was having in the City of Waterloo, Iowa, in the spring of 2004," from March through June. Hunt admitted to Officer Blanco that he had owned a 9 millimeter gun but claimed he had never fired that gun, he just carried it on him for protection. When asked by Blanco about using other guns during this period of time, Hunt stated "he shot at people who were shooting at him" several times, and it was in retaliation for persons shooting at him. He stated he had used a .38 or .32, but was not sure. Hunt denied any involvement in the May 4, 2004 shooting incident in Waterloo, and never admitted to having used a .25 caliber gun. He did tell Officer Blanco that he had shared guns with his friends, and probably had access to any type of gun he wanted. However, he denied owning a .25 caliber gun and did not know if any of his friends did.

Hunt filed a motion in limine seeking, in part, to exclude the testimony of Officer Blanco regarding his apprehension, arrest, and interview in Arizona. After hearing arguments from both sides on the motion, the district court ruled, in part, that

Officer Blanco's testimony on the defendant's admissions, particularly the minute that reflected that the defendant had admitted to the officer that he had been involved in shootings prior to June of 2004 and his admission was it was a plural involving small caliber guns, the Court does consider . . . those admission as not unfairly prejudicial if they were admitted into the record in this case and to that extent, I'll overrule the motion in limine with respect of Officer Blanco's testimony regarding the defendant's admissions of being involved in shootings.

Following trial the jury found Hunt guilty as charged. Hunt filed a motion for new trial arguing, in part, that the court erred in admitting the testimony of Officer Blanco regarding his purported admissions to shootings prior to the offense charged and that he carried weapons when he traveled in Waterloo. A hearing was held and the court denied the motion. The court sentenced Hunt to a term of incarceration of no more than ten years on the intimidation charge and no more than two years on the weapons charge. The sentences were ordered to run concurrently.

On appeal Hunt claims the district court erred in denying his motion in limine and admitting Officer Blanco's testimony about his statements to her regarding possession of other weapons and other instances when he fired weapons. He argues such evidence was not relevant, its prejudicial effect substantially outweighed the probative value, and the evidence constituted other bad acts evidence used to establish that he had the propensity to commit the acts charged.

We note that although Hunt did not renew his objections to Officer Blanco's testimony during trial, it is clear the court's ruling on his motion in limine was a final ruling on the admissibility of her testimony. Accordingly, no further

objection was needed for Hunt to preserve error on this issue. *State v. Alberts*, 722 N.W.2d 402, 406-07 (Iowa 2006). Because error was properly preserved we need not address Hunt's alternate claim that his trial counsel was ineffective for not properly preserving this issue for appeal.

Challenges to evidentiary rulings are reviewed for correction of errors at law. Iowa R. App. P. 6.4. A court has wide discretion in making such rulings, and its decisions in this regard are reversed only for a demonstrated abuse of discretion. *State v. Sallis*, 574 N.W.2d 15, 16 (Iowa 1998). Abuse is found where a district court exercised its discretion on grounds or for reasons clearly untenable, or to an extent clearly unreasonable. *State v. Bayles*, 551 N.W.2d 600, 604 (Iowa 1996). "Even though an abuse of discretion may have occurred, reversal is not required if the court's erroneous admission of evidence was harmless." *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005) (citing *State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004)).

Reversal is required in cases of nonconstitutional error when it appears that the rights of the complaining party have been injuriously affected by the error or that he has suffered a miscarriage of justice. In applying this test, we presume prejudice[,] that . . . a substantial right of the defendant is affected[,] and reverse unless the record affirmatively establishes otherwise.

Id. at 12 (internal citations and quotations omitted). "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. . . ." Iowa R. Evid. 5.103(a).

Assuming without deciding that the district court abused its discretion in allowing the challenged testimony, we conclude any such error was harmless under the record before us.

As set forth above, both Goodson and Robinson recognized and knew Hunt from past interactions with him and members of his family. They knew where he lived, or had lived, with his grandmother and described the house accurately. The incident occurred during daylight hours on a clear day and thus all of the witnesses had a chance to clearly observe the shooter. Goodson even spoke to the shooter and had the added reason to closely observe him and his actions due to her concern for the safety of her son. Based on these clear observations and their prior acquaintance with Hunt, both Goodson and Robinson identified him by approximate name at the scene of the shooting and both were absolutely certain of their identification of Hunt as the shooter not only in the photographic lineup but also at trial. In addition, Moore also had a chance to clearly observe the shooter on the day in question and identified Hunt from the photo lineup, stating she was “50/50 percent” sure he was the shooter.

Finally, the jury was instructed that Hunt could not be convicted based on his “prior statements alone.” The court also instructed the jury on how to evaluate eyewitness testimony. Jurors are presumed to follow the court’s instructions. *State v. Piper*, 663 N.W.2d 894, 915 (Iowa 2003); *State v. Proctor*, 585 N.W.2d 841, 845 (Iowa 1998).

We conclude the overwhelming evidence in the record clearly establishes that Hunt was the shooter in the incident in question and thus the admission of Officer Blanco’s testimony did not injuriously affect Hunt’s substantial rights. Error, if any, on the part of the district court in denying Hunt’s motion in limine

and admitting the challenged evidence did not prejudice Hunt and thus was harmless. Hunt's convictions are affirmed.

AFFIRMED.