IN THE COURT OF APPEALS OF IOWA

No. 1-653 / 10-0304
Filed November 9, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERRID MICHAEL WINFREY,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge.

A defendant challenges the sufficiency of the evidence to sustain his convictions and also challenges certain evidentiary rulings, the district court's denial of his mistrial motion, and the court's approval of an in-court gun firing demonstration. **AFFIRMED.**

Jesse A. Macro, Jr. of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Nan Horvat and Dan Voogt, Assistant County Attorneys, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

A man fired bullets into the driver's side of a vehicle, killing the driver and seriously injuring the passenger. The State charged Jerrid Winfrey with first-degree murder, attempt to commit murder, and willful injury causing serious injury. A jury found him guilty of all three crimes. On appeal, Winfrey challenges the sufficiency of the evidence supporting the finding that he committed the crimes. He also challenges certain evidentiary rulings, the district court's denial of his mistrial motion, and the court's approval of an in-court gun firing demonstration.

I. Sufficiency of the Evidence

Winfrey contends the State presented insufficient evidence that he committed the crimes. We review the record to determine if there is substantial evidence on the question of identity. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). A reasonable juror could have found there was.

Damont Jackson was the front-seat passenger in a vehicle about to be driven by Richard Lewis. Jackson testified that, before he got into the car, he saw Winfrey following the pair to the vehicle. Jackson got into the passenger seat and closed the door. As he did so, he saw Winfrey step in front of the car and move around to the driver's side. Just after Lewis got in to the driver's seat and began closing the door, Winfrey put his arm into the car, pulled out a gun, and started shooting. He then tucked the gun into his pants and walked away. Lewis subsequently died at a hospital. Jackson, whose leg was hit by a bullet, was also taken to the hospital for treatment.

Jackson unequivocally identified Winfrey as the shooter. While other witnesses, including a rear-seat passenger in the same vehicle, did not identify Winfrey as the shooter, the jurors were free to credit Jackson's trial testimony on this question. For that reason, we find sufficient evidence to support the jury's finding that Winfrey was the person who committed the crimes.

II. Admission of Hearsay Evidence

Winfrey next contends the district court erred in admitting what he contends was hearsay testimony from Richard Lewis's mother, Nicole Sanders. *See State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009) (reviewing hearsay rulings for correction of errors at law).

The conversation Sanders related, which occurred months before the shooting, involved Winfrey, Winfrey's uncle, and Lewis and concerned marijuana that Lewis purportedly stole from Winfrey's uncle. The State offered Sanders's testimony as a means of buttressing its theory that Winfrey shot Lewis to avenge the theft of marijuana from Winfrey's uncle.

Winfrey asserts that this conversation was clearly hearsay and, accordingly, was inadmissible. *See* Iowa Rs. Evid. 5.801(*c*) (hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"), 5.802 (stating hearsay generally is not admissible in court proceedings except as otherwise provided by rule or statute). The State counters that the challenged testimony was not offered for the truth of the matter asserted and, therefore, was not hearsay. *State v. Jones*, 271 N.W.2d 761, 767 (Iowa 1978) ("An out-of-court utterance is not hearsay unless it contains an assertion of fact and is offered to

prove the truth of that assertion."). Alternately, the State contends that even if the testimony was hearsay, Winfrey was not prejudiced by its admission.

The State's argument that the statements were not offered for the truth of the matter asserted—that Lewis in fact stole marijuana from Winfrey's uncle—would have more cogency had the State not presented those assertions as fact in its opening statement. Specifically, the prosecutor stated:

> [W]hat we'll learn is that the seeds of this defendant's discontent with Richard Lewis were actually planted months before.
>
> We're going to hear about a confrontation between Richard's mother, Nicole Sanders, Richard, and the defendant's uncle, Jamon Winfrey, when the defendant was present. And that confrontation was over the defendant's Uncle Jamon's belief that Richard has stolen 15 to 20 pounds of marijuana from him from his house where the defendant was supposed to be watching but was almost literally asleep at the switch. Those seeds grew into the murder by this defendant of Richard Lewis and the shooting and serious injury to Damont Jackson.

Contrary to the State's present assertion, it did matter to the State's theory that marijuana was stolen from Winfrey's uncle, because this fact, according to the State, sowed the "seeds" for the subsequent murder. For this reason, we conclude the statements were hearsay. *But see State v. Williams*, 360 N.W.2d 782, 787 (Iowa 1985) (finding a statement was not offered for truth of the matter asserted but to show what induced killing).

Nonetheless, the erroneous admission of this hearsay evidence did not amount to prejudicial error because the evidence that Winfrey committed the crimes in question was overwhelming and the hearsay evidence that came in through Sanders was essentially duplicative of other testimony in the record. *See State v. Newell*, 710 N.W.2d 6, 18–20 (Iowa 2006) (stating no prejudice will be found from the erroneous admission of hearsay statements where the

evidence in support of the defendant's guilt is overwhelming or cumulative). In addition to the direct testimony of front-seat passenger Damont Jackson, an officer stated that Jackson identified the killer as "Jerrid." The officer also spoke to Winfrey after he was apprehended, and Winfrey acknowledged "there was a problem with his uncle." This acknowledgement essentially established what the State sought to establish through Sanders. For these reasons, reversal is not required. *See id.*

III. Exclusion of Impeachment Testimony

Winfrey next argues that the district court abused its discretion in excluding evidence of a marijuana ingredient detected in Damont Jackson's blood shortly after the shooting. Winfrey hoped to use this evidence to call into question Jackson's recollection of events. *See State v. Ivory*, 247 N.W.2d 198, 204 (Iowa 1976) ("[E]vidence of drug use which would substantially lessen or temporarily impair the ability to perceive the facts which the witness purports to have observed is provable to attack the credibility of the witness under the foregoing method of attack."); *see also State v. Rodriguez*, 636 N.W.2d 234, 239 (Iowa 2001) (setting forth standard of review).

We discern no abuse of discretion in the court's ruling. The physician who was slated to testify about Jackson's blood test results specifically stated that interpretation of the results was outside his area of expertise. Winfrey did not offer any other experts who could tie the results to a level of impairment at the time of the shooting. Absent such testimony, the results were of limited value as impeachment evidence.

IV. Exclusion of Other Evidence

At trial, a jailhouse informant implicated Winfrey in the shooting. The informant admitted he pleaded guilty to a federal life sentence with no possibility of parole and also admitted that his testimony on behalf of the State could potentially shorten his sentence. He acknowledged testifying in seven other matters in an effort to shorten his sentence.

The defense sought to elicit details about the seven other cases. The district court sustained the State's motion to exclude this testimony. The court reasoned that "to allow Defendant to probe into the details of information he may have provided in other cases to attempt to determine whether he has been truthful in other cases would take discovery far beyond any reasonable bounds."

On appeal, Winfrey argues the district court ruling amounted to an abuse of discretion and a violation of his constitutional rights to confront witnesses. We disagree.

Trial courts generally have wide latitude on admissibility rulings of this nature and they will not be reversed unless there is an abuse of discretion. *State v. Johnson*, 219 N.W.2d 690, 699 (Iowa 1974). Trial courts also retain "wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 1435, 89 L. Ed. 2d 674, 683 (1986).

The pertinent information about this witness's motives for testifying was in front of the jury. *But see id.* (noting trial court prohibited all inquiry into witness's

motives for favoring the prosecution). Additional details about the specifics of other cases would have been tangential and confusing. For that reason, we affirm the district court's ruling on this issue.

V. Mistrial Motion

During deliberations, the court attendant had contact with a juror. Specifically, a juror asked her whether the court had requested information from the jurors about medications they were taking. The court attendant stated she did not recall that such a question was asked during voir dire but she would bring his question to the attention of the judge. She did so. The court reporter, who overheard the exchange, essentially corroborated the court attendant's statements.

Winfrey moved for a mistrial on the basis of this contact. The district court denied the motion, reasoning as follows:

> It is very clear from this record that there was no conversation that took place between [the court attendant] and the jurors or [the court reporter] and the jurors that had anything to do with any issue of this trial. There were no comments made on the evidence. There was no information given to a juror that had any bearing on the factual issues that the jury is required to determine.
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> According to the testimony, the juror was commenting upon perhaps his frustration with another juror. And that's irrelevant to any issue in the case. That is not an inquiry which [the court attendant] made as to the status of their deliberations.
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> Jurors may go in and out of the restroom and make comments under their breath or express frustration or look mad and red on whatever goes on inside the jury room.
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> It appears that this juror who came out was indicating that one of the jurors had said she was on medication. This, this is not grounds for a mistrial.
>
> This case has been going on for a long time. The defendant has had a fair trial. There is nothing in what has been discussed this morning that changes that. The jury is not tainted. And the motion for mistrial is denied.

Our review of this issue is for an abuse of discretion. *State v. Johnson*, 445 N.W.2d 337, 340 (Iowa 1989). We discern no abuse because, as the district court noted, the matter that was brought to the attention of the court did not relate to the facts of this case.

VI. In-Court Demonstration

Prior to trial, the defense filed a motion in limine seeking to exclude an expected dry-firing of a firearm. The defense argued that the weapon used in the shooting was never recovered and any general testimony about how a semi-automatic handgun operated was irrelevant. The district court denied the motion to exclude the demonstration, with the proviso that the State clarify the weapon used in the demonstration was not the murder weapon.

At trial, a Department of Criminal Investigation employee explained the mechanics of a handgun, then demonstrated the firing of the gun using a "dummy" cartridge. On appeal, Winfrey reiterates that "[t]here was no probative value to the testimony and it should have been found irrelevant."

The State preliminarily responds that the defense did not preserve error on this argument. We disagree with this contention. Prior to trial, the defense filed a detailed motion in limine addressing this issue. The court's ruling allowing the demonstration was clear and unequivocal. *See State v. Daly*, 623 N.W.2d 799, 800 (Iowa 2001). At trial, defense counsel objected to the demonstration "based on the previous record made." The court stated, "Same ruling." Although defense counsel did not again object when the employee inserted the dummy cartridge and actually fired the gun, the ruling on the motion in limine together

with the objection when the demonstration began left all concerned on notice of the defense position on the demonstration. *See id.* Error was preserved.

Turning to the merits, we agree with Winfrey that the demonstration, and particularly the dry-firing of a gun, was irrelevant to any issue in the case. The fact that a gun was fired was not at issue. Nor was the type of gun or the fact that cartridges and casings were found at the scene. The only real question was whether Winfrey was the person who shot the gun. The gun demonstration and dry-firing did nothing to enlighten the jury on this key question.

What remains to be determined is whether this irrelevant demonstration requires reversal. "[W]here the defendant concede[s] the challenged evidence or the same evidence [is] overwhelmingly clear in the record, any error in the admission of the challenged evidence [is] deemed not prejudicial." *State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004). As noted, there was no dispute that a gun was used in the crimes. This fact was overwhelmingly clear in the record. For that reason, we conclude the dry-fire demonstration did not amount to reversible error.

We affirm Winfrey's judgment and sentence for first-degree murder, attempt to commit murder, and willful injury causing serious injury.

AFFIRMED.