

**IN THE COURT OF APPEALS OF IOWA**

No. 3-197 / 10-0177  
Filed April 10, 2013

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

**vs.**

**DEMARKO ONSLOW WILLIAMS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

Defendant appeals from his conviction for voluntary absence from a  
facility. **AFFIRMED.**

G. Brian Weiler, Davenport, for appellant.

Thomas J. Miller, Attorney General, Michael L. Bennett, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Alan R. Havercamp, Assistant  
County Attorney, for appellee.

Considered by Danilson, P.J., Bower, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**HUITINK, S.J.****I. Background Facts & Proceedings.**

Demarko Williams was in the custody of the Iowa Department of Corrections for a previous offense. On April 7, 2009, he entered a residential corrections facility in Davenport, Iowa, on a work release program.

On June 10, 2009, Williams was granted an afternoon furlough to look for a job. Employees of the facility had difficulty locating Williams where he said he was going to be that afternoon. Charles Hodson, an employee of the facility, had a telephone conversation with Williams at 3:35 p.m. and informed him he needed to return to the facility immediately. Williams did not return. He was later apprehended in Illinois on October 18, 2009, and returned to Iowa.

Williams was charged with voluntary absence from a facility, in violation of Iowa Code section 719.4(3) (2009), a serious misdemeanor. A jury trial was held January 4, 2010. During the trial, the State offered the following exhibits: (1) a work release order from the Iowa Board of Parole; (2) a temporary work release agreement; (3) a work release plan; (4) a list of rule violations; (5) a list of possible disciplinary measures; (6) an agreement for out-of-State employment; (7) a personal property waiver form; and (8) a job seeking furlough form. Williams objected to all of these exhibits on the ground that there was an inadequate foundation for them. The court overruled Williams's objections.

A jury found Williams guilty of voluntary absence from a facility. He was sentenced to 365 days in jail and fined \$315 plus court costs. Williams appeals, claiming there was not sufficient admissible evidence in the record to support his conviction.

## **II. Standard of Review.**

“Whether the [offering] party has established . . . a proper foundation is a matter committed to the sound discretion of the trial court; reversal is warranted only when there is a clear abuse of discretion.” *State v. Musser*, 721 N.W.2d 734, 750 (Iowa 2006). “An abuse of discretion occurs when the court’s decision is based on a ground or reason that is clearly untenable or when the court’s discretion is exercised to a clearly unreasonable degree.” *State v. Becker*, 818 N.W.2d 135, 140 (Iowa 2012).

## **III. Merits.**

Williams contends the district court abused its discretion by overruling his objections to the exhibits presented by the State. He claims the documents were not properly authenticated and were not certified. See Iowa R. Evid. 5.901. Williams asserts the documents were improperly admitted into evidence. He claims that without these documents the State would not have been able to prove the essential elements of the offense of voluntary absence from a facility.

We note that when there has been an objection on the grounds of lack of foundation, even if the district court abuses its discretion in ruling on the objection, reversal of a criminal conviction is not warranted unless the defendant has been prejudiced. *State v. Sayles*, 662 N.W.2d 1, 8 (Iowa 2003). Evidence that has been improperly admitted is not considered to be prejudicial if substantially the same evidence is properly in the record. *State v. Newell*, 710 N.W.2d 6, 19 (Iowa 2006). We can go directly to the issue of prejudice without first determining whether the district court abused its discretion in ruling on Williams’s objections to the State’s exhibits. See *Taylor v. State*, 352 N.W.2d

683, 685 (Iowa 1984) (finding that in a claim of ineffective assistance of counsel, the prejudice component could be considered first).

The jury was instructed in this case that in order to find Williams was guilty of the offense of voluntary absence from the facility, the State was required to prove:

1. That the defendant had previously been committed to the Residential Corrections Facility.
2. The Residential Corrections Facility was a community-based correctional facility, or jail, or a correctional institution under the jurisdiction of the Department of Corrections.
3. On or about the 9th day of June, 2009, the defendant knowingly and voluntarily was absent from the Residential Corrections Facility where he was required to be.

See Iowa Code § 719.4(3); Iowa Crim. Jury Instructions 1900.2 (2010). The State presented evidence on all three of these elements through witness testimony, which came in without objections.

As to the first element, Johnna Kay, a probation and parole officer with the Seventh Judicial District Department of Correctional Services, testified Williams entered the program at the residential corrections facility where she was employed on April 7, 2009. She testified Williams was under the jurisdiction of the Iowa Department of Corrections while he was at the facility. Hodson also testified Williams was a resident of the residential corrections facility. The jury could consider this evidence on the issue of whether Williams had been committed to the residential corrections facility.

On the second element, Kay testified that the residential corrections facility was a part of the Iowa Department of Corrections. Hodson testified he was employed by the residential corrections facility for the Seventh Judicial

District Department of Correctional Services. The jury could consider this evidence on the issue of whether the residential corrections facility was a correctional institution under the jurisdiction of the Iowa Department of Corrections.

As to the third element, Kay testified Williams was required to return to the facility on June 10, 2009, and he did not ever voluntarily return to the facility. She stated she never informed Williams he did not need to return to the facility. Hodson testified Williams left the facility on June 10, 2009, to look for a job. Hodson stated he personally spoke to Williams on the telephone at 3:35 that afternoon and informed Williams he needed to return to the facility immediately. Hodson also testified he never informed Williams he did not need to return. The jury could consider this evidence on the issue of whether Williams was knowingly and voluntarily absent from the facility where he was required to be.

Thus, even if the State's exhibits were improperly admitted, Williams has not shown he suffered any prejudice because substantially the same evidence was admitted through the testimony of witnesses without objection. See *State v. Brown*, 656 N.W.2d 355, 362 (Iowa 2003). The exhibits were cumulative to the testimony of Kay and Hodson on the elements of the case. We conclude Williams has not shown that without these exhibits the State would have been unable to prove the essential elements of the offense.

We affirm Williams's conviction for voluntary absence from a facility.

**AFFIRMED.**