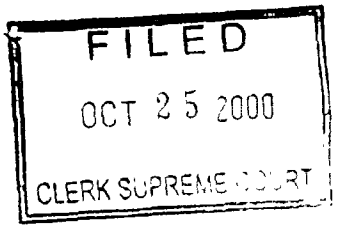
IN THE COURT OF APPEALS OF IOWA

No. 0-570 / 98-1665
Filed October 25, 2000



STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAUL LOUIS LIENDO,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

Raul Liendo appeals from his conviction, following a jury trial, of third-degree burglary as an habitual offender. **AFFIRMED.**

Angela Fritz Reyes, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmons, Assistant Attorney General, William E. Davis, County Attorney, and Julie Walton, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

On March 7, 1998, Roldolfo Duran's home was burglarized. A subsequent police investigation yielded fingerprints matching those of defendant Raul Louis Liendo. On April 21, 1998, Liendo was charged with burglary in the third degree in violation of Iowa Code section 713.6A.

Officer Waline, the officer who discovered and collected the fingerprints, was unavailable to testify at trial. Instead, the State offered testimony of Duran, who had observed Officer Waline collect the fingerprints, and testimony of Officer Johnson, who performed the fingerprint comparison. Johnson testified to where Liendo's prints were found based on Waline's notes.

The jury returned a guilty verdict. Liendo was sentenced to an indeterminate term not to exceed fifteen years.

Liendo appeals, arguing Officer Johnson's testimony regarding when and where the fingerprints were discovered was inadmissible hearsay and should have been excluded.

II. Admissibility of Hearsay Statements.

Our standard of review concerning the admission of hearsay evidence is for correction of errors of law. *State v. Tornquist*, 600 N.W.2d 301, 303 (Iowa 1999). Erroneous admission of hearsay is presumed to be prejudicial unless the contrary is established affirmatively. *State v. Rice*, 543 N.W.2d 884, 887 (Iowa 1996). However, we will not find prejudice if the admitted hearsay is merely cumulative. *See State v. McGuire*, 572 N.W.2d 545, 547 (Iowa 1997).

The district court admitted the disputed testimony under Iowa Rule of Evidence 804(b)(5). This rule provides:

> (b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
> * * *
>
> (5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Iowa R. Evid. 804(b)(5).

This exception should only be applied when there is significant indicia of reliability. *State v. Nance*, 533 N.W.2d 557, 559 (Iowa 1995). Admissibility of such hearsay requires findings of trustworthiness, materiality, necessity, notice, and service of the interests of justice. *See State v. Brown*, 341 N.W.2d 10, 14 (Iowa 1983). Liendo's objection at trial was limited to the trustworthiness of Johnson's testimony. He argues there is a lack of certainty that the fingerprints on the card presented to the examiner were the same fingerprints discovered at the scene. We disagree. This determination does not require absolute certainty. It is instead based on an assessment of whether the totality of the circumstances surrounding the statements render the declarant particularly worthy of belief.

See State v. Kone, 557 N.W.2d 97, 100 (Iowa App. 1996) (*citing Idaho v. Wright*, 497 U.S. 805, 820, 110 S. Ct. 3139, 3149, 111 L. Ed. 2d 638, 655-56 (1990)).

We find the State's assessment of the trustworthiness of these statements to be highly persuasive. It correctly notes that "[t]he information on the card was done so contemporaneously with the lifting of the prints, the author of the evidence card is a police officer with no apparent reason to falsify the information, the officer related facts of which he had firsthand knowledge, and corroborating evidence supported the fact that the defendant was in the home the day of the burglary." We conclude that taken together these factors support a finding of sufficient trustworthiness to admit Johnson's testimony.

Even if we were to conclude otherwise, Liendo was not prejudiced by Johnson's testimony. *See State v. Williams*, 574 N.W.2d 293, 298 (Iowa 1998) ("[T]he test of prejudice . . . is whether it sufficiently appears that the rights of the complaining party have been injuriously affected or that the party has suffered a miscarriage of justice."). The fingerprint evidence was offered as proof of Liendo's presence in Doran's home. The record is replete with other evidence of this fact. Not only did an eyewitness observe a man of Liendo's description at the crime scene, Liendo returned to the crime scene that day wearing one of the victim's shirts, and Liendo later admitted that he had been in Duran's home on the day of the burglary.

The judgment of the district court is affirmed.

AFFIRMED.