

IN THE COURT OF APPEALS OF IOWA

FILED

APR - 8 1983

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

Filed April 8, 1983

vs.)

GEORGIA ANN STIGLER,)

3-02

Defendant-Appellant.)

67065

Appeal from Black Hawk District Court - Robert E. Mahan, Judge.

Defendant appeals from her conviction of false imprisonment in violation of Iowa Code § 710.7. **AFFIRMED.**

Fern S. Shupeck, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Joseph P. Weeg, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell and Schlegel, JJ.
Johnson, J. takes no part.

PER CURIAM

Defendant appeals from her conviction of false imprisonment in violation of Iowa Code § 710.7. She claims that the trial court erred in overruling her objections to the introduction of certain evidence on hearsay and relevancy grounds. She also claims that she received ineffective assistance of counsel at trial. We affirm.

Defendant was charged by information on March 12, 1981, with false imprisonment in connection with an incident involving victims Reuben Stigler (defendant's husband) and Calvin Hill. Defendant's brother, Gregory Nelson, was tried as a co-defendant. Defendant lived in her house with Nelson and her husband. On the night of February 26, 1981, Nelson returned home to discover that his large collection of guns, \$1,000, and other miscellaneous items had been stolen. When defendant returned to the house, Nelson told her he had been robbed. When her husband called home, defendant accused him of being involved in the burglary. Defendant's husband and another person went to the home, where Nelson and defendant held them at gunpoint, allegedly in an attempt to get them to tell where the stolen items were. The police were called, and thought the victims, who escaped shortly thereafter, were being held hostage.

Defendant and Nelson were tried together and were represented by the same privately-retained attorney. The jury found defendant guilty of false imprisonment. She was given a one-year suspended sentence and was placed on two years' probation. This appeal followed.

I. Defendant first claims that the trial court erred in admitting, over hearsay objections, certain statements made over the telephone by declarants threatening to kill Reuben Stigler and Calvin Hill. While being held by defendant and Nelson, Stigler telephoned his mother who testified at trial that she heard female voices in the background threatening to kill Stigler and Hill. In addition,

Barry Walker, a friend of Stigler's, telephoned defendant's home during this time at the direction of police officer Joseph Mulnix. Mulnix listened in on Walker's conversation with defendant and testified at trial that defendant again threatened to kill the victims.

We may assume without deciding that this challenged testimony is hearsay. We are convinced, however, that defendant was not prejudiced by its introduction. Stigler's mother testified without objection that she talked to defendant on the phone after talking to her son and that defendant at that point threatened to kill Stigler if Nelson's property was not returned. With regard to Mulnix's testimony, Barry Walker testified, again without objection, that defendant told him of her threat to kill the victims. Therefore, any error in the admission of the challenged testimony was rendered harmless because such testimony was merely cumulative to other properly-admitted evidence. See State v. Smith, 309 N.W.2d 454, 455-56 (Iowa 1981).

II. Defendant also claims that the trial court erred in admitting certain allegedly irrelevant testimony. Reuben Stigler had written a letter to his friend Sylvester Davis in which he claimed that he had stolen Nelson's money. At trial, Stigler testified that he lied in the letter about the money because he no longer trusted Davis. He then explained that this lack of trust arose when, a few days after his marriage to defendant, he found her and Davis taking a shower together.

We do not believe the trial court abused its discretion in determining that this evidence was relevant. See State v. Windsor, 316 N.W.2d 684, 688 (Iowa 1982). Stigler placed his credibility in issue by testifying; therefore, evidence of his credibility would be relevant. See State v. O'Connell, 275 N.W.2d 197, 203 (Iowa 1979). His testimony regarding Davis and defendant's activities together was relevant because it tended to support his credibility by explaining why he no longer trusted Davis and thus lied in his letter to Davis regarding the taking of Nelson's money. Therefore, the court did not err in admitting this testimony.

Defendant also claims that Davis's testimony regarding Stigler finding them together was irrelevant. Again, assuming without deciding that defendant is correct, the evidence was merely cumulative to Stigler's admissible testimony. Any error was therefore harmless. Smith, 309 N.W.2d at 455-56.

Defendant asserts on appeal that this evidence was prejudicial because it was an attempt to show that she had bad moral character. This objection, however, was not raised at trial; we therefore will not consider it on appeal. State v. Morehouse, 316 N.W.2d 884, 886 (Iowa 1982).

III. Finally, defendant complains that she received ineffective assistance of counsel at trial. We do not believe the record on direct appeal is sufficient to make a determination of her claim at this time.

We find no reason to disturb defendant's conviction and sentence. We therefore affirm.

AFFIRMED.