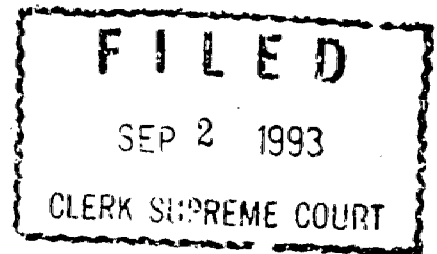


IN THE COURT OF APPEALS OF IOWA

No. 3-300 / 92-985



000743

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERRY V. CARCO,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County,
John R. Havercamp, Judge.

Jerry Carco appeals from his conviction, following a jury trial, of second-degree arson, conspiracy to commit arson in the second degree, and solicitation to commit a felony. **AFFIRMED.**

Gary K. Koos of Koos Law Office, Davenport, for appellant.

Bonnie J. Campbell, Attorney General, Thomas G. Fisher, Jr., Assistant Attorney General, William E. Davis, County Attorney, and Michael Walton, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett,
JJ.

000744

OXBERGER, C.J.

The State charged Jerry V. Carco with second-degree arson, conspiracy to commit second-degree arson, and solicitation to commit a felony. The State alleged Carco hired Terry Wallace to burn down a house in which Carco lived and which was owned by Carco's companion, Bonnie Nimrick.

At trial, Carco objected on hearsay grounds to several portions of the testimony of Fire Marshall James Carpenter and Lieutenant Fire Marshall Donald Hackett. The allegedly objectionable investigators' testimony consisted mainly of relating statements they had obtained during the fire investigation. The district court overruled Carco's objections on the ground that the testimony was offered to explain the investigation, not to prove the truth of the matter asserted.

The jury found Carco guilty as charged. The district court entered judgment and sentenced Carco to up to ten years in prison.

Carco appeals.

Discussion

Carco contends the district court abused its discretion in admitting impermissible hearsay testimony. He contends the challenged testimony ventured far beyond a description of the fire investigation and went directly to the guilt or innocence of the defendants.

Iowa Rule of Evidence 802 prohibits the admission of hearsay testimony "except as provided by the Constitution of the State of Iowa, by statute, by these rules, or by other rules of the Iowa Supreme Court." Hearsay is an out-of-court statement offered to prove the truth of its contents. State v. Horn, 282 N.W.2d 717, 724 (Iowa 1979). Generally, error in the admission of hearsay is presumed prejudicial unless the contrary is affirmatively established. State v. McKettrick, 480 N.W.2d 52, 60 (Iowa 1992). However, admission of hearsay evidence is not prejudicial if substantially the same evidence exists in the record. Id.

In this case, the declarants actually testified and confirmed the challenged testimony. In substance, their testimony was identical to the challenged testimony. Accordingly, we find no prejudice in admitting the alleged hearsay testimony. We affirm the district court.

AFFIRMED.