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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

152

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

THOMAS M. CHITWOOD,)

Defendant-Appellant.)

Filed September 25, 1984

4-312
83-527

Appeal from the Iowa District Court for Polk County--Rodney J. Ryan, Judge.

Defendant appeals from his conviction of burglary in the first degree. On appeal, he asserts that the court abused its discretion in excluding from evidence his attempt to explain his state of mind in breaking into his ex-wife's house. AFFIRMED.

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel, and Sackett, JJ.

Statement Of The Case.

Defendant-Appellant appeals from the judgment and sentence entered following his conviction for first degree burglary. Iowa Code §713.1, 713.2 (1981).

On July 9, 1982, the defendant was charged by trial information with a number of crimes, including one count of burglary in the first degree. Defendant gave notice of his intention to rely on the defense of diminished responsibility on November 18, 1982. Trial to a jury commenced in this case on February 7, 1983 and three (3) days later the jury returned guilty verdicts on every count of each charge.

The charges in this case arose out of an incident that occurred at the home of Eugene Van Dusseldorp on April 23, 1982. Defendant's former wife, Carla, was living with Van Dusseldorp on this date. Defendant broke into the Van Dusseldorp home through a basement window while Eugene and Carla were away for the evening. The defendant was armed with a pistol and shotgun. Eugene and Carla were confronted by Mr. Chitwood when they returned to the house that night. The defendant had the couple sit on the living room couch because he "had some things [he] wanted to say." Both victims testified that defendant told them that if they tried anything stupid he would shoot them. Over approximately a four (4) hour period the defendant talked with Eugene and Carla. The discussion centered around a pending criminal matter involving the defendant, which the victims were to appear as witnesses against defendant.

Law And Application.

Our review is on assigned error. See R. of App. P. 4 (1983). Defendant testified that several personal problems had caused him to become depressed. He blamed his former wife for his troubles. According to the defendant's own testimony, he decided to break into the Van Dusseldorp home because, in his words: "I had some things I wanted to say, and I guess pretty much come hell or high water I was going to say them."

The issue on appeal is whether the trial court abused its discretion in excluding detailed background testimony regarding each of defendant's personal problems. Defendant must show that the trial court has abused its discretion or committed prejudicial error in the admission or exclusion of relevant evidence before its decision will be reversed on appeal. United States v. Wolf, 645 F.2d 665, 668-69 (8th Cir. 1981). "The admission of evidence lies within the sound discretion of the trial court and we will not find an abuse of discretion unless the action of the [trial] court is clearly unreasonable under the attendant circumstances." State v. DeBerg, 288 N.W.2d 348, 351 (Iowa 1980).

The defendant testified that several personal problems had caused him to become depressed. These problems concerned the loss of friends, a pending criminal matter and the loss of his job. Eugene Van Dusseldorp and Carla Chitwood (later Van Dusseldorp) were to be witnesses at the trial on the criminal matter. Defendant blamed his ex-wife, Carla, for all his troubles. The trial court permitted defendant to state to the jury what his personal problems were, but would not allow the defendant to testify in detail about the problems. With regard to admissible testimony, the court permitted defendant to testify that he faced the prospect of not keeping steady employment, his dissatisfaction with his criminal trial counsel on the pending matter and problems with keeping friendships because of his marital breakup with Carla. Defendant was not allowed to give background details of each and, further, in defense counsel's closing argument the three basic reasons for defendant's depression were not to be expanded on.

The defendant contends that burglary in the first degree requires a specific intent and that the state is obligated to prove the defendant's actions were performed with the specific intent to commit a felony, a theft or an assault. Defendant admitted breaking and entering into the home of Eugene Van Dusseldorp, but denied his intent was to commit an assault. "Assault" has been

defined under Iowa common law as an attempt or offer, with force or violence, to do corporeal hurt to another whether from malice or wantonness, with such circumstances or denote, at the time, or intention to do it, coupled with present ability to carry such intention into effect. State v. Redman, 244 N.W.2d 792, 797 (Iowa 1976). An assault may be committed without actually touching, or striking, or doing bodily harm to the person of another. State v. Murphy, 7 Wash. App. 505, ____, 500 P.2d 1276, 1281 (1972).

The defendant's intent to assault Eugene Van Dusseldorp and Carla Chitwood can be presumed from the natural and probable consequences of his actions. Every person is presumed to contemplate the ordinary and natural consequences of their own acts. See State v. Shelledy, 8 Iowa 477, 8 Clarke 477 (1859). The defendant testified that he entered the Van Dusseldorp home with the intent only to talk to the victims, not to assault them. The evidence produced at trial is in contradiction to this testimony. Defendant broke into and entered Van Dusseldorp's home. Defendant carried two (guns) with him into the house. Defendant told the victims that he didn't want to hurt them, but if they tried anything stupid he would shoot at them. The victims were detained for some four (4) hours while defendant "had his say."

We believe the trial court was correct in excluding detailed background information on the three events leading to defendant's depression. The proffered evidence was not relevant to the issue of intent to assault. It was merely relevant to the issue of defendant's depressed state of mind, which had already been established. We hold that the trial court did not abuse its discretion in disallowing the defendant from expounding on the three (3) incidents causing his depression.

The defendant was not prejudiced by the exclusion of the proferred testimony. The testimony was no more probative of the issue of defendant's depression than the basic statement that the trial court allowed into evidence.

Judgment of the trial court is affirmed.

AFFIRMED.