FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES P. KLAES,

Plaintiff-Appellee,

vs.

HARVEY D. SCHOLL,

Defendant-Appellant.

Filed April 30, 1985

5-120
84-121

HARVEY D. SCHOLL,

Plaintiff-Appellant,

vs.

THE CITY OF CLINTON, IOWA; JAMES P. KLAES; DAVID SPEAKMAN; and THOMAS HANSEN,

Defendants-Appellees.

Appeal from the Iowa District Court for Clinton County - Max R. Werling, Judge.

Harvey D. Scholl appeals from an adverse judgment in consolidated actions for damages arising out of an assault. AFFIRMED.

Harold J. DeLange II, of Wehr & DeLange, Davenport, for appellant.

James D. Bruhn, of Shaff, Farwell & Senneff, Comanche, for plaintiff-appellee.

Timothy J. Walker, of Whitfield, Musgrave, Selvy, Kelly & Eddy, Des Moines, for defendants-appellees.

Heard by Snell, P.J., and Schlegel and Sackett, JJ.

SACKETT, J.

Harvey D. Scholl was stopped by certain police officers including James P. Klaes on suspicion of OWI. A struggle ensued. Both men claimed to be injured in the struggle and filed suit for their injuries; Klaes against Scholl and Scholl against Klaes, Speakman and the City of Clinton. The causes were consolidated. After a trial, the jury returned a verdict in favor of officer Klaes for $6,000 actual and $10,000 exemplary damages. Scholl has appealed from the verdict contending the trial court erred in permitting him to be cross-examined concerning certain nonfelonious assaults in 1973, '75, '77 and '81. On cross-examination Scholl was questioned about a series of assaults and arrests for assaults.

Iowa Rules of Evidence 404 provides in relevant part:

> Rule 404.
> (a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:
> ***
> (B) In civil cases. Evidence of character for violence of the victim of assaultive conduct offered on the issue of self defense by a party accused of the assaultive conduct, or evidence of peaceable character to rebut the same;[1]

The Iowa rule in civil cases is straightforward and provides evidence of Scholl's prior assaultive conduct is clearly admissible.

Scholl contends, however, that the evidence sought to be admitted to prove the assaultive conduct was otherwise rendered inadmissible by 404(b) which provides:

> (b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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[1] This is a departure from Fed. Rule 404(a)(2) which provides as an exception to the inadmissibility of character evidence: "(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor[.]"

Scholl complains, in essence, that the evidence introduced to show his prior assaultive conduct included arrests for assaultive behavior and evidence of arrests is not admissible.

An arrest is not considered evidence of guilt. The unfair prejudice a party would suffer from admission of nonjudicial determination of improper conduct outweighs the probative value of the conduct on the issue of character of violence. Hill v. Rolleri, 615 F.2d 886, 890 (9th Cir. 1980). Klaes' attorney sought to question Scholl about arrests rather than evidence of character for violence. We agree that the mere fact of an arrest for assault should not be admissible here. However, after a careful reading of the record, we determine the only admissions of arrests were followed by admission of pleas of guilty to the charge[2] or facts such as would show aggressive conduct at the time of arrests. The fact of the arrest was essentially cumulative.

Scholl's other contention on appeal was waived in oral argument.

AFFIRMED.

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[2] A voluntary plea of guilty to a charge is an admission against interest. Although it may be explained it is admissible for the same purpose as the testimony of an observer to the event. See Farm & City Ins. Co. v. Hassel, 197 N.W.2d 360, 364 (Iowa 1972); Martin v. Cafer, 258 Iowa 176, 185, 138 N.W.2d 71, 77 (1965); Boyle v. Bornholtz, 224 Iowa 90, 99-100, 275 N.W. 479, 485 (1937).