FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

JERRY L. MILES)

Defendant-Appellant.)

Filed December 30, 1981

1-370
65995

Appeal from Scott District Court, John J. Carlin, Judge.

The defendant appeals from his conviction and sentence for the crime of murder in the second degree in violation of §§ 707.1 and 707.3, The Code 1979. AFFIRMED.

Chris Odell, State Appellate Defender's Office, for defendant-appellant.

Thomas J. Miller, Attorney General, and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

The defendant appeals from his conviction and sentence for the crime of murder in the second degree in violation of §§ 707.1 and 707.3, The Code 1979. We affirm.

The victim in this case was shot and killed with a .38 caliber handgun. During the jury trial, the trial judge admitted evidence of .22 caliber ammunition found in the defendant's car. The jury convicted the defendant of second-degree murder. Although the judge did not submit a special interrogatory for the jury to make a finding that a firearm was involved, he sentenced the defendant to mandatory minimum sentence under § 902.7, The Code.

The defendant appealed. He argues that the trial court erred by admitting the .22 caliber ammunition because its prejudicial effect on the jury outweighed any probative value of the evidence. He also asserts that the jury was not required to find that he used a firearm beyond a reasonable doubt and, therefore, the mandatory minimum sentence provision of § 902.7 is inapplicable. We disagree with both contentions of the defendant.

The murder weapon was a .38 caliber handgun, and a .38 caliber slug was taken from the victim's body. The prosecution never contended the .22 caliber ammunition was used in the crime committed. The defendant explained at the trial why he had the .22 caliber bullets in his car. It is not illegal to possess such bullets. Although the bullets may have been erroneously admitted because they had no relevance to the case, there was also no prejudice to the defendant by admitting them. An error which is not prejudicial to the defendant is not ground for reversal. State v. Buford, 308 N.W.2d 31, 24 (Iowa 1981). In addition, the officers who searched the defendant's car testified that they found .22 caliber bullets in the car. Defense counsel did not object to this testimony. Admission of the bullets themselves was merely cumulative, and therefore nonprejudicial.

The defendant contends that the jury never made a finding that a firearm was involved in the commission of the crime and, therefore, the trial judge erred by imposing a minimum sentence pursuant to § 902.7, The Code. The trial judge did not submit a special interrogatory regarding firearm usage to the jury. The proper method for alleging and finding that a firearm was involved is to submit such an interrogatory.

Iowa R. Crim. P. 6(6), 21(2). The court in State v. Bruns, 304 N.W.2d 217, 219 (Iowa App. 1981), vacated a minimum sentence imposed because neither the instructions nor an interrogatory required the jury to make a finding that a firearm was involved. In this case, Instruction No. 11 required the jury to find beyond a reasonable doubt that the defendant shot the victim before it could convict him. The defendant could not have shot the victim without using a firearm. The jury found the defendant shot the victim. Therefore the jury found beyond a reasonable doubt that a firearm was used. State v. Johnson, 312 N.W.2d 144 (Ct. App. 1981). The trial judge did not err in applying § 902.7 to the defendant.

AFFIRMED.