



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
ALFRED LEE LeFLORE,)
Defendant-Appellant.)

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8-464
87-1132

Appeal from the Iowa District Court for Black Hawk County (No. D7X008243), Alan L. Pearson, Judge.

Defendant appeals his conviction, following a jury trial, of first-degree robbery. **AFFIRMED.**

Raymond E. Rogers, Acting Chief Appellate Defender, and Barbara M. Anderson, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Sarah J. Coats, Assistant Attorney General; and Tom Ferguson, Assistant Black Hawk County Attorney, for plaintiff-appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

SCHLEGEL, P.J.

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Defendant Alfred LeFlore appeals his conviction, following a jury trial, of first-degree robbery. He contends that the trial court erred by admitting hearsay testimony that someone had seen him with a sawed-off shotgun two days before the robbery.

At approximately 8:45 a.m. on the morning of June 9, 1986, an armed robber held up the Western Union Office in Waterloo, Iowa. Defendant LeFlore was charged with the crime and a jury found him guilty of first-degree robbery after hearing testimony indicating that LeFlore accidentally shot himself in the leg with a shotgun during the commission of the crime. Among the many witnesses heard at trial was a gas station owner (Harrington) who testified, over LeFlore's hearsay objection, that someone else had said they saw LeFlore with a shotgun two days before the robbery.

The sole issue before us on appeal is whether the trial court committed reversible error by admitting this testimony. The State does not dispute that the testimony was in fact hearsay, despite the fact that the prosecution argued otherwise at trial. Instead, the State contends that conclusive proof of LeFlore's guilt was so overwhelming that any hearsay testimony regarding his possession of a shotgun two days before the crime was not prejudicial but was merely harmless error.

Prejudice is presumed if hearsay is admitted, unless the contrary is affirmatively established. State v. Horn, 282 N.W.2d 717, 724 (Iowa 1979). Where substantially the same evidence is in the record, erroneously admitted evidence will not be considered prejudicial. State v. Gilmore, 259 N.W.2d 846, 858 (Iowa 1977). Reversal is not required if the other evidence is so overwhelming as to prove the alleged error was harmless beyond a reasonable doubt. State v. Sowder, 394 N.W.2d 368, 372 (Iowa 1986).

Because we find that the evidence of defendant's guilt is overwhelming in this case, we find trial court's error to be harmless and nonprejudicial to defendant's case. While there is no other evidence to support Harrington's testimony that defendant was in possession of a shotgun two days prior to the robbery, we are convinced that the evidence before the jury was compelling in establishing that defendant was in possession of a shotgun during the robbery.

The jury heard testimony from witness Gladys Rainey, who worked next door to the Chamber of Commerce Building which was adjacent to the Western Union office. She testified that on June 9, 1986, at approximately 8:45 a.m., she saw a black man go by her office window and then, a few seconds later, saw the same man going in the opposite direction, and then heard a shotgun blast. She indicated that he was wearing a mask and carrying a long object in

his right hand. She positively identified LeFlore in court as the man she saw that morning. Her co-worker, Wanda Hill, who was in the office with Rainey that morning, testified that she saw the robber fleeing shortly after she initially noticed him and that he had a long gun in his right hand.

The jury heard further testimony from Dr. Brian Miller that he had treated LeFlore for a shotgun wound approximately twelve hours after the robbery and stated that the wound was not fresh, but approximately ten to twelve hours old and that shotgun pellets and wadding were removed from LeFlore's leg wound. Testimony was also heard from Victor Maurillo, a criminalist for the Iowa Department of Criminal Investigation, who concluded that the robber suffered a self-inflicted gunshot wound subsequent to the robbery, based upon tests which indicated that the shotgun used in the robbery discharged not more than four feet from the sidewalk. The evidence also showed that blood, tissue, and shotgun pellets were recovered from the sidewalk outside of the Western Union office, and that blood from the get-away car matched defendant's blood type. The car was positively identified as a car belonging to a friend of LeFlore's.

LeFlore offered testimony that he sustained his leg injury the day before the robbery during a barbecue and that a firecracker had gone off by his leg. LeFlore's

friend, Sam Harris, testified that he was approached by LeFlore and asked to tell the police that he and LeFlore had been to the park on a barbecue the day before the robbery. However, at trial, he denied that he was with LeFlore that day. Defendant offered further evidence in support of his alibi that he signed out of the Waterloo Work Release Center on the morning of the robbery to work at Seal's Construction; however, the evidence indicated that he was never employed there.

The record contains other evidence in support of defendant's conviction; however, we find it unnecessary to develop the record further. We are convinced from our review of the evidence in this case that the trial court's error in admitting Harrington's testimony did not amount to reversible error. We therefore affirm defendant's conviction of first-degree robbery.

AFFIRMED.