IN THE COURT OF APPEALS OF IOWA

No. 9-334 / 88-1351

FILED
OCT 2 4 1989
CLERK SUPREME COURT

644

STATE OF IOWA,

Appellee,

vs.

ARTHUR ALBERT HARRISON,

Appellant.

Appeal from the Iowa District Court for Webster County, Paul E. Hellwege, Senior Judge.

Harrison appeals from a district court judgment entered following his conviction after jury trial of possession of a schedule two controlled substance with intent to deliver in violation of Iowa Code section 204.401(1)(b). Harrison contends the district court erred in admitting hearsay testimony from a narcotics agent as to what a confidential informant told him. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Cynthia Goins, Assistant County Attorney, for plaintiff-appellee.

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

DONIELSON, P.J.

On April 17, 1988, a confidential informant arranged for defendant to sell one-eighth of an ounce of methamphetamine, crank, to two narcotics special agents. Following the sale, Harrison was arrested and charged with possession with intent to deliver and delivery of methamphetamine.

At trial, the State examined one of the narcotics special agents concerning the events of April 17, 1987. Agent Graham testified he and his partner met with the confidential informant upon their arrival in Fort Dodge. Graham testified they then drove to Harrison's residence. At this point, the State asked:

> Q. Why did you go to Art Harrison's residence? A. Confidential informant had called Agent Lewis and myself earlier that morning and advised us that Art Harrison had contacted him as to wondering if Agent Lewis and myself would be interested in purchasing any--

Defense counsel then objected, based on hearsay, and requested the question and answer be stricken. The district court overruled the objection, "as far as the answer got."

Harrison was found guilty and he appeals. The State argues the statement was not hearsay because it was not offered to prove the truth of the matter asserted, and in any case, any error is harmless given the overwhelming evidence of Harrison's guilt. Our review is for correction of errors at law. Iowa R. App. P. 4.

Under our rules, "hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Iowa R. Evid. 801(c). Statements that otherwise could be considered hearsay, offered not for the purpose of proving the truth of the statements but rather offered to help explain relevant conduct taken in response to them, are not hearsay and are not excludable as such. State v. Hollins, 397 N.W.2d 701, 705 (Iowa 1986). The State argues the testimony in question was offered for the purpose of explaining the effect of the conversation upon the witness. We do not blindly accept as controlling the purpose urged by the State. Rather, we review the relevant record to determine if the purpose voiced by the State can reasonably be found to be the real purpose for which the challenged testimony was offered. Id.

Agent Graham was attempting to testify with regard to what the confidential informant told him. The gist of Graham's statement was the informant told him he had been contacted by defendant, and defendant was wondering if Agents Graham and Lewis would wish to purchase something from him. The State appears to argue this statement is not hearsay because it explains why the agents went to the defendant's home after they had met with their confidential informant.

When hearsay statements are not necessary to explain an officer's subsequent conduct, they are inadmissible. State v. Maniccia, 355 N.W.2d 256, 261 (Iowa App. 1984). The statement in this case was not necessary to explain why the agents went to defendant's home. This is apparent from the question and answer which followed defendant's objection:

> Q. Because of this conversation with the confidential informant, did you then proceed to Art Harrison's residence? A. Yes, ma'am.

By rephrasing its question, the State was able to establish why the agents went to defendant's home without requiring Agent Graham to repeat the conversation he had with the confidential informant.

Testimony approaches the line of inadmissibility when it goes beyond the point of merely explaining why certain responsive actions were taken. State v. Mount, 422 N.W.2d 497, 502 (Iowa 1988).

The State in this case was attempting to go beyond merely establishing that the agents in this case had a conversation with the informant and they then proceeded to the defendant's home. In attempting to bring out the details of the conversation, and not simply focusing on the fact a conversation occurred, the State attempted to establish the truth of the facts asserted (that defendant wished to sell a controlled substance to the agents). See State v. Sowder, 394 N.W.2d 368, 371 (Iowa 1986) (Focusing on details of conversation rather than mere fact that

conversation occurred, went beyond impeachment purposes and made statements nonadmissible hearsay.). This "real" purpose for admitting this testimony makes it inadmissible as hearsay.

The State contends even if the testimony at issue was hearsay, its admission in this case was harmless error. Prejudice is presumed if hearsay is admitted, unless the contrary is affirmatively established. Sowder, 394 N.W.2d at 372. In examining the record, we find the evidence of defendant's guilt to be so overwhelming as to preclude reversal of defendant's conviction. When the agents arrived at defendant's home, he acknowledged they were there to purchase crank from him. Defendant instructed another, Blake Harrison, to call a source and inquire about obtaining some crank. He stated he did not want Agent Graham telling him how to run his "dope business." Defendant referred to the crank as coming from his new source and stated it was "good crank." Defendant discussed the possibility of making future sales to the agents. He accepted the cash payment from the agents and he gave them a $5 bill in change.

AFFIRMED.