

IN THE COURT OF APPEALS OF IOWA

FILED

APR 24 1984

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed April 24, 1984

341

vs.

)

JOHN DAVID LONG,

)

4-46
83-463

Defendant-Appellant.

)

Appeal from the Iowa District Court for Marshall County - Glenn C. Sedgwick, Associate Judge.

Defendant appeals his conviction for possession of a firearm by a felon in violation of Iowa Code section 724.26. AFFIRMED.

Charles Harrington, Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney General, for plaintiff-appellee.

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

SCHLEGEL, J.

Defendant appeals his conviction for possession of a firearm by a felon, in violation of Iowa Code section 724.26, claiming that evidence concerning a statement he was alleged to have made to a police officer should have been excluded as irrelevant, and for the reason that any probative value from the statement was outweighed by its prejudicial effect. We affirm.

As a result of activities occurring in the early morning hours of September 15, 1982, defendant, John David Long, was arrested on a charge of possession of a firearm by a felon, in violation of Iowa Code section 724.26 (1981). At trial, there was testimony by two eyewitnesses that defendant was observed by them in possession of a shotgun. There was also evidence that he had shotgun shells in his possession. Two shotguns were found in close proximity to the place where defendant was, immediately after he allegedly had been seen with a shotgun.

Officer David Joswiak, a police officer in whose custody defendant was kept for a period of time following his arrest, testified that on the morning of the arrest he had a conversation with defendant. Over appropriate objection, the testimony proceeded as follows:

Q. Did you have a conversation with him there?

A. Yes, sir.

Q. Did the defendant, John David Long, at that time say anything to you in regard to any kind of a firearm?

A. Yes, sir.

Q. What did he say?

A. He said that—He made the comment to me that the next time he was just going to point the shotgun at an officer and pull the trigger because Iowa doesn't have the death penalty.

Defendant claims the court erred in failing to exclude the statement contained in the last quoted answer. Defendant first claimed that the statement

was irrelevant, since it did not have any bearing upon whether defendant had a shotgun, and did not constitute an admission that he had a shotgun. Further, defendant objected upon the grounds that it would be very prejudicial for the jury to hear that statement.

The trial court allowed the testimony, holding that it constituted an admission against interest, as an admission concerning the immediate past circumstances, following closely upon the heels of defendant's arrest on the charge.

I. Relevancy. The test of relevancy is whether the evidence offered would render the desired inference more probable than it would be without such evidence. Irrelevant evidence is that which has no logical tendency to establish any material proposition. State v. Chadwick, 328 N.W.2d 913, 917 (Iowa 1983).

We agree that the statement testified to tends to render the inference of possession of the firearm more probable than it would be without that statement. Therefore, the trial court was correct in ruling that it was relevant. Its admissibility as an admission by defendant is not challenged. There was no error on the issue of relevancy.

II. Prejudice. A trial court should exclude evidence upon proper objection when its probative value is substantially outweighed by the danger of unfair prejudice. State v. Webb, 309 N.W.2d 404, 412 (Iowa 1981). Whether the probative value of proffered evidence is outweighed by the danger of unfair prejudice to the defendant is a determination committed to the discretion of the trial court. The court's ruling will be reversed on appeal only when a clear and prejudicial abuse of that discretion is shown. Id. at 412.

As already indicated, there was other evidence by two eyewitnesses that placed defendant in possession of a shotgun. Likewise, shotgun shells were removed from his pockets, and the shotguns were found near the place where defendant was, and had been. As corroboration for that testimony, the testimony

concerning the statement was, of course, prejudicial to defendant's case, but as stated in Webb, 309 N.W.2d at 412: "Defendant has not shown, however, that the prejudice was unfair, much less that it substantially outweighed the probative value of the testimony." Id. at 412.

We hold that there was no abuse of discretion by the court in failing to exclude the testimony of Officer Joswiak, and accordingly, the conviction of the defendant is affirmed.

AFFIRMED.