

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

BYRON RAYMOND MILLER,)

Defendant-Appellant.)

Filed March 9, 1988

8-44
87-578

453

FILED

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County (No. CS 8971),
John P. Nahra and L. D. Carstensen, Judges.

The defendant appeals his conviction for burglary in the second degree.

AFFIRMED.

Charles Harrington, Chief Appellate Defender, and B. John Burns, Assistant
Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Mark J. Zbieroski, Assistant Attorney
General; and Bruce A. Ingham, Assistant County Attorney, for the plaintiff-
appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

PER CURIAM

Byron Miller appeals his conviction of burglary in the second degree, in violation of Iowa Code sections 713.1 and 713.5 (1987). He asserts the district court erred in allowing irrelevant testimony concerning the behavior of the defendant and others. We affirm.

The following exchange took place during the examination of Police Sergeant Thomas Hansen concerning the behavior of the defendant and his accomplices:

Q. With that in mind and thinking about the three individuals that you saw in the Henry Sabin School, did any of the three of them exhibit signs that they were under the influence of any substance, alcohol or other controlled substance?

A. No.

Q. Did you notice any kind of inappropriate behavior on their part?

A. No, there was no inappropriate behavior. They appeared to be laughing and small-talking between themselves.

Q. What kind of a -- What kind of a laughter? What kind of a conversation?

A. I don't recall real specific conversations. They were saying things like, We'll be out of this; it will be dismissed. We're not in any big trouble. Things like that.

Q. Have you seen that kind of behavior in the past?

A. Yes, I have.

Q. In what kind of circumstances?

A. I've seen --

MR. FREY: Objection. This is irrelevant, Your Honor.

THE COURT: Excuse me, Mr. Frey?

MR. FREY: Objection on the basis of relevance.

THE COURT: Mr. Ingham?

MR. INGHAM: No comment, Your Honor.

THE COURT: It's overruled.

A. I've seen the same type of behavior exhibited in police officers in a tense situation where we were expecting to be --

MR. FREY: Objection. It appears the witness is now attempting to testify as a psychiatrist or psychologist, and there has been no foundation to show any basis for this kind of testimony from this witness.

MR. INGHAM: He's only testifying from personal observation.

THE COURT: As I understand -- As I understood the question, it was merely for a response as to observation, is that correct, Mr. Ingham?

MR. INGHAM: That was the intended question, yes, Your Honor.

THE COURT: All right. As long as it's not to draw conclusions, overruled.

MR. FREY: Your Honor, I would move that the answer thus far be stricken as unresponsive to the question -- the part that has been given.

Q. Sergeant Hansen, I believe you testified that you had seen this kind of behavior before personally. I want to ask you if you've ever been personally involved in situations in which you have seen this kind of behavior?

A. Yes, I have.

MR. FREY: Objection.

THE COURT: Overruled.

A. At times when --

MR. INGHAM: Well --

MR. FREY: Objection at this point. He's answered the question.

THE COURT: Sustained.

Q. What kind of situation have you been in that has produced similar behavior?

A. Potential dangerous situations where confrontation with a crowd or with specific individuals is apparent that officers that I was with would engage in kind of silly bravado-type of conversations. Things that would not normally be humorous become very funny.

Miller argues this testimony was irrelevant because Sgt. Hansen did not possess any expertise to testify as a psychiatrist or psychologist, and that his testimony

proved nothing about the defendant's condition. He further argues the statements were prejudicial since the defendant was attempting to use his behavior to prove intoxication.

Evidence is admissible if it is relevant and its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. State v. Wilson, 406 N.W.2d 442, 447 (Iowa 1987). The admissibility of evidence is a matter for the exercise of the district court's discretion. State v. Chadwick, 328 N.W.2d 913, 917 (Iowa 1983). We will reverse the district court's determination on the issue of admissibility only upon a showing of a clear abuse of discretion. Wilson, 406 N.W.2d at 447; State v. Roth, 403 N.W.2d 762, 765 (Iowa 1987).

We hold the defendant has not shown an abuse of discretion by the trial court. Sgt. Hansen's testimony described the defendant's behavior on that evening. It was probative on the issue of the defendant's intoxication. Hansen's observations, based on over twenty years of personal experience, on behavior in stressful situations was relevant because it assisted the jury in evaluating and deciding a fact in issue. The testimony was in the nature of lay opinion. See Iowa R. Evid. 701. We find no error in the district court's actions and affirm the defendant's conviction.

AFFIRMED.