IN THE COURT OF APPEALS OF IOWA

No. 0-471 / 99-1265
Filed September 27, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL WAYNE HENDON,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Page County, J. C. Irvin, Judge.

Daniel Hendon appeals his convictions following a jury trial for possession of methamphetamine with intent to deliver in violation of Iowa Code section 124.401(1)(6) (1997) and prohibited acts in violation of section 124.402(1)(e) (1997). Hendon contends the trial court erred in admitting hearsay evidence. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, and Verd Bailey, County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

MILLER, J.

Defendant Daniel Hendon appeals his convictions, following jury trial, for possession of methamphetamine with intent to deliver in violation of Iowa Code section 124.401(c)(6) (1997), and prohibited acts (keeping a house used for drug dealing) in violation of Iowa Code section 124.402(1)(e) (1997), contending the trial court erred in allowing inadmissible hearsay evidence at trial. We affirm.

Background Facts and Prior Proceedings

On or about January 12, 1999 Police Chief Kevin Hughes and Assistant Chief Darrell Saner answered a call regarding a domestic matter at the home of the appellant Daniel Hendon and his wife Jeneanne Hendon. Upon their arrival the officers observed that Ms. Hendon was visibly upset and had red marks on her neck. Ms. Hendon informed the officers that the couple had been arguing, Daniel had been choking her, and she had struck him on the head several times with a coffee or teapot. The officers then entered the home to speak with the parties and were informed by Ms. Hendon that Daniel was in the basement. They met Mr. Hendon as he was coming up the stairs from the basement.

The couple then resumed their argument in the presence of the officers. Jeneanne asked Daniel if he wanted her to tell the police what the argument was really about and Daniel shouted back that she did not want to do that. At that point Chief Hughes informed Daniel that he was under arrest for domestic abuse assault. Daniel told Jeneanne she did not know what she was doing and she once again asked if he wanted the cops to know what the argument was about. Jeneanne then announced to the police, "The reason we was having the argument is account of the drugs you have in the basement and the drug dealing

that you've been doing out of that basement." After this statement Daniel attempted to run towards the basement stairs. The officers were able to restrain him and subsequently transported him to the police station.

After Daniel was removed from the residence Ms. Hendon signed a written consent to search and allowed the officers to search the home. During the search officers found a baggie of methamphetamine, razor blades, plastic baggies, tin foil, and an electronic scale in the basement game room area. No drugs were found on Mr. Hendon's person, however when he was "processed" at the police department the police found a checkbook on his person that contained names, amounts and telephone numbers.

Mr. Hendon was subsequently charged with possession with intent to deliver methamphetamine, three counts of child endangerment, and prohibited acts. Jury trial commenced June 8, 1999. Following the State's case Hendon moved for a judgment of acquittal. The trial court dismissed the three counts of child endangerment based on insufficient evidence. The possession with intent to deliver and prohibited acts counts were submitted to the jury. A verdict of guilty was returned with a special verdict finding that Hendon had possessed a controlled substance with intent to deliver within 1,000 feet of a public school. Hendon filed a motion for new trial which was denied by the court.

On July 19, 1999 Hendon was sentenced to an indeterminate term not to exceed ten years on the possession count and an indeterminate term not to exceed two years on the prohibited acts charge. The sentences were ordered to run concurrently. The court declined to enhance the sentence an additional five years based on the special finding of the jury regarding the possession with

intent to deliver within 1,000 feet of a school, and decided to "waive" the "mandatory minimum" sentence which would otherwise apply under Iowa Code section 124.413. Hendon filed a pro se notice of appeal on July 30, 1999.

At trial Officer Hughes testified on direct examination that Ms. Hendon had stated she and Daniel were having the argument because of the drugs and drug dealing going on in the basement. Hendon objected to this testimony as hearsay. The trial court overruled the objection reasoning that the testimony was admissible to explain the officers' subsequent actions. In addition, Pamela Grashorn testified at trial that she had heard Jeneanne say to the police officers that the reason for the argument was she suspected drugs in the house. Ms. Grashorn had come to the Hendon residence on the day of the incidents to pick up her two children from their babysitter, Jeneanne Hendon, and was the one who initially called the police at Jeneanne's request. Mr. Hendon also objected to this statement as hearsay. The trial court overruled the objection without further comment.

Hendon challenges the admission of Chief Hughes' and Ms. Grashorn's testimony on the basis both were inadmissible hearsay.

Standard of Review

The standard of review for hearsay rulings is for correction of errors at law. *State v. Ross*, 573 N.W.2d 906, 910 (Iowa 1998). Admission of hearsay evidence is prejudicial to the nonoffering party unless the contrary is shown. *Id.* Error was properly preserved by the defendant through timely objections at trial to the proffered evidence.

Merits

Hearsay is 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). Hearsay is not admissible except as provided by the Iowa Constitution, by statute, by the rules of evidence, or by other rules of the Iowa Supreme Court. Iowa R. Evid. 802. The State contends the real purpose of the testimony was not to prove the truth of the matter asserted (here Mr. Hendon's drug possession and dealing) but to explain the course of the investigation conducted by the officers.

To determine whether the evidence was offered for the truth of the matter asserted we must objectively assess the real purpose for which the evidence was offered under the facts and circumstances found in the record. *State v. Deases*, 518 N.W.2d 784, 792 (Iowa 1994). *See also State v. Martin*, 587 N.W.2d 606, 610 (Iowa App. 1998). "Statements that otherwise would 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). Responsive conduct evidence is admissible over a hearsay objection if it explains the conduct itself and it is relevant to some aspect of the State's case. *Id* at 705-706. *See also State v. Mitchell*, 450 N.W.2d 828, 832 (Iowa 1990); *State v. Edgerly*, 571 N.W.2d 25, 29 (Iowa App. 1997).

The State argues the statements in controversy were offered not for their truth but rather were necessary to explain the officers' responsive conduct at the initial stage of the investigation. The State clearly had the right at trial to develop fully the circumstances leading to the discovery of the drugs and drug

paraphernalia in Mr. Hendon's basement. *See generally Hollins*, 397 N.W.2d at 706. The officers' search of the basement, which yielded the drugs in question, was prompted solely by Ms. Hendon's statements regarding Daniel's suspected drug possession and dealing, and thus such evidence was essential to the development of the State's case in chief.

We agree with the trial court's reasoning and ruling. The statements challenged by Hendon were offered to explain the responsive conduct of the investigating officers and their decision to seek and secure Ms. Hendon's consent to search the basement of the residence. Mr. Hendon suggests that even if otherwise admissible, these statements were more prejudicial than probative and should have been excluded based on their prejudicial nature. We disagree.

The trial court limited the jury's consideration of Chief Hughes' testimony concerning this statement by Ms. Hendon. The court repeatedly cautioned the jury that the only purpose of this and certain other testimony by Chief Hughes was to show what the officers may have acted upon. The trial court instructed the jury that Chief Hughes' testimony concerning the statement by Ms. Hendon was not offered to prove the truth of anything and they were not to consider Ms. Hendon's statement to be true.

Although the district court did not elaborate in the same manner on its reasons for overruling Mr. Hendon's hearsay objection with regard to Ms. Grashorn's testimony, "we will affirm a ruling which admits evidence over a hearsay objection on *any* proper ground appearing in the record, even if it was not raised below." *State v. Weaver*, 608 N.W.2d 797, 805 (Iowa 2000)

(emphasis added). Ms. Grashorn's testimony corroborated Chief Hughes' testimony, and was relevant for the same purpose of explaining the responsive conduct of the investigating officers. Additionally, her challenged testimony was merely cumulative of both Chief Hughes' and Ms. Hendon's previous testimony regarding the same statement by Ms. Hendon.

We conclude the two statements challenged by Hendon were not offered for their truth but rather in explanation of later relevant actions. Therefore, the testimony was not hearsay and was not excludable as such. *See Hollins*, 397 N.W.2d at 705.[1] The district court did not commit an error of law in admitting the challenged statements at trial. We affirm the convictions and sentences.

AFFIRMED.

[1] As we have concluded the challenged testimony is not hearsay, we need not address the State's argument that such testimony falls under the excited utterance exception to the hearsay rule and do not decide this issue.