



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )  
Plaintiff-Appellee, )  
vs. )  
CHARLES KEITH JAMES, )  
Defendant-Appellant.)

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87-1771

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Appeal from the Iowa District Court for Polk County (CR 33916), Theodore H. Miller, Judge.

Defendant appeals his conviction, following a jury trial, for voluntary manslaughter. **AFFIRMED.**

William L. Wegman, State Public Defender, and Barbara M. Anderson, Assistant State Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Christie J. Scase, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J.

797

The defendant, Charles James, appeals his conviction, following a jury trial, of voluntary manslaughter. He challenges the admission of certain hearsay evidence and the district court's refusal to give his requested instruction concerning good character evidence. We affirm.

The defendant was accused of shooting and killing his former girlfriend during an argument. He asserted that he acted in self defense after she threatened him with a gun. The defendant was charged with first degree murder, but the jury found him guilty of voluntary manslaughter.

I. James first claims that the trial court erred in allowing the State to introduce hearsay statements into evidence. At trial the State offered evidence from a legal aid attorney, a paralegal, and two police officers that the victim had reported that she had been assaulted by the defendant on at least three occasions prior to the fatal shooting. The district court excluded this proposed testimony as hearsay during the State's direct evidence. However, upon rebuttal, the court allowed the testimony of the legal aid attorney and the two police officers. In so ruling, the court noted that the defendant had been allowed to rely on hearsay statements made by the victim, and further noted that the assault reports involved here were made under circumstances indicating reliability. The defendant made a motion for mistrial, which the trial court

overruled. The defendant also raised the issue in his motion for a new trial, which was denied by the trial court.

Hearsay is defined under Iowa Rule of Evidence 801 as "a statement, other than one made by the declarant while testifying at trial . . . offered in evidence to prove the truth of the matter asserted." See State v. Galvan, 297 N.W.2d 344, 346 (Iowa 1980). We look to a statement's purpose in deciding whether it is hearsay, and our review of such statements is limited to abuses of discretion. State v. Maniccia, 355 N.W.2d 256, 260 (Iowa App. 1984). We will uphold the trial court's ruling as long as there is one hearsay theory of admission applicable under the circumstances. Id. Admission of hearsay evidence is presumed to be prejudicial error unless the contrary is firmly established. State v. Mueller, 344 N.W.2d 262, 266 (Iowa App. 1983).

In this case, Police Officer Leonard Murray was allowed to testify that on November 21, 1986, a woman claiming to be Sandra Evans told him that on November 19, 1986, the defendant met with her in a parking lot to discuss their children, and that he struck her on the chin, pulled out her hair, and bruised her shoulder. He also testified that Sandra told him that on November 21, 1986, the defendant swung a tire iron at her car windshield but she was able to drive away before the car was damaged. Police Officer

Thomas Trimble also testified that on August 21, 1986, a woman identifying herself as Sandra Evans told him that the defendant had beaten her face and back with his fist on August 20, 1986. Finally, legal aid attorney Diane Dornburg testified that on October 22, 1986, Sandra Evans told her that the defendant had physically abused her on the morning of October 22, 1986.

The out-of-court statements in question fall into the hearsay category, as the record in this case does not suggest that the State was offering the challenged evidence for a purpose in which the truth of the hearsay statements was not an issue. See State v. Williams, 427 N.W.2d 469, 471 (Iowa 1988). Despite this, the trial court relied on the doctrine of curative admissibility to sustain admission of the testimony. Under this doctrine, the Iowa Supreme Court has recognized that when one party introduces inadmissible evidence, with or without objection, the trial court has the discretion to allow the adversary to offer otherwise inadmissible evidence on the same subject when it is fairly responsive. See State v. Padgett, 300 N.W.2d 145, 147 (Iowa 1981 ); State v. Pepples, 250 N.W.2d 390, 394 (Iowa 1977) (emphasis added).

Based upon our review of the record, we find no abuse of discretion in the admission of the testimony challenged here. The record indicates that several defense witnesses were allowed, over repeated objections by the State, to

present hearsay testimony as to the victim's alleged threats against the defendant, including testimony from the defendant's sisters that the victim had threatened to kill the defendant. In response to this testimony, the trial court allowed the challenged evidence, and we find such evidence to be "fairly responsive" to the evidence offered by the defendant and within the scope of the doctrine of curative admissibility. We therefore affirm the trial court's decision admitting the challenged testimony.

II. The defendant also contends that the district court erred in refusing to give his requested "good character" instruction stressing the character evidence he offered. He apparently claims that because he introduced substantial evidence of his peaceful, nonviolent and good character, he was entitled to an instruction to the effect a man possessing these qualities would not be likely to commit the crime charged.

A good character instruction should be given upon defendant's request if properly supported by the evidence. See State v. Levy, 160 N.W.2d 460, 469 (Iowa 1968). We find the trial court did not err in refusing to issue defendant's proposed instruction in this case. The jury was properly instructed to consider all testimony presented at trial, including defendant's character evidence. See Iowa Jury Instructions Nos. 7, 34, 35.

Defendant's conviction of voluntary manslaughter is hereby affirmed.

**AFFIRMED.**