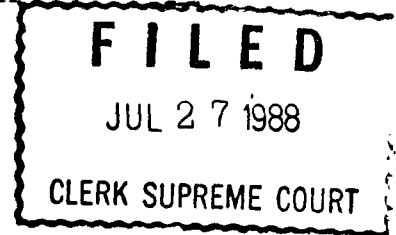


IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
)
Plaintiff-Appellee,)
)
vs.)
)
CHARLES EDWARD ROBINSON,)
)
Defendant-Appellant.)



8-283
87-1105 274

Appeal from the Iowa District Court for Polk County (No. 34334) - A. M. Critelli, Judge.

The defendant appeals following his conviction by a jury for first-degree murder and attempted murder. **AFFIRMED.**

Charles Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Catherine H. Thune, Assistant County Attorney, for plaintiff-appellee.

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

OXBERGER, C.J.

This is an appeal from defendant's conviction by a jury for first-degree murder in violation of Iowa Code Sections 701.1, 701.2 (1987). Defendant contends that the trial court erred by accepting photographs of his house into evidence and by permitting evidence of a prior felony to be used for impeachment. Our scope of review is on errors assigned. The trial court's findings of fact are binding upon this court if supported by substantial evidence. Iowa R. App. P. 14(1). We affirm.

The defendant is an acknowledged drug dealer who was charged with first-degree murder and attempted murder after he shot two of his cocaine customers. He contends that the shootings were in self-defense. At trial the defendant's objections which are at issue were overruled.

This case presents two issues. First, whether the trial court abused its discretion in admitting eleven pictures of the defendant's house; and second, whether during the trial of 1987 charge a prior conviction from 1977 should be admitted under Iowa Rule of Evidence 609(b).

The admissibility of evidence is a matter for the exercise of the trial court's discretion. State v. Clark, 325 N.W.2d 381, 384 (Iowa 1982). We will not reverse a trial court's determination to admit or refuse admission into evidence of these photographs except where an abuse of discretion is shown, as where the evidence is clearly irrelevant or prejudicial. State v. McGhee, 280 N.W.2d 436, 440-41 (Iowa 1979), cert. denied 444 U.S. 1039 (1980).

During the course of the trial the State introduced into evidence various photographs of the defendant's home. Defendant contends the admission of these photographs constitutes cumulative evidence because the physical appearance of the house and its function as a "drug house" had previously been testified to. Further, defendant asserts the pictures were prejudicial as they emphasize that the defendant was a drug dealer.

The State argues that the photographs of the house corroborate evidence of defendant's drug dealing which in turn establish a motive for the shootings at issue.

Photographs can be used in two main ways, to illustrate the testimony of a witness, or as substantive proof themselves. State v. Holderness, 293 N.W.2d 226, 234-35 (Iowa 1980). Here they were used to illustrate the testimony of a witness. Photographs which illuminate verbal testimony are relevant. State v. Slayton, 417 N.W.2d 432, 436 (Iowa 1987). See also State v. Brown, 397 N.W.2d 689, 700 (Iowa 1980).

Admissibility of the photos is within the trial court's discretion. See State v. Munz, 355 N.W.2d 576, 580 (Iowa 1984). The trial court, in this instance, did not abuse its discretion. The probative value of the photos was outweighed by the danger of unfair prejudice to the State. The jury already knew the defendant was a drug dealer so there was no prejudice. We believe that the relationship between drug dealing and the shootings create substantial evidence to support the trial court's finding.

The second issue concerns Iowa Rule of Evidence 609(b), use of a prior conviction for impeachment purposes. Rule 609(b) provides in relevant part:

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Iowa R. Evid. 609(b).

At the time of trial the defendant had four previous felony convictions, 1972, 1974, 1977, and 1979. The crime which is the subject of this trial occurred on January 17, 1987. The State filed charges January 20, 1987. The trial date was June 22, 1987. The trial court ruled the defendant could be impeached with the 1979 and the April 1987 convictions.

Defendant contends the 1977 conviction is inadmissible under the rule 609(b) ten-year time limit. Further, that the prejudicial effect of the use of such conviction for impeachment purposes is outweighed by its probative value.

The defendant was not released from prison until 1979 for the 1977 conviction at which time he was placed on parole. Accordingly, under rule 609(b) the ten-year limit starts to run ". . . the date of the conviction or of the release of the witness from the confinement imposed for that conviction whichever is the later date" Iowa R.

Evid. 609(b) (emphasis added). The trial court did not abuse its discretion in allowing impeachment based on the 1977 conviction.

We affirm the trial court's admission of the photographs of the defendant's house as well as allowance of two of defendant's prior felonies for impeachment. We find substantial evidence to support both of these rulings.

AFFIRMED.