FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,)

Plaintiff-Appellee,) Filed September 23, 1980

vs.)

DENNIS RAWLINGS,) 0-240/64201

Defendant-Appellant.)

Appeal from Pottawattamie District Court - Harold L. Martin, Judge.

Defendant appeals his conviction of assault with intent to inflict serious injury in violation of sections 708.1 and 708.2, the Code 1979. AFFIRMED.

Matt Walsh and Gary K. Anderson, Council Bluffs, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Shirley Ann Steffe, Assistant Attorney General; and Joseph J. Hrvol, Assistant Pottawattamie County Attorney; for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals his conviction of assault with intent to inflict serious injury in violation of sections 708.1 and 708.2, The Code 1979. He argues trial court erred in allowing certain rebuttal testimony and in refusing to grant a continuance at the beginning of trial in order to allow new counsel time to familiarize himself with the case. We affirm the conviction.

At oral argument, defendant's counsel conceded the argument relating to trial court's refusing to grant the motion for continuance lacked merit; we therefore need not reach that question. In any event, we note the trial court has very broad discretion in granting or overruling or motion for continuance and will be reversed only when that discretion is abused. State v. McGinnis, 243 N.W.2d 583, 586 (Iowa 1976). No such abuse appears from the record.

An information was filed on June 21, 1979 charging defendant with willful injury in connection with a stabbing incident which occurred earlier that year. Trial began on August 28, 1979. The State's case in chief consisted of testimony by the complaining witness and other witnesses, after which defendant gave his version of what happened. The State then called Michael Curtis as a rebuttal witness who had observed the incident from his car. Defendant objected to Curtis's testimony on the grounds it was really part of the State's case in chief and, since Curtis's name was not endorsed on the information and minutes of his testimony were not attached, he therefore may not testify. After a lengthy out-of-court discussion, the trial court overruled defendant's objections and allowed Curtis to testify for the limited purpose of contradicting defendant's testimony as to who the aggressor was. The jury returned a verdict finding defendant guilty of the lesser offense of assault with intent to inflict serious injury. After his motion for new trial was overruled, defendant brought this appeal.

Iowa R. Crim. P. 5(3) provides:

> The prosecuting attorney shall, at the time of filing such information, endorse or cause to be endorsed thereon the names of the witnesses whose evidence the prosecuting attorney expects to introduce and use on the trial of the same, and shall also file with such information the minutes of evidence of such witness which shall consist of . . . a full and fair statement of the witness' expected testimony."

Iowa R. Crim. P. 18(4) further provides in relevant part:

> [I]n the case of informations, a witness may testify in support thereof if the witness' identity and a minute the of the witness' evidence has been given pursuant to these rules.

It is not disputed that Curtis' name was not endorsed on the information, minutes of his testimony were not attached, and defendant had no prior notice as to the nature of the expected testimony. We do not agree, however, that these facts require reversal of defendant's conviction.

First, it is settled that the names of proper rebuttal witnesses need not be endorsed on the information. State v. Bakker, 262 N.W.2d 538, 543 (Iowa 1978). Defendant argues Curtis' testimony was not really for rebuttal purposes; it was merely labelled as such by the State in order to circumvent its failure to adhere to the procedural rules quoted above. We cannot agree. "Rebuttal testimony is 'that which explains, repels, controverts, or disproves evidence produced by the other side.' (citations omitted). Such testimony may be admitted in rebuttal even though it might have been used as part of the State's main case." Id.; see also State v. Proulx, 252 N.W.2d 426, 431-32 (Iowa 1977). In this case, the county attorney indicated Curtis would testify for the limited purpose of controverting or disproving defendant's testimony as to the identity of the aggressor. In fact, his testimony was so limited. We cannot say the trial court clearly abused its discretion in determining Curtis' testimony was proper rebuttal testimony and in allowing the same. Bakker, 262 N.W.2d at 543; Proulx, 252 N.W.2d at 431-32.

Finding no error, we affirm the conviction.

AFFIRMED.