

FILED

467

MAR 24 1981

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed March 24, 1981

vs.

)

ROGER ALVIN KRUSE,

)

0-414

Defendant-Appellant.

)

64756

Appeal from Clay District Court - Murray S. Underwood, Judge.

Defendant appeals from his conviction for arson in the second degree in violation of section 712.3, The Code 1979, contending that the trial court erred in giving a certain instruction and that the court abused its discretion by allowing certain rebuttal testimony. AFFIRMED.

Douglas L. Hein, Spencer, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

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

DONIELSON, J.

Defendant Roger Kruse appeals from his conviction for arson in the second degree in violation of section 712.3, The Code 1979. He contends that the trial court erred in giving a certain instruction and that the court abused its discretion by allowing certain rebuttal testimony. We affirm the conviction.

I.

Defendant and a companion, Kevin Corbett, were accused of setting fire to an automobile on May 19, 1979. The commission of the arson was observed by a police officer, who testified at trial that he saw an individual bend over the rear of the car, at which time a flash of light occurred, the car burst into flames, and two persons ran from the scene. The officer identified defendant as the person he had seen bending over the rear of the car. The defendant and Corbett both testified that Corbett had set the fire and that the defendant had no idea that Corbett was planning to commit the arson. The State presented rebuttal evidence by recalling the police officer, who testified concerning the physical layout of the crime scene and how it affected his opportunity to observe the events in question. The jury then convicted defendant of second degree arson, for which he was sentenced to a term not to exceed ten years.

II.

The defendant first contends that the trial court erred in instructing the jury that it could consider flight from the scene of the crime as evidence of guilt without also instructing that flight could be caused by motives other than guilt. We find that the defendant has failed to preserve error on this issue. Although he objected to this particular instruction at trial, at no time did he object on the ground that the cautionary language he now requests be added to clarify the instruction. In determining the sufficiency of an objection to an instruction in order to preserve error, we look to see whether the objection alerted the trial court to the error that is now urged on appeal. State v. Lewis, 242 N.W.2d 711, 716 (Iowa 1976). After a careful examination of the objection raised at trial, we conclude that the defendant has failed to preserve error because he did not alert the trial court to his desire that cautionary language be added to the instruction.

III.

Defendant also contends that the trial court abused its discretion in allowing the police officer to testify on rebuttal concerning the physical layout of the scene of the

crime and how it affected his ability to observe the commission of the arson. Defendant alleges that this testimony was merely repetitive of the officer's previous testimony and therefore was not proper rebuttal testimony. We disagree.

Trial courts have considerable discretion in ruling on the admission of rebuttal evidence. State v. Bakker, 262 N.W.2d 538, 543 (Iowa 1978). Such a ruling will not be disturbed on review without a showing of a clear abuse of discretion; State v. McCullough, 226 N.W.2d 216, 217 (Iowa 1975). A clear abuse of discretion is present only where the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will, but the perversity of will." State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976). No such showing has been made here. Proper rebuttal testimony is that which explains, repels, controverts, or disproves evidence produced by the other side, and is admissible even though it may have been used as part of the State's main case. Bakker, 262 N.W.2d at 543. The officer's testimony was offered to controvert and disprove testimony given by Corbett that tended to cast doubt upon whether the officer could have seen two individuals behind the victimized car from fifty some feet away. Moreover, it may not properly be said that the rebuttal testimony was merely repetitive of the officer's previous testimony; it would more appropriately be characterized as elaboration on his earlier statements. For these reasons, we find no abuse of discretion in the trial court's decision to admit the officer's rebuttal testimony; defendant's conviction is therefore affirmed.

AFFIRMED.