

IN THE COURT OF APPEALS OF IOWA

No. 8-553 / 97-1939

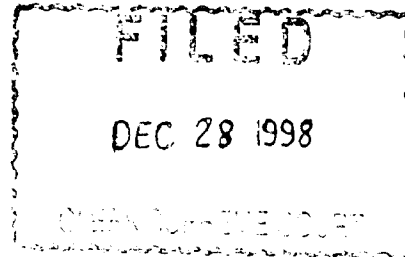
STATE OF IOWA,

Plaintiff-Appellee,

vs.

TERRANCE MASON,

Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

Defendant appeals from his convictions for assault while participating in a felony, possession of a firearm by a felon, and interference with official acts.

AFFIRMED.

J.E. Tobey III, Davenport, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, William E. Davis, County Attorney, and Kelly Raines, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

PER CURIAM

Defendant-appellant Terrance Mason appeals from his convictions of assault while participating in a felony, possession of a firearm by a felon, and interference with official acts. Defendant claims the district court denied him a fair trial in overruling motions for mistrial after the State presented testimony about prior acts by defendant. We affirm.

Defendant was charged with: count I, going armed with intent; count II, assault while participating in a felony; count III, carrying weapons; count IV, felon in possession of a firearm; count V, interference with official acts; and count VI, domestic assault causing injury.

The victim of the alleged crime, Stacy VanHoosier, prior to trial recanted allegations implicating defendant. The State recognized the directive of *State v. Tracy*, 482 N.W.2d 675 (Iowa 1992), and agreed not to call VanHoosier in their case in chief. *Id.* at 679. The district court then determined any testimony from officers regarding statements made by VanHoosier at the time the incident was investigated were first subject to an offer of proof to determine their admissibility. At trial, an officer testified VanHoosier said the defendant had assaulted her in the past. Defense counsel objected and moved for a mistrial. The court denied the motion, but instructed the jury to disregard the officer's testimony regarding the prior assaults. Shortly thereafter, the same officer again testified, "[S]he basically made the statement that he had assaulted her in the past." Defense counsel objected and again moved for a mistrial. The court overruled the motion, finding an admonition to the

jury would suffice and the short statement was not so prejudicial as to warrant a mistrial.

The jury returned guilty verdicts to counts II, IV, and V. The court sentenced defendant to two concurrent, indeterminate five-year terms on counts II and IV, and an indeterminate, concurrent one-year term on count V.

We review the court's denial of a mistrial for an abuse of discretion. *State v. Hardin*, 569 N.W.2d 517, 522 (Iowa App. 1997). Because defendant alleges a violation of his constitutional rights, we review de novo to determine whether the court abused its discretion. *State v. Veal*, 564 N.W.2d 797, 809 (Iowa 1997); *State v. Finnel*, 515 N.W.2d 41, 43 (Iowa 1994).

On appeal, defendant argues the district court denied him a fair trial by denying his motions for mistrial. "Trial courts have considerable discretion in ruling upon motions for mistrial, as they are present throughout the trial and are in a better position than we to gauge the effect on the jury of the matter in question." *State v. Cage*, 218 N.W.2d 582, 586 (Iowa 1974). When a trial court responds quickly to objectionable evidence, the defendant bears a heavy burden of demonstrating a clear abuse of discretion on the part of the trial court. *State v. Choudry*, 569 N.W.2d 618, 620 (Iowa App. 1997); *State v. Keys*, 535 N.W.2d 783, 786 (Iowa App. 1995).

In both instances of the objectionable testimony, defendant quickly objected and moved for a mistrial. The district court denied both motions and instructed the jury to disregard the testimony. Generally, a jury is presumed to follow its instructions. *State v. Frank*, 298 N.W.2d 324, 327 (Iowa 1980). Cautionary

instructions are sufficient in all but the most extreme cases. *State v. Breitbach*, 488 N.W.2d 444, 488 (Iowa 1992); *State v. Belieu*, 288 N.W.2d 895, 901 (Iowa 1980). Here, references to prior bad acts were brief. Both the defendant and the district court quickly responded to the testimony. “Only in extreme instances where it is manifest that the prejudicial effect of the evidence on the jury remained, despite its exclusion, and influenced the jury is the defendant denied a fair trial and entitled to a reversal.” *State v. Peterson*, 189 N.W.2d 891, 896 (Iowa 1971). The district court did not abuse its discretion in denying defendant’s motions for mistrial.

AFFIRMED.