IN THE COURT OF APPEALS OF IOWA

No. 2-279 / 91-765

FILED
SEP 29 1992
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

HIRAM ANTONIO SERRANO,

Appellant.

Appeal from the Iowa District Court for Muscatine County, Jack L. Burns, Judge.

Serrano appeals from his convictions, following a jury trial, of attempted murder, in violation of Iowa Code section 707.11 (1989), and willful injury, in violation of Iowa Code section 708.4 (1989). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Richard J. Bennett and James Kivi, Assistant Attorneys General; and William F. Creasey, County Attorney, for appellee.

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

OXBERGER, C.J.

Hiram Antonio Serrano was charged with attempted murder and willful injury for allegedly stabbing his former girlfriend, Theresa Jackson, in the neck. Prior to trial, he filed a notice of intent to rely upon an alibi defense.

At trial, Theresa Jackson testified that sometime after 2:30 a.m. on November 14, 1990, she awoke and went downstairs to answer her door. When she reached the dining room, she heard the glass break on her door. Serrano allegedly entered the room, shouted at her and threw her to the floor. Jackson testified she did not remember anything after that point.

Jackson testified that she awoke the next morning in a pool of blood on the dining room floor, with two stab wounds on her neck. A cervical spine injury was later discovered, and Jackson was paralyzed as a result of the injury.

The defendant and his mother both testified that he was asleep in his room at the time of the assault. During trial, the defendant objected to alleged obscured hearsay testimony by an investigating officer. The testimony refuted the defendant's alibi defense.

The jury found Serrano guilty of attempted murder and willful injury. On May 3, 1991, the district court entered judgment and sentenced Serrano to consecutive, indeterminate prison terms of up to twenty-five years and up to ten years on the respective counts.

Serrano appeals.

Scope of Review

Our scope of review is for correction of errors at law. Iowa R. App. P. 4.

Serrano contends the district court erred in admitting the testimony of Officer Timko regarding the results of his investigation. He alleges the testimony of Officer Timko, which refuted Serrano's alibi defense, was based on a conversation with Serrano's brother, and was inadmissible as obscured hearsay. Obscured hearsay is evidence offered to relay information received from another person. State v. Judkins, 242 N.W.2d 266, 268 (Iowa 1976).

During the testimony of Officer Roger Timko the following exchange occurred:

> Q. You talked to Milton Serrano at the time of--at the time the search was going on? A. Yes, I did.
> Q. Did you ask him about--
> MR. WUNDER [DEFENSE COUNSEL]: Object. May we approach?
> THE COURT: Sure.
> (A short discussion was held at the bench off the record.)
> * * *
> Q. Mr. Timko, answering yes or no, did you interview Mr. [Milton] Serrano? A. Yes.
> Q. Based on your entire investigation did you determine whether or not Mr. [Hiram] Serrano was home all night?
> MR. WUNDER: Object. May we approach, your Honor?
> * * *
> MR. WUNDER: Your Honor, as I just explained during our bench conference, I believe that the question would indirectly require this witness to respond to some hearsay. I would object on those grounds.
> THE COURT: Overruled. He may answer.
> * * *
> A. Yes, I determined whether he was or was not.

Q. What did you determine? A. Determined that he was not.

We hold the initial hearsay objection was premature. Officer Timko had only been asked whether he had made a determination, not what the determination had been. When Officer Timko was asked what his determination was, his answer came in without objection.

In addition, no record was made regarding the use of hearsay by Officer Timko. While he indicated he interviewed Serrano's brother, no record was made to indicate the information from the interview formed the basis for the results of his investigation. No record was made regarding the content of Officer Timko's interview with Serrano's brother. We hold there is no evidence in the record from which we may conclude Officer Timko's testimony included obscured hearsay.

AFFIRMED.

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