FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed September 27, 1983
vs.	)	3-243 / 69017
DENNY JOE BENHAM,	)	
Defendant-Appellant.	)	

Appeal from Black Hawk District Court, L. D. Lybbert, Judge.

Defendant appeals from his conviction for false use of a financial instrument in violation of Iowa Code section 715.6 asserting that a handwriting exemplar and testimony based on it were admitted into evidence in violation of the foundational requirements of Iowa Code section 622.25. AFFIRMED.

Fern S. Shupeck, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Joseph P. Weeg, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

OXBERGER, C.J.

Defendant appeals from his conviction for false use of a financial instrument in violation of Iowa Code section 715.6 asserting that a handwriting exemplar and testimony based on it were admitted into evidence in violation of the foundational requirements of Iowa Code section 622.25. The State does not assert that admission was proper but asserts that error was waived by failure to timely object, or alternatively, that any error was harmless. We affirm.

At the trial, a police officer testified without objection that on three occasions at his request defendant prepared handwriting specimens for purposes of comparison with the signature of a forged check. An expert testified without objection that in his opinion the same person signed both the handwriting specimens and the forged check. Defendant unsuccessfully objected on foundational grounds when the State subsequently thought to introduce into evidence the exemplar containing the handwriting specimens. There was no evidence presented that either the police officer or the expert observed defendant prepare the handwriting specimens.

Iowa Code § 622.25 provides: Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person that are proved to be genuine. The genuineness of the writing made the basis of comparison, sometimes called the "standard" writing, should be proven by direct or positive evidence. Winch v. Norman, 65 Iowa 186, 188, 189, 21 N.W. 511, 512 (Iowa 1884). Two obvious methods of proving the standard writing, are: testimony of a witness who saw the party write it; and secondly, by the party's admission. State v. Streit, 248 Iowa 260, 263, 80 N.W.2d 318, 320 (Iowa 1957). Neither method was shown here.

The Streit case states that there are other acceptable methods of proving "standards" and goes on to describe one. We do not believe the case at bar exemplifies some other acceptable method of proving "standards," and therefore we agree with Benham that the foundation was not properly laid to admit Exhibit D into evidence as a "standard" for comparison.

However, the State contends that Benham failed to preserve any error on this issue because he failed to object to the comparison of the alleged forged check with the handwriting exemplar (Exhibit D) and that the failure to object constituted waiver of his right to object to the admission of Exhibit D. The general rule is that in order for there to be a proper preservation of errors committed by the trial court in the introduction of evidence at trial, objections to evidence must be timely and be raised at the earliest time the error becomes apparent. State v. Reese, 259 N.W.2d 771, 775 (Iowa 1977). After the handwriting expert testified that in his opinion the Exhibit D exemplar and the alleged forged check were written by the same person, the State offered the exhibit into evidence. At that point in time, Benham's counsel asked to voir dire the expert witness. The testimony indicated that Benham had not been observed preparing the handwriting exemplar. Accordingly, Benham's counsel objected to the admission of Exhibit D because the appropriate foundation had not been laid, i.e., no proof of a genuine "standard." The general procedure for admitting exhibits into evidence is that when the proponent presents the exhibit to the judge and offers it to be marked for identification as plaintiff's exhibit, the opponent may make his objection to its receipt into evidence at that time. See McCormick on Evidence, § 51 (2d ed.). This appears to be what Benham's counsel did. We believe that the objection was timely and was raised at the earliest time that the error became apparent, see Reese at 775, error being that no one saw Benham actually prepare the handwriting exemplar.

However, prejudice will not be found where substantially the same evidence is in the record without objection. State v. Johnson, 272 N.W.2d 480, 482 (Iowa 1978). Defendant's counsel did not object to the expert witness testifying to his use of Exhibit D. Nor did he object when the expert witness testified that Exhibit D was Benham's handwriting exemplar and that it was his opinion that the alleged forged check was authored by Benham. The evidence of the comparison was already in the record at the time that defendant objected to the exemplar being admitted. Benham's failure to object to this other like evidence does not work as a waiver of objection to new evidence. However, an overruling of the new objection will frequently not be prejudicial. See McCormick on Evidence, § 55 (2d ed). We find this to be the case here. Therefore, any error made at the trial court level was harmless and as such we affirm its ruling.

AFFIRMED.