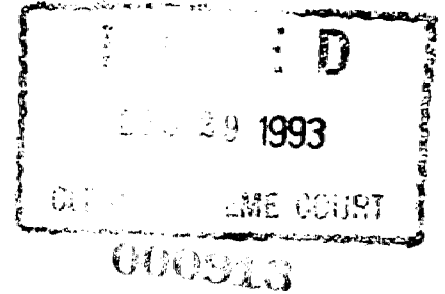


IN THE COURT OF APPEALS OF IOWA

No.3-583 / 92-1590



STATE OF IOWA,

Appellee,

vs.

VONVETTA L. SAWYERS,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Sawyers appeals from his conviction, following a jury trial, of willful injury. **AFFIRMED.**

John P. Messina, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, Thomas G. Fisher, Jr., Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Peter B. Newell, Assistant County Attorney, for appellee.

Heard by Oxberger, P.J., Habhab, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

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OXBERGER, C.J.

The State charged Vonvetta L. Sawyers with willful injury for injuring William Frost in a bar fight.

Prior to cross-examining Frost, Sawyers sought permission to ask him whether he had consulted an attorney about filing a civil action against Sawyers. Sawyers urged that such evidence would indicate Frost had a motive to color his testimony.

The State objected because no lawsuit was pending and the evidence would be irrelevant and prejudicial. The district court sustained the objection. Sawyers then made an offer of proof.

In chambers, the prosecutor stated:

MR. NEWELL: Your Honor, to -- just by coincidence it happened that attorney Tim Luce was in the hall. Mr. Luce is the individual who is representing Mr. Frost on any possible civil actions. He informed me that because of some recent decisions regarding dram shop actions they -- there is not a present intention to file any such action. I'm also informed that they contemplate, although they have not yet filed any kind of action civilly against the two individuals involved in this and Mr. Sawyers and the other individual that was involved in the assault.

When asked, Frost denied consulting with an attorney about a possible suit against Sawyers.

The jury found Sawyers guilty as charged, and the district court entered judgment and imposed sentence.

Sawyers appeals.

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Our chief concern regarding Sawyers' complaint on appeal involves the offer of proof made regarding Frost's alleged lawsuit. "In making a proffer of evidence it is essential that the evidence be material as to issues in the case and that the witnesses will testify in accordance with the proffer." Schreiber Mills, Inc. v. Lee County, 249 Iowa 747, 754, 88 N.W.2d 811, 816 (1958) (emphasis added). "The offer must contain specific evidence, competent upon the subject, which tends to prove the desired fact." Id.

Sawyers attempted to show, in his offer of proof, that Frost had hired an attorney to pursue a suit against Sawyers. However, Frost testified he had not consulted an attorney regarding a lawsuit against Sawyers. Furthermore, no other evidence presented indicated Frost planned to pursue a lawsuit against Sawyers. We conclude Sawyers' offer of proof failed and affirm the decision of the trial court.

AFFIRMED.