IN THE COURT OF APPEALS OF IOWA

No. 4-487 / 93-0921

FILED
JAN 23 1995
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ARCHIE LEE LILLIS, JR.,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Archie Lillis Jr. appeals judgment and sentence entered upon his convictions of going armed with intent and possession of a firearm as a felon in violation of Iowa Code sections 708.8 and 724.26 (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and D. Raymond Walton, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Sackett and Cady, JJ.

PER CURIAM

Defendant-appellant appeals his conviction, following a jury trial, of going armed with intent and possession of a firearm as a felon in violation of Iowa Code sections 708.8 and 724.26 (1991). Defendant contends: (1) trial judge James C. Bauch erred in admitting in evidence a letter he allegedly wrote and sent to District Court Judge George Stigler; and (2) he was denied effective assistance of trial counsel because his attorney did not preserve the issue of the denial of his right to a speedy trial. We affirm.

The following letter was received in evidence as the State's exhibit:

> Dear honorable Sr.
>
> My letter is in regards to the facts that i have been incarcerated since 9-24-92. And since i have been told to have a court appointed lawyer i have never been seen at anytime by my counsel.
>
> I have been denied a bond because . . . where i was seeking that i could continue to work at I.B.P. until my court appearance. i want to say that I did go arme with intent on that day of 9-24-92 because of the anger i received after being seriously assaulted by a group of four men.
>
> One who i know as Teddy Coleman. I have been trying to get in touch with my lawyer so that i could press charges, but noone has saw me and my trial date has been set for 12-1-92. Im sorry for discharging a firearm in the city limits and it will never happen again. Im not a bad person and i have been doing good . . .
>
> Please sir have mercy on me so that i may continue to better my life as i was trying very hard.
>
> Thank you Sir,

(signed) Archie L. Lillis, Jr.

Defendant was aware the State intended to introduce the letter in evidence through the testimony of George Stigler.[1] George Stigler is a District Court Judge for the First Judicial District including Black Hawk County.

Before Stigler was called to testify, defendant's counsel, in chambers, objected to the letter going into evidence on the grounds defendant wrote it without benefit of an attorney and after his incarceration. Defendant claimed the letter was prejudicial and not probative. The trial court advised counsel he would admit the letter finding it was a voluntary statement by defendant in his own writing on his own volition.

Stigler was then called and he testified that as a District Court Judge from time to time he receives mail from people involved in the system. Stigler was asked if he received a letter from Archie L. Lillis, Jr., and Stigler said he did. Stigler was not certain when he received the letter but recalled it was a month or two before the trial. The letter Stigler received was identified and offered in evidence. Stigler also testified

---

1. In the State's opening statement, the county attorney told the jury there would be testimony that defendant wrote a letter to Judge George Stigler where he basically admitted he was going armed with intent that night that he had shot off this weapon and they will get a chance to look at the letter. The county attorney further said defendant will be trying to lay off the blame for what happened on this Teddy Coleman fellow, and he will be basically indicating he is asking for some sort of mercy from George Stigler.

defendant made mention of the charges he was facing at the time in the letter and one of those charges was going armed with intent. A recess was then taken at 11:46 a.m. The court convened again at 1:33 p.m. and, in chambers, defendant's counsel made further record objecting to the exhibit on the additional ground of foundation. He advanced there was no testimony from Stigler that he knew the letter was in defendant's handwriting or it actually came from defendant. Defendant's counsel also objected because the document reflected a trial date of December 1, 1992, and Stigler indicated in his testimony he had received it approximately a month or two ago, which would have been at the end of January, at the latest, and, therefore, he contended the authenticity of the letter may be in doubt.[2] Defendant's counsel further advanced there was no foundation as to the date it was received, as to the date it was written or to whom or who wrote it. Judge Bauch overruled the objections as untimely and as going to the weight of the document rather than its admissibility.

On appeal, defendant contends the trial court abused its discretion in admitting the letter because it was prejudicial and had little probative value and an insufficient foundation was established before admission.

The letter was filed on January 25, 1993. The trial started on March 31, 1993.

---

2. Defendant's jury trial commenced on March 31, 1993.

Defendant contends the letter prejudiced him because of references in the letter to the fact he had a court-appointed attorney, his court-appointed attorney was not giving him effective representation, and the court had denied his request of a bond.

Evidence a defendant uses public funds for his or her attorney has been determined to be prejudicial. See State v. Woodyard, 414 N.W.2d 654, 659 (Iowa App. 1987); State v. Roghair, 353 N.W.2d 433, 435 (Iowa App. 1984). Evidence that shifts the focus of a trial from evidence introduced to the performance of a defendant's attorney has in some cases been found to be prejudicial. See State v. Larmond, 244 N.W.2d 233, 235-37 (Iowa 1976); State v. Blanks, 479 N.W.2d 601, 603-04 (Iowa App. 1991); State v. Matlock, 387 N.W.2d 781, 784 (Iowa App. 1986).

Defendant contends it was further prejudicial for the jury to learn he had been incarcerated for some time without bail. See State v. Wilson, 406 N.W.2d 442, 449 (Iowa 1987). And the admissions are like an uncounseled plea. See Burgett v. Texas, 389 U.S. 109, 114-15, 88 S. Ct. 258, 261-62, 19 L. Ed. 2d 319, 324-25 (1967); State v. Simpson, 450 N.W.2d 819, 821-22 (Iowa 1990).

Defendant contends, although the letter purports to admit his guilt to going armed with intent and discharging a firearm in the city limits, there was no evidence he knew the elements of these crimes. Additionally, defendant advances the letter's clear purpose was to obtain

assistance and seek an end to the prosecution or his incarceration. Defendant says the letter does not so much reflect an admission of guilt as it does a plea for help.

Defendant also contends, although the letter was signed with his name, the State provided no evidence to establish he was the author of the letter and, thus, the State failed to authenticate it. He reasons, therefore, it has little probative value.

The State contends the only objection defendant now raises that was raised at the trial court level was there was no showing defendant had written the letter. The State contends this objection was not made until after the letter was admitted in evidence and, consequently, no objection is preserved for review. See also State v. Howes, --- N.W.2d --- (Iowa App. 1994).

We find the trial court abused its discretion in admitting the letter. We do not; however, find it grounds for reversal. The only conclusion that can be drawn from this record is defendant was guilty. The admission of the letter was without prejudice to defendant.

On January 25, 1993, defendant filed a pro se motion to dismiss because he had been denied his right to a speedy trial. The court denied the motion on defendant's attorney's assertion there were plea negotiations and defendant had indicated he was amenable to the plea offer.

A new attorney was appointed for defendant and he filed a second motion to dismiss on March 29, 1993, urging the

same reasons advanced in defendant's January 25, 1993 motion.

In the motion it was asserted that the plea offer was only available for twenty-four hours. The defendant's attorney presented no evidence in support of this allegation and the motion was overruled. Defendant testified he only had one opportunity to meet with his first attorney. The attorney said it was three or four times. Defendant alleges his second attorney was ineffective in failing to introduce jail records showing the number of visits.

Defendant ask this issue be reserved for postconviction relief.

The failure to bring a defendant to trial within ninety days of arrest can be excused if the cause is continued because of plea negotiations. See State v. La Mar, 224 N.W.2d 252, 254 (Iowa 1974).

Defendant's first attorney testified a plea offer was made by the state before December 1, 1992, and left open for a considerable period and the prosecutor making the offer made a professional statement the offer was left open until February 19, 1993, when defendant's attorney was told it would only remain open for a short time.

In overruling the motion, the trial court found this evidence credible. Defendant has not met the necessary burden to succeed on this issue.

AFFIRMED.