



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	Filed April 30, 1985
Plaintiff-Appellee,	)	
vs.	)	<u>5-21</u>
JOHN WILLIAM WILSON,	)	84-185
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

The defendant appeals from conviction and sentence for first-degree murder, asserting that the trial court abused its discretion by overruling the defendant's motion for a mistrial after a state witness characterized the defendant as criminal. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., Hayden, and Sackett, JJ.

OXBERGER, C.J.

In this appeal we are presented with the straightforward question of whether a mistrial was mandatory when one of the prosecution's witnesses stated during defendant's murder trial that the defendant was a known criminal. We find no abuse of the trial court's discretion.

The defendant, John Wilson, killed his mother and step-father November 29, 1982. He admitted the killing, but presented a defense of insanity.

Both sides presented expert testimony as to Wilson's sanity or insanity. The evidence showed that Wilson had been diagnosed as schizophrenic and has been institutionalized many times due to his illness. At the time of the killings, Wilson was living with his parents and was receiving social security disability payments.

There was testimony that prior to the murders, Wilson had been notified that his disability payments were being terminated and that his parents had told him to move out of their home. There was considerable evidence that indicated that Wilson knew what he was doing when he committed the crime.

During the State's rebuttal, the assistant police chief was called as a witness. The officer testified that he had known Wilson for twenty to twenty-five years. When asked how he became acquainted with Wilson, the officer explained, "... John has been acquainted with the criminal elements most of his life. Police and criminals know each other."

Defense counsel objected to this statement and moved for a mistrial. The trial court denied the motion and then instructed the jury to disregard the witness's comment.

The State indicates the prosecutor was also surprised by the statement. The State asserts, however, that the court's instruction to the jury to disregard the statement cured the prejudicial effect upon the jury. The general rule is that

improper testimony is not unduly prejudicial if the trial court admonishes the jury to disregard it. State v. Williams, 315 N.W.2d 45, 55-56 (Iowa 1982); State v. Peterson, 189 N.W.2d 891, 896 (Iowa 1971). The decision of whether prejudice resulting from such a statement is severe enough to warrant a new trial is within the sound discretion of the trial court. State v. Chadwick, 328 N.W.2d 913, 916 (Iowa 1983). The reasoning for this standard is that the district court has the opportunity to observe the effect of such statements upon the jury. Id.

In the Williams case the prosecutor asked three questions regarding an area of evidence which had been suppressed earlier by a motion in limine. Williams at 55. Despite the fact the court found the prosecutor's excuse for asking the questions weak, and the line of questioning improper, it determined it did not have such a prejudicial effect as to deprive the defendant of a fair trial. Id. In Peterson another motion in limine was granted to prevent introduction of evidence that the defendant had refused to talk to officers. Peterson at 894. Nevertheless, the police officer witness indicated the defendant would not answer questions asked of him. Id. at 895. The court stated, "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 reversal." Id. at 896 (citations omitted). The court found denial of a mistrial motion was warranted.

We also find the defendant has not shown the statement given involved one of those extreme instances where the prejudice was so great that a mistrial must be granted by this court. We find the trial court did not abuse its discretion.

AFFIRMED.