FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plantiff-Appellee,	)	859
vs.	)	
FRED L. SOWDER,	)	9-204 88-650
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (36411), Thomas A. Renda, Judge.

The defendant appeals from his conviction, following a trial to the bench, of third-degree theft. He contends the trial court erred in overruling his objections to lay testimony concerning handwriting comparisons. **AFFIRMED.**

William L. Wegman, State Public Defender, and Raymond E. Rogers, Assistant Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Sarah J. Coats, Assistant Attorney General; and Melodee Hanes, Assistant County Attorney, for plaintiff-appellee.

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

SACKETT, J. 851

We are asked to determine whether the trial court erred in admitting testimony concerning defendant's handwriting.

Defendant was charged with theft of ropes and rings from the Principal Financial building in Des Moines. The State introduced the testimony of a security guard who said defendant entered the building, said he had to check something on the roof, signed the building register "F. Smith," went up the elevator, came down twenty minutes later with the ropes and rings and left the building.

The defendant had worked for a window washing concern that owned the items stolen. The manager of the window washing company was allowed to testify, over objection, he compared the signature of defendant appearing on papers in defendant's personnel file with the signature on the sign-in sheet from the Principal. He further testified he determined the two signatures were written by the same person. Defendant contends the testimony should not have been admitted.

Defendant argues the State failed to establish the defendant's signature on the paper from the personnel file was genuine and because the manager was not an expert in handwriting comparison, the trial court erred in overruling the defendant's objections. Iowa Code section 622.25 (1987) provides "[e]vidence respecting handwriting may be given by experts, by comparison, or by comparison by the

jury, with writings of the same person which are proved to be genuine." (Emphasis added). To establish a foundation for the admission of the sample, the State must present evidence someone saw the individual write the sample or the individual admitted writing the sample. State v. Debner, 202 Iowa 150, 151, 209 N.W. 404, 405 (1926). Iowa R. Evid. 901(b)(2) provides nonexperts may voice an opinion on the genuineness of handwriting if that opinion is "based upon familiarity not acquired for purposes of the litigation."

First of all, it is not entirely clear that these standards apply to the testimony at issue here. The testimony was not offered to prove defendant's guilt in stealing the items, but rather to show how he became a suspect in the case.

Even if we were to find that the evidentiary standards applied here and were not met, the admission of the testimony regarding handwriting was not prejudicial to the defendant. Two security guards at the Principal identified defendant and testified that they saw him sign the register. One of the guards testified that he saw defendant take the stolen items from the building. The trial court specifically stated that it based its finding of guilt on this testimony. Therefore, we do not find the admission of the evidence to be reversible error.

AFFIRMED.