

FILED

JUN 28 1979

CLERK SUPREME COURT

271

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed June 28, 1979

vs.

)

DONALD C. HARTING,

)

167

Defendant-Appellant.

)

62533

Appeal from Lee District Court - Thomas E. Tucker, Judge.

Defendant appeals conviction for injury to a vehicle in violation of section 714.11,
The Code 1977. Affirmed.

Joseph L. Phelan, of Fort Madison, for appellant.

Thomas J. Miller, Attorney General of Iowa, Ann Fitzgibbons, Assistant Attorney
General, and Robert N. Johnson, III, Assistant Lee County Attorney, for appellee.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Defendant Donald C. Harting appeals from a jury conviction for injury to a vehicle in violation of section 714.11, The Code 1977. He contends the trial court erred when it refused to admit evidence showing that the complaining witness had in the past received psychiatric treatment, and had at one time owned a handgun. We affirm.

Defendant was charged by county attorney's information on August 12, 1977 with injury to a motor vehicle after he shot at a truck driven by complaining witness as she attempted to leave the scene of an argument with defendant. Fresh bullet holes were found during a police inspection of the truck. At trial, defendant offered evidence that the complaining witness had possessed a handgun in 1975, and that she had received psychiatric treatment in the past. The state objected on the grounds of relevancy and materiality and none of this testimony was admitted.

The test of relevancy is whether the evidence offered makes the desired inference more probable than it would be without such evidence. State v. Engeman, 217 N.W.2d 638, 639 (Iowa 1974). Materiality ordinarily relates to the pertinency of offered evidence to the issue in dispute or to the issue of credibility. State v. Clay, 213 N.W.2d 473, 477 (Iowa 1973). The determination of relevancy and materiality of evidence rests within the sound discretion of the trial court. State v. Watts, 244 N.W.2d 586, 589 (Iowa 1976); State v. Battle, 199 N.W.2d 70, 72 (Iowa 1972).

The defendant's knowledge that the complaining witness owned a handgun at least two years prior to the incident giving rise to the instant charge "has no logical tendency to establish any material proposition" to that charge. See State v. Walker, 218 N.W.2d 915, 919 (Iowa 1974). There was no evidence that the complaining witness still owned or had in her possession the handgun. The bullet holes found in the truck had been made very recently. There were eyewitness accounts that defendant had fired shots at the vehicle. The evidence was not relevant, and was properly excluded by the trial court.

Defendant also made an offer of proof that the complaining witness had received psychiatric treatment at one time when she had been living with defendant in South Dakota. Defendant argues such evidence would have impeached the witness. The evidence offered did not, however, include an explanation of the nature of any psychological disorder suffered by the complaining witness, when it may have occurred,

or the type of treatment received. There was no attempt to relate the witness's condition to her competency, her capacity to observe, remember or recount the matters testified to. State v. Harvey, 242 N.W.2d 330, 337-38 (Iowa 1976). The trial court properly excluded evidence of prior psychiatric treatment of the complaining witness.

AFFIRMED.