FILED
DEC 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed December 27, 1983

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.) 3-286
69424

HOWARD RUSSELL SWITZER,)

Defendant-Appellant.)

Appeal from Marshall District Court, Sandra J. Holien, Associate Judge.

Defendant appeals his conviction of tampering with a witness in violation of Iowa Code section 720.4. AFFIRMED.

LuAnn White, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Joseph P. Weeg, Assistant Attorney General, for plaintiff-appellee.

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

OXBERGER, C.J.

Defendant appeals his conviction of tampering with a witness in violation of Iowa Code section 720.4. We affirm.

I. Chain of Custody

Defendant claims that the original letter was improperly admitted without an adequate showing of chain-of-custody. The foundational requirements necessary for the admissibility of photographs are that they must be verified as correct and that they are accurate representations of observations of the witness. State v. Zaehringer, 280 N.W.2d 416, 421 (Iowa 1979). This standard acknowledges the difference between photographs and other demonstrative evidence for which a chain of custody foundation is required. Id. at 421-22. See State v. Lamp, 322 N.W.2d 48, 57 (Iowa 1982), for foundational prerequisites to admissibility of other physical evidence. Trial courts have discretion to decide whether sufficient foundation has been laid for admission of photographs, but of course must act within that discretion. State v. Holderness, 293 N.W.2d 226, 230 (Iowa 1980). In the case at bar, the foundational elements submitted were the following: the photographs of the questioned letter were identified by Jerry and Pam Denbow, the victims, as the letter they had received threatening them to drop the charges; and the handwriting expert testified that he had taken the photos of the original letter and identified the photos as the photos of the original letter. Conventionally, the foundational elements of a photograph are shown by: (1) direct testimony of a person who observed the scene and testifies that the picture fairly shows it; or (2) who describes the photographic process employed and testifies it produces accurate pictures. Holderness at 230. We find the former was applicable in this case. We further find that the direct testimony of the Denbows and the handwriting expert provide sufficient foundation to satisfy the prerequisites to admissibility of the photographs.

II. Best Evidence Rule and Genuine Writing

These issues are the same issues disposed of in the companion case State of Iowa v. Howard Russell Switzer, No. 69423. Therefore, for the reasons stated in those opinions, we find that the photos were not erroneously admitted in violation of the best evidence rule and that there was sufficient basis for the trial court to admit the exemplars as genuine writings and establish a "standard" for comparison.

AFFIRMED.