IN THE COURT OF APPEALS OF IOWA

No. 0-454 / 09-1135
Filed August 11, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM EARL CLARK,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Defendant appeals his convictions for delivery of a controlled substance. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellant Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel Voogt, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor, J. takes no part.

EISENHAUER, J.

A jury found William Clark guilty of three counts of delivery of heroin and one count of delivery of cocaine salt hydrochloride with enhancements for prior convictions and being a habitual offender. Clark claims the court erred by admitting drug-related evidence discovered by the police during the execution of a search warrant. We review "standard claims of error in admission of evidence for an abuse of discretion." *State v. Stone*, 764 N.W.2d 545, 548 (Iowa 2009). We affirm.

An undercover informant agreed to cooperate with police to avoid jail for his own drug-related offenses. From January 23 to February 13, 2009, the informant made four separate drug purchases from Clark at an apartment. On February 17, 2009, while Clark was present, the police executed a search warrant at the apartment. The police discovered drug-related items.

Clark was charged with delivery of controlled substances based on the informant's four controlled buys. Prior to the start of trial, Clark moved to exclude evidence of the drug-related items found in the apartment during the search, arguing the evidence was irrelevant and prejudicial.[1] The State responded:

> Mr. Clark has not been charged with the controlled substances we recovered from his residence as a result of the search warrant yet. It is not the State's intention to discuss in any detail the drugs or other items . . . found at the execution of the search warrant.
> . . . .

[1] Clark did not raise a constitutional objection to the admission of the challenged evidence and the district court did not rule on constitutional grounds. Therefore, Clark has not preserved a constitutional issue on appeal. *State v. Johnson*, 272 N.W.2d 480, 484 (Iowa 1978) (stating "constitutional questions must be preserved in the same manner as any other issue").

> So in an effort to tie him into the location from which these drugs were found, and, again, corroborating what the [informant] says, it's important for the officers to be at least able to testify that, ultimately, they executed a search warrant at this location and they found, among other things, Mr. Clark. And that's really the extent to which I'm going to go into the search warrant evidence.

The court sustained Clark's motion "as to what they found except that Mr. Clark lived at the residence."

During the State's questioning, witnesses were not asked about what was found in the apartment during the search. However, during cross-examination of a detective, the defense elicited testimony: (1) the marked money the State's witnesses testified to using in the controlled buys from Clark was not found in the apartment during the search; and (2) when the detective spoke to Clark, he denied involvement in drug dealing. The State then argued this questioning/testimony opened the door for the State to inquire into items found in the apartment during the execution of the search warrant and indicated it would not object to a limiting instruction. The court agreed the cross-examination opened the door for the State and ruled:

> As such, the State shall be permitted on redirect to rehabilitate the credibility of the confidential informant by asking the officer questions . . . as to whether or not there [were] substances found in [Clark's] apartment at the time of the search warrant consistent with those purchased by the CI at any of the four alleged purchases or controlled buys that took place.

On redirect, the State asked the detective:

> Q. Were there items found and recovered in that search warrant that were consistent with any of the . . . illegal drugs that were purchased . . . on these controlled buys we talked about? A. Yes.

> Q. What? A. In particular, we found a prescription pill bottle that had a white residue in it. In my training and experience, it could be consistent with the cocaine that we found on the last buy on February 13th. We also found an Ibuprofen bottle which inside it had a plastic-wrapped whitish-yellowish rock substance which is consistent with crack cocaine. . . .

The court gave the jury a limiting instruction:

> You have heard evidence that during a search of the defendant's residence certain alleged illegal drugs were found. You are to consider this evidence only in determining the credibility of [the confidential informant] and other witnesses. The defendant has not been charged with any offenses in connection with the search conducted on February 17th, 2009.

Clark admits the detective was asked "whether any of the marked money was recovered" during the search, but argues this question did not "open the door" because the detective "was not asked about any other items found during the search."

We conclude defense counsel's cross-examination of the detective raised an inference no evidence was found during the search consistent with the informant's claim Clark sold him drugs at the apartment. This opened the door to the State's showing there was evidence found during the search consistent with the controlled buys. *See State v. Parker*, 747 N.W.2d 196, 206 (Iowa 2008) (stating Iowa recognizes "an 'opening the door' principle of evidence"); *State v. Mitchell*, 670 N.W.2d 416, 420-22 (Iowa 2003) (using "opening the door" principle to hold State entitled to rebut the inference defendant sought to establish). Additionally, the testimony elicited by the State on redirect did not belabor the point and the court utilized an appropriate limiting instruction. Clark cannot

complain when he "opened the door" and the State's rebuttal was appropriately limited. Accordingly, we affirm.

AFFIRMED.