IN THE COURT OF APPEALS OF IOWA

No. 0-497 / 09-1550
Filed August 11, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FREDERICK DUANE WOODS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, District Associate Judge.

Frederick Duane Woods appeals his conviction of public intoxication, third offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Shana Guthrie and Jeremy Westendorf, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes no part.

MANSFIELD, J.

Frederick Woods appeals from the judgment and sentence entered upon a jury verdict finding him guilty of public intoxication, third offense, in violation of Iowa Code sections 123.46 and 123.91 (2007). Woods asserts the district court erred in preventing him from cross-examining the arresting police officer about the officer's status on administrative leave due to pending criminal charges. Because we find no abuse of discretion in the district court's refusal to allow this line of inquiry, we affirm.

I. Background Facts and Proceedings.

The jury trial in this matter revealed the following facts: At approximately 2:30 a.m. on December 24, 2008, Officer Michael Dobson and another officer with the Waterloo Police Department were dispatched to the downtown Ramada Inn concerning a subject who was refusing to leave the business premises.

Upon their arrival, Officer Dobson briefly spoke to the employee who called in the report. The employee informed Officer Dobson that a man, who was then sitting in a chair in the lobby, did not have a room and was being rude and disorderly. Accordingly to Officer Dobson, he and the other officer then approached the man, who was later identified as Woods. Officer Dobson noticed Woods "was passed out." Officer Dobson awoke Woods and requested he leave. At this time, Officer Dobson observed "[a] very strong odor of alcohol on his breath, bloodshot, watery eyes, and when we asked him to step up out of the chair to exit the lobby he swayed from side to side." Officer Dobson testified Woods was "a little uncooperative" and "a little snotty," but after several requests, he eventually left the Ramada Inn. However, a few minutes later, Woods

reentered the Ramada Inn. At that time, Officer Dobson placed him under arrest. Woods refused to submit to a breath test at the scene.

Woods was charged with public intoxication, third offense, to which he pled not guilty. The case proceeded to trial on June 30, 2009.

Before trial, the State filed a motion in limine seeking to prohibit Woods from "[a]ttacking the credibility of any State's witnesses through their criminal histories, prior arrests, and/or prior alleged bad acts without prior notice and approval by the Court." At the hearing on the motion, the prosecution and the defense explained that Officer Dobson was currently on administrative leave and faced several pending criminal charges. According to a *Waterloo Courier* article, the charges included intimidation with a dangerous weapon, first-degree harassment, and misdemeanor domestic abuse. It was undisputed, however, that the charges did not concern Dobson's work as a police officer. The district court sustained the motion by forbidding Woods to go into these matters without first requesting a hearing outside the presence of the jury.

At trial, Officer Dobson was the State's only witness. When asked on direct examination, "[H]ow long have you been a Waterloo police officer?" he answered, "I am in my 15th year right now." Dobson then proceeded to testify to the events described above.

Before cross-examination commenced, Woods's counsel requested and obtained a further hearing before the trial judge. There, Woods's counsel argued that Officer Dobson had "opened the door" by telling the jury he was in his fifteenth year on the police force, despite his suspension. She also argued that Dobson's status on administrative leave entered into his credibility. The district

court concluded the pending charges were not relevant in this case and were not probative of truthfulness. Further, the district court held any probative value from cross-examination about Officer Dobson's status would be substantially outweighed by the danger of unfair prejudice and confusion of issues. Accordingly, the district court barred the defense from asking questions relating to Officer Dobson's having been placed on administrative leave.

The case was later submitted to the jury, which rendered a guilty verdict. A brief trial was then held on the enhancement penalty, after which the jury found Woods had committed the prior offenses.

Woods now appeals. He contends the district court erred in limiting the cross-examination of Officer Dobson.

II. Standard of Review.

"[T]he admissibility of specific acts of misconduct on cross-examination to attack credibility of a witness is within the trial court's discretion and will be disturbed only when such discretion has been obviously abused." *State v. Johnson*, 219 N.W.2d 690, 699 (Iowa 1974); *see also* Iowa R. Evid. 5.608(*b*) (stating specific instances of conduct may only be inquired into on cross-examination "in the discretion of the court"). An abuse of discretion occurs "when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State v. Smith*, 522 N.W.2d 591, 593 (Iowa 1994).

III. Analysis.

Although proper cross-examination may include impeachment by inquiry into specific instances of conduct, such inquiry must be "probative of truthfulness or untruthfulness." Iowa R. Evid. 5.608(*b*).

> Effective cross-examination demands that some allowance be made for going into matters of this kind, but the possibilities of abuse are substantial. Consequently safeguards are erected in the form of specific requirements that the instances inquired into be probative of truthfulness or its opposite and not remote in time.

Id. advisory committee note; *State v. Martin*, 385 N.W.2d 549, 553 (Iowa 1986).

As a general matter, it is difficult to see how Dobson's status on administrative leave due to pending domestic violence charges would bear on his credibility. In the first place, the charges at the time were just charges; Dobson had not been convicted of anything. *See State v. Bauer*, 324 N.W.2d 320, 323 (Iowa 1982) (evidence of an arrest is not admissible to impeach a witness). Also, the charges themselves did not involve dishonesty or false statement. In the past, the supreme court has had upheld limitations on cross-examinations of law enforcement officers relating to similar matters. *See State v. O'Connell*, 275 N.W.2d 197, 203 (Iowa 1979) (finding trial court did not abuse its discretion in limiting cross examination of a police officer regarding conduct that our supreme court censured in an unrelated undercover criminal investigation, because the prior conduct did not reflect on the officer's "truthfulness or credibility as a witness"); *State v. Crawford*, 202 N.W.2d 99, 103 (Iowa 1972) (holding trial court did not abuse its discretion in limiting cross examination pertaining to a detective being placed on suspension for allegedly drinking on duty because "the nature of the disclosed misconduct would have had little bearing on the issue of the detective's inclination to be truthful under oath").

Woods argues this case is different because the State "opened the door" by allowing Dobson to testify he was in his fifteenth year as a police officer, even though Dobson was actually on administrative leave when he gave that answer.

We perhaps assign this argument more weight than the trial judge did. The district court reasoned that under the "open the door" rule, the evidence still has to be otherwise admissible. But the supreme court has held to the contrary. It has concluded a party can open the door to otherwise *inadmissible* evidence by introducing testimony about a subject matter. *State v. Parker*, 747 N.W.2d 196, 206 (Iowa 2008); *Miller v. Bonar*, 337 N.W.2d 523, 529 (Iowa 1983).

"[A] defendant who testifies at trial should not be permitted to resort to perjury or false characterization on direct examination without fear of being exposed by the State on cross-examination." *Parker*, 747 N.W.2d at 206. We believe the same principle applies to a prosecution witness. If a witness does resort to perjury or false characterization on direct examination, he or she creates a potential credibility question. In many circumstances, the other party should be able to probe that matter before the jury.

However, we cannot say the State so clearly opened the door here that the refusal to allow Woods's counsel to ask Dobson about his administrative leave amounts to an abuse of discretion. The fact is: At the time of trial, Dobson *was* a Waterloo police officer and had been for fifteen years. He was on leave because of some unproven charges, but he had not lost his job. One can argue that Dobson's answer was entirely accurate.

In addition, even if the administrative leave evidence were relevant, or somehow became relevant because of Dobson's testimony on direct, the district court did not abuse its discretion in determining its probative value would be substantially outweighed by the danger of unfair prejudice and confusion of issues. *See* Iowa R. Evid. 5.403. The simple issue in this case was whether

Woods was intoxicated. If Dobson made a misstep in claiming, "I am in my 15th year right now," it was not a major one. Had Dobson's administrative leave status come into evidence, there would have been a danger of unfair prejudice. Although the pending charges against Dobson were unproven, they were more serious than those against the defendant and Dobson was the prosecution's only witness.

Woods also argues the limits on his cross-examination of Dobson violated the U.S. and Iowa Constitutions. Yet he failed to assert these arguments below so they are not preserved. *State v. Mulvany*, 600 N.W.2d 291, 293 (Iowa 1999) ("[W]e require error preservation even on constitutional issues."); *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal.").

For the foregoing reasons, we find the district court did not abuse its discretion and affirm Woods's convictions.

AFFIRMED.