

**IN THE COURT OF APPEALS OF IOWA**

No. 6-366 / 05-0595  
Filed August 9, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**RAYMOND DEWAYNE WILSON,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,  
Judge.

Raymond Wilson appeals his conviction for domestic abuse assault  
causing bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant  
Appellate Defender, for appellant.

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

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Raymond Dewayne Wilson had an intimate but tumultuous relationship with Laurie Auxier. In July 2004, Auxier claimed that Wilson assaulted her. Pictures taken the day after the incident showed bruises on her body.

The State charged Wilson with domestic abuse assault causing bodily injury. Iowa Code § 708.2A(2)(b) (2003). Following a bench trial, the district court adjudged Wilson guilty and imposed sentence.

On appeal, Wilson challenges certain evidentiary rulings made by the court and contends the district court considered an improper sentencing factor.

***I. Evidentiary Rulings******A. Evidence of Prior False Accusation Against a Third-Party***

Wilson contends the district court improperly excluded evidence that Auxier made a false accusation of abuse prior to July 2004. The State counters that this evidence was in fact admitted but given no weight. We agree with the State.

The State called Auxier as a witness. On cross-examination, defense counsel attempted to elicit an admission from Auxier that she made a false claim of abuse against Wilson's cousin. The State objected, urging that the questions sought irrelevant information, were ambiguous as to time, and were unduly prejudicial. The district court overruled the objection and Auxier testified that she indeed made a false allegation of abuse against the cousin.

In its ruling, the district court addressed the weight to be given this and other testimony of Auxier's prior conduct. The pertinent portion of the court's ruling is as follows:

[T]he defendant went to great lengths to question Auxier's credibility. This involved efforts to call in question her character for truthfulness. This consisted of opinion testimony from the defendant, his sons, and [a neighbor], as well as repeated references to prior instances where Auxier had made false accusations against the defendant and others. Some of these instances were admitted to or conceded by Auxier. However, most of defendant's efforts were unsuccessful, the court finding that the proffered evidence was inadmissible pursuant to Iowa R. Evid. 5.404(b) and 5.608(b). The only evidence admitted at trial concerning Auxier's character for truthfulness which has been considered by this court for purposes of this ruling was the aforementioned opinion testimony of the defendant, his sons, and [a neighbor]. The court has given no weight to any of the specific instances of prior conduct of Auxier relied upon by the defendant to attack her credibility.

Reading this ruling in conjunction with the court's evidentiary ruling during trial, it is clear that the court admitted the "false allegation" evidence but gave it "no weight." See Iowa R. Evid. 5.608(b) (allowing impeachment of a witness through cross-examination with specific instances of conduct, if the cross-examination is probative of truthfulness or untruthfulness). The court's assignment of weight was within its purview as fact-finder. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993); *State v. Robinson*, 288 N.W.2d 337, 341 (Iowa 1980).

Our conclusion that the district court admitted rather than excluded the "false allegation" testimony cited above disposes of Wilson's first challenge.

***B. Other Evidence Bearing on Truthfulness of Witness***

Wilson next challenges the district court's limitation or exclusion of several other lines of questioning bearing on Auxier's truthfulness. Defense counsel attempted to cross-examine Auxier about prior domestic abuse allegations against Wilson. Most of the State's objections to this evidence were sustained. Defense counsel also attempted to raise questions about Auxier's prior

allegations of “sexual torture” by Wilson. The district court allowed part of the evidence and disallowed part. And, defense counsel attempted to question Auxier about allegations of drug use in Wilson’s home. The State’s objections were sustained.

We discern no abuse of discretion in these rulings. *State v. Jordan*, 663 N.W.2d 877, 879 (Iowa 2003). In each instance, the district court could have tenably concluded that the line of questioning did not relate to demonstrably false accusations made by Auxier prior to the July 2004 incident. Additionally, the district court could have tenably concluded that the time frame of the occurrences was remote or ambiguous. *State v. Smith*, 522 N.W.2d 591, 593 (Iowa 1994).

Even if an abuse of discretion could be found on this record, “reversal is required only when the abuse is prejudicial.” *State v. Greene*, 592 N.W.2d 24, 27 (Iowa 1999). Here, there was ample unchallenged evidence impugning Auxier’s character for truthfulness. For example, the district court allowed evidence that Auxier made untruthful or inconsistent statements about domestic abuse issues. The district court also allowed opinion testimony from Wilson’s youngest son that he did not think Auxier was believable. And, the court allowed opinion testimony from Wilson’s other son that Auxier was a “consistent liar.” Finally, Wilson was allowed to testify that Auxier was “a straight-up liar.” In light of this other evidence, the challenged evidence would have been cumulative. *State v. Duncan*, 710 N.W.2d 34, 45 (Iowa 2006).

## ***II. Sentencing Factors***

Wilson argues the district court improperly based the sentencing decision on his refusal to admit guilt. See *State v. Nichols*, 247 N.W.2d 249, 256 (Iowa

1976) (“The trial court must carefully avoid any suggestions in its comments at the sentencing stage that it was taking into account the fact defendant had not pleaded guilty but had put the prosecution to its proof.”). Our review of this issue is for an abuse of discretion. *State v. Knight*, 701 N.W.2d 83, 85 (Iowa 2005) (“[T]he use of an impermissible sentencing factor is an abuse of discretion and requires resentencing.”).

Although it is impermissible to consider the fact that a defendant has not pled guilty, a sentencing court may consider a defendant’s lack of remorse and may find “a lack of remorse based on facts other than the defendant’s failure to plead guilty.” *Knight*, 701 N.W.2d at 87. See also *State v. Bragg*, 388 N.W.2d 187, 192 (Iowa Ct. App. 1986). This is what the district court did. The court mentioned Wilson’s “thinly veiled attempt” to place responsibility for the incident on the victim. The court also made note of the prosecutor’s assertion that Wilson might not successfully complete a batterer’s education course.

We recognize the prosecutor’s assertion was based on Wilson’s refusal to admit to domestic abuse. Specifically, the prosecutor stated, “my familiarity with the Batterer’s Education Program is that you have to at least admit that you have had incidences of domestic abuse assault in the past with significant others.” However, defense counsel essentially refuted this assertion, stating, “[Wilson’s] indicating to me that on his first plea and conviction for assault with regard [ ] this victim he did make an admission in that case and that he would be able to do so and speak about his propensities for domestic abuse in such a class.”

Responding to these assertions, the district court stated,

I have doubts as to whether Mr. Wilson would be in a position to successfully complete a course of batterer's education, which is going to be required anyway, as counsel points out, but I say that only because I think his attitude is an important consideration in this Court's mind as to whether – to what degree any leniency ought to be shown.

It is clear from this language that the court focused on Wilson's attitude rather than on his refusal to admit to the crime. The sentencing decision, therefore, was not based on Wilson's "decision to stand trial." See *Knight*, 701 N.W.2d at 89 (stating district court may properly consider defendant's lack of remorse as long as it is not based on decision to stand trial). We discern no abuse of discretion.

**AFFIRMED.**