IN THE COURT OF APPEALS OF IOWA 000465

No. 7-241 / 96-1250

FILED
MAY 29 1997
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LINDA ELAINE WHETSTINE,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge.

The defendant appeals her conviction and sentence entered following a jury trial for driving while barred in violation of Iowa Code section 321.561 (1995).

AFFIRMED.

Kermit L. Dunahoo of Dunahoo Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, J. Patrick White, County Attorney, and Janette C. Waterhouse, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

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HUITINK, P. J.

Defendant Linda Whetstine appeals her conviction of driving while barred in violation of Iowa Code section 321.561 (1995). We affirm.

The record indicates that on October 4, 1995, David Droll was a passenger in a car driven by fellow police officer Robert Gass. As they approached a Pontiac Bonneville traveling in the same direction, Droll recognized Whetstine as the driver. Although he was not completely sure of his identification, Gass agreed the driver looked like Whetstine. Droll wrote down the license plate number and watched the driver as they passed the Bonneville. Droll later determined Whetstine's license was barred and the Bonneville was registered to her boyfriend. Whetstine was arrested three days later and charged with this offense.

Prior to trial Whetstine filed a motion in limine seeking exclusion of any reference to her prior arrest for driving while barred. The district court excluded any reference to the reason for her arrest but permitted Droll to testify he arrested Whetstine two months prior to his October 4, 1995 observation.

At trial Whetstine admitted her license was barred but disputed Droll's claim that she was driving on October 4, 1995. She testified that she was elsewhere babysitting that day. Whetstine also testified that she is often mistaken for her sister who resembles her.

Droll testified he recognized Whetstine based on two prior encounters. The first encounter was when he arrested her two months before his October 4, 1995, observations. He also testified he saw Whetstine on October 3, 1995, when he arrested her sister. The jury convicted Whetstine of driving while barred, and she appeals.

Whetstine argues the trial court erred in partially denying her motion in limine. She argues the trial court should not have allowed Droll to testify he previously arrested her. We review for an abuse of discretion. *State v. Plaster*, 424 N.W.2d 226, 229 (Iowa 1988).

Evidence of prior bad acts is not admissible to show a general propensity to commit wrongful acts. *State v. Bayles,* 551 N.W.2d 600, 604 (Iowa 1996). Evidence of prior bad acts may be admitted, however, for one or more of the nonexclusive purposes listed in Iowa Rule of Evidence 404(b). *Plaster,* 424 N.W.2d at 228. The analysis for admissibility is two-fold: (1) Is the evidence relevant, and (2) does the danger of unfair prejudice substantially outweigh the probative value of the evidence? *State v. Uthe,* 542 N.W.2d 810, 814 (Iowa 1996). "'Unfair prejudice' involves 'an undue tendency to suggest decisions on an improper basis, commonly though not necessarily, an emotional one.'" *Id.* (quoting *Plaster,* 424 N.W.2d at 231).

Droll's prior encounters with Whetstine are relevant to her identity as the driver of the car he observed on October 4, 1995. The probative value of this

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evidence was substantial because of Whetstine's denial and her claim of mistaken identity. The district court balanced the probative value of this evidence against the danger of unfair prejudice and determined the evidence should be admitted. Any undue prejudice resulting from references to Whetstine's arrest was minimized by the district court's exclusion of the reason for Whetstine's arrest. We find no abuse of discretion and affirm the district court.

AFFIRMED.