IN THE COURT OF APPEALS OF IOWA

No. 0-206 / 89-782

FILED
AUG 30 1990
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

703

CAROLYN LOUISE HOWELL,

Appellant.

Appeal from the Iowa District Court for Appanoose County, Max Ruschmeyer, Judge.

The defendant appeals from her conviction, following a jury trial, for first-offense OWI. She challenges two evidentiary rulings. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Brian K. Sissel, Assistant State Appellate Defender, for the appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Kerry Lee Cathcart, County Attorney, for the appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Defendant-Appellant Carolyn Howell appeals her conviction following a jury trial of operating a motor vehicle while intoxicated, first offense, in violation of Iowa Code § 321J.2 (1987). Defendant contends the trial court abused its discretion in (1) refusing to admit evidence of prior inconsistent statements made by the arresting officer and (2) admitting into evidence a videotape of the defendant's processing over defendant's objections. We now affirm.

On November 30, 1988, defendant was stopped by Officer Barnes after observing that defendant turned a corner at an excessive rate of speed and that defendant's taillights were out. Officer Barnes noticed defendant was slow in producing her driver's license and defendant's breath carried a strong odor of alcohol. When asked if she had been drinking, defendant answered in the affirmative. The officer had defendant perform field sobriety tests. These tests were not conducted to the satisfaction of Officer Barnes. Based upon defendant's appearance, speech, odor, admission to consuming alcohol, and performance of the field sobriety tests, it was the officer's opinion defendant was under the influence of alcohol. Defendant was then arrested by Officer Barnes and later charged with OWI.

The matter came to trial March 21-22, 1989, and the jury found defendant guilty of operating a motor vehicle

while intoxicated, first offense. Defendant appeals from the resulting conviction.

I. IMPEACHMENT EVIDENCE. Defendant contends the district court erred by excluding her proposed impeachment evidence showing the arresting officer had made a prior inconsistent statement concerning the demonstration of sobriety tests to defendant. At Howell's jury trial, the arresting officer testified:

> Q. At the time that you asked her to step out of the car, did you ask her to perform any field sobriety tests? A. Yes, I did.
> Q. Could you please tell us what you asked her to perform? A. I asked her to perform five count test using the fingers on one hand and I demonstrated that test to her.
> * * *
> Q. What other tests did you offer her? A. Okay. I had her perform what we call a heel-to-toe walk.
> Q. * * * Did you demonstrate this for the Defendant? A. Yeah, I believe so. This is standard procedure to demonstrate all of our tests before we have them perform them.

Defendant cross-examined the officer regarding this testimony.

> Q. In your testimony to the D.O.T. do you recall indicating that it was a standard procedure. You didn't have any independent recollection whether you demonstrated any of these tests or not? A. I don't recall, you know exactly what I said, like I say, without having some transcript or something to refer to.
> * * *
> Q. Well, I'm not asking as to exact words. I am asking whether you told them you demonstrated as you did here? A. I don't recall whether I told them I demonstrated the tests or not, no.

In her case-in-chief, defendant sought to introduce a tape recording of a prior D.O.T. hearing concerning her arrest.

There, Officer Barnes had testified he could not recall whether he had demonstrated the sobriety tests but to do so was standard procedure. The district court did not permit this impeachment evidence.

The trial judge has wide discretion in ruling on the admissibility of evidence, and those decisions will not be disturbed unless there is a clear and prejudicial abuse of discretion. Carter v. Wiese Corp., 360 N.W.2d 122, 131 (Iowa App. 1984). We presume, without deciding, defendant's impeachment evidence would have been admissible under Iowa Rule of Evidence 613(b).[1] However, defendant extensively cross-examined Officer Barnes on his memory of whether he demonstrated the field sobriety tests to Ms. Howell. The officer was equivocal in his memory of demonstrating those tests. He testified he did not recall his prior testimony before the D.O.T. and he also testified that he had not noted demonstrating those tests in his report. Any additional benefit defendant might have received by the admission of the officer's prior testimony before the D.O.T. would be minimal. Exclusion of this evidence by the trial court was not a clear and prejudicial abuse of discretion.

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1. "Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon or the interests of justice otherwise require. . . ." Iowa R. Evid. 613(b). See State v. Ware, 338 N.W.2d 707, 712-13 (Iowa 1983).

II. VIDEOTAPE. Defendant next challenges the admission of the videotape showing her processing and booking. She contends there was inadequate evidence of chain of custody to show the reliability of the videotape. She also contends the trial court erred in not omitting an alleged reference to an earlier OWI charge.

Admission of evidence over a chain of custody objection is a matter within the trial court's discretion. Reversal is warranted only upon a clear showing that discretion was abused. State v. Gibb, 303 N.W.2d 673, 681 (Iowa 1981). "The showing required is that it be reasonably probable tampering, substitution or alteration did not occur." Id. The trial court is entitled to presume State agents would not tamper with evidence. State v. Kantaris, 280 N.W.2d 389, 392 (Iowa 1979).

A proper foundation laid for the accuracy of what the film portrays obviates the need to establish a chain of custody. State v. Deering, 291 N.W.2d 38, 41 (Iowa 1980). When "a witness to the event purportedly depicted by the film testifies that the film accurately portrays that event, a foundation has been established upon which the trial court, in the exercise of its sound discretion, may admit the film into evidence." Id. at 40. Here, the booking officer testified the videotape accurately reflected what occurred at the station after defendant's arrest, and defendant does not claim falsification or alteration occurred. Admission of the videotape over

defendant's chain of custody objection was well within the discretion of the trial court.

We do not address defendant's final contention. While defendant argues the trial court refused, "sub silento," to delete an alleged reference to a prior OWI charge, the record contains no ruling on defendant's motion. It was defendant's duty to request or demand a ruling. See State v. Hackett, 197 N.W.2d 569, 572-73 (Iowa 1972). A motion which was never decided or ruled on below presents no question for a reviewing court.

AFFIRMED.