IN THE COURT OF APPEALS OF IOWA

No. 3-703 / 12-0688
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RUDOLPH DARNELL EDWARDS,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Denver D. Dillard, Judge.

Rudolph Edwards appeals from his convictions for willful injury causing bodily injury and domestic abuse assault causing injury. **AFFIRMED ON CONDITION, REMANDED WITH DIRECTIONS.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Janet M. Lyness, County Attorney, and Kristin Parks and Dana Christiansen, Assistant County Attorneys, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

POTTERFIELD, P.J.

Rudolph Edwards appeals from his convictions for willful injury causing bodily injury and domestic abuse assault causing injury. He argues the court improperly admitted evidence of a prior assault against the same complaining witness and failed to sufficiently inquire into a conflict between Edwards and his counsel after denying counsel's motion to withdraw. We affirm on condition and remand with directions, finding the prior-acts evidence was admissible for non-propensity reasons and that the district court failed to make a sufficient inquiry into the possibility of a conflict of interest.

I. Facts and proceedings.

Edwards and A.G. resided in an apartment together with two children—one of whom was Edwards's biological child. They also resided with a roommate, A.B., and A.B.'s children. On January 15, 2011 (an icy, cold day), Edwards and A.G. were arguing about whether A.G. could drive somewhere. Ultimately, A.G. left the apartment, and Edwards followed shortly thereafter. A.G. remembers turning around and seeing Edwards, then waking up the next day. A.G's roommate found her lying on the icy pavement, gurgling blood, and bleeding from the head. The roommate saw Edwards walking away and called paramedics. A.G. was taken to the emergency room. Her jaw was broken in two places, her nose was broken, she had a concussion, and she had a large lump on the back of her head.

Edwards was arrested. At the police station, he was left in a room by himself while a camera recorded him. He called his brother, Marvin, and told him he "snapped out" and "caught her ass" and that he knew Marvin would be

disappointed in him. He told an officer he "snapped out" and "blanked out," that he was a "beast," and that A.G. wanted him to fight her. He told the officer "she wanted me to snap out and beat her ass."

Edwards was charged with willful injury, domestic abuse assault causing injury, and harassment. Prior to trial, Edwards filed a motion in limine, seeking to exclude evidence of any prior acts of assaultive behavior. The State revealed it would offer testimony by A.G. regarding an uncharged assault against her that took place two days before the assault with which Edwards was finally charged. The substance of her testimony was that Edwards held her down in her bed for hours, threatening to beat her to the point she would need reconstructive surgery and a "halo" (a type of neck) brace.

The district court ruled the testimony was not propensity evidence but admissible as motive for the subsequent attack. Trial was held before a jury April 18–21, 2011. The following individuals testified in the State's case: A.G., her emergency room physician, the roommate, a friend of Edwards, three officers, a criminalist, and a detective. Edwards again objected to A.G.'s testimony describing the prior assault and was overruled. Edwards testified in his own defense, admitting being outside with A.G., but denying hitting her. Edwards said he might have elbowed A.G., but that A.G. had slipped on the ice as he walked away and her fall caused her injuries.

While the jury was deliberating, Edwards approached the court and reported his attorney told him to perjure himself, and that he testified accordingly to his detriment. The court asked Edwards's attorney if this was true, and the attorney denied the allegation, noting that providing further detail might violate

attorney-client privilege. The attorney requested to withdraw from the case, due to Edwards's accusation that the attorney committed an ethics violation. The court denied the request at that time, stating, "[T]hat's something that can be considered later if necessary."

Several hours later, the jury returned verdicts of guilty of willful injury causing bodily injury (a lesser included offense of the original charge of willful injury), and domestic abuse assault causing bodily injury. Through counsel, Edwards renewed his motion for judgment of acquittal, which was denied. Edwards denied the prior convictions alleged as sentencing enhancements. The court discussed with the parties the procedure for presentation of evidence regarding the prior convictions. That proceeding did not take place that afternoon for reasons unrelated to defense counsel's motion to withdraw, but the court anticipated a renewal of the motion to withdraw when it decided to empanel a second jury at a later date to hear the evidence on prior convictions.

The following week, defense counsel filed a written motion to withdraw, which the court granted the following month without hearing. Edwards was represented by substitute counsel when he appeared to stipulate to a prior conviction for purposes of sentencing enhancement on Count II, domestic abuse assault causing bodily injury. He was sentenced to consecutive terms of imprisonment of five years and two years. He appeals from the evidentiary ruling regarding prior acts, and claims a conflict with his trial attorney.

II. Analysis.

We review evidentiary rulings for whether the trial court abused its discretion. *State v*. *Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009). When

determining whether a conflict of interest exists implicating the right to counsel, we review as follows:

> A determination of whether a conflict exists is a mixed question of law and fact. Because this is a claim of a Sixth Amendment violation, our review is de novo. Whether the facts show an actual conflict of interest or a serious potential for conflict is a matter for trial court discretion, and we find an abuse of that discretion only when a party claiming it shows the discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable.

Pippins v. State, 661 N.W.2d 544, 548 (Iowa 2003) (citations and internal quotation omitted).

A. Evidentiary ruling.

Edwards argues the district court improperly admitted A.G.'s testimony regarding the prior unreported incident of domestic abuse as it was a prior bad act that should have been excluded under Iowa Rule of Evidence 5.404(b). This rule reads:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Iowa R. Evid. 5.404(b). Because the act testified to by A.G. does reflect adversely on Edwards's character it is potentially excludable as a prior bad act under 5.404(b). *See Reynolds*, 765 N.W.2d at 289.

> However, prior bad acts are admissible if offered for the purpose of establishing motive or intent. Before evidence of prior bad acts can be considered admissible, the court must (1) find the evidence is relevant and material to a legitimate issue in the case other than a general propensity to commit wrongful acts, and (2) determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. Evidence is relevant when it has any tendency to make the

> existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. When evidence of prior bad acts is offered to establish an ultimate inference of mens rea, the court should require the prosecutor to articulate a tenable noncharacter theory of logical relevance.

Id. at 289–90 (internal citations and quotation marks omitted). "In sexual assault and domestic violence cases, we have recognized that the prior relationship between the defendant and the victim is relevant in establishing intent and/or motive." *Id.* at 290–91. The evidence is "not offered to show a *general* propensity towards violence but rather to demonstrate the nature of [the defendant's] relationship and feelings toward a *specific* individual." *Id.* at 291 (quoting *State v*. *Reyes*, 744 N.W.2d 95, 103 (Iowa 2008)).

Rule 5.404(b) also allows the use of prior-bad-acts evidence to prove the absence of mistake or accident, a central issue injected into this case by Edward's claim that A.G. suffered an accidental fall on the ice. In cases of violent crimes, prior-bad-acts evidence of domestic assault is admissible to refute a claim that the victim's injuries were accidental or unintended. *See*, *e*.*g*., *State v*. *Newell*, 710 N.W.2d 6, 21–22 (Iowa 2006); *see also State v*. *Taylor*, 689 N.W.2d 116, 124–29 (Iowa 2004). Although the district court ruled the description of the prior actions of Edwards was relevant to motive and intent, we agree with Edwards that the fighting issue here was not Edwards's frame of mind when he assaulted A.G., but whether he assaulted her at all. The evidence of the prior assault was relevant to disprove Edwards's claim of accident, and we affirm the district court on that issue, even though it was not the ground relied upon by the court at trial. *See DeVoss v*. *State*, 648 N.W.2d 56, 62 (Iowa 2002) (noting error-

preservation exception when affirming trial court's evidentiary ruling); *see also Aller v. Rodgers Mach. Mfg. Co.*, 268 N.W.2d 830, 840 (Iowa 1978) ("Here, defendant's objection was sustained; therefore, the ruling will be upheld if the evidence could be held inadmissible on any theory, even though not urged in the objections.").

Here, the prior act was close in time to the assault, the threats made during that prior act were closely related to the actual injuries sustained by A.G., the event showed the nature of Edwards and A.G.'s relationship, and the prior act spoke to the attitude and feelings of Edwards specifically towards A.G. *See Reynolds*, 765 N.W.2d at 291. We therefore find the evidence was relevant for the purpose of disproving Edwards's claim of accident.

We next must determine whether the probative value of the evidence substantially outweighs the danger of unfair prejudice. *See id.* at 289.

> In balancing the probative value against the danger of unfair prejudice, the court should consider the following factors:
>
> > the need for the evidence in light of the issues and the other evidence available to the prosecution, whether there is clear proof the defendant committed the prior bad acts, the strength or weakness of the evidence on the relevant issue, and the degree to which the fact finder will be prompted to decide the case on an improper basis.

Id. at 290 (quoting *State v. Taylor*, 689 N.W.2d 116, 124 (Iowa 2004)). The State concedes that Edwards's post-arrest admissions provided the jury with ample evidence on motive and intent, and we agree that the relevance of the prior act is related to refuting the claim of accident. Edwards and A.G. were the only two individuals actually present for the attack, and A.G. could not remember the incident due to her head injury. Edwards was presenting a theory that she

slipped and fell on ice. The description of the prior threats and assault was highly probative to refute Edwards's claim of accident.

The prejudice to Edwards from the admission of this evidence is undermined by the jury's verdict, which acquitted Edwards on Count III (harassment) and found him guilty of the lesser included offense on Count I (willful injury). Edwards had a full and fair opportunity to cross-examine A.G. as to the veracity of her testimony, and, because he chose to testify, provide his own version of the event. The high probative value of the evidence substantially outweighs any unfair prejudice. *See* Iowa R. Evid. 5.403. The court did not abuse its discretion in admitting the prior-acts evidence.

B. Inquiry into conflict.

When a court is made aware of a potential conflict of interest between a defendant and attorney, the court is required to inquire into the circumstances of the conflict sua sponte. *State v*. *Watson*, 620 N.W.2d 233, 236 (Iowa 2000). Where an actual conflict exists, prejudice is presumed and reversal is mandated. *Id.* at 238; *see also State v*. *Smitherman*, 733 N.W.2d 341, 347–48 (Iowa 2007) (noting limited applicability of the automatic reversal rule, requiring showing of adverse effect where inquiry into conflict is conducted).

Edwards told the court his counsel instructed him to give false testimony. The court asked defense counsel if this was true, and counsel responded that it was not, but that he did not want to explain because he feared any comment would violate attorney-client privilege. Counsel requested permission to withdraw from representation of Edwards as Edwards had accused him of an ethical violation. The court denied the request. Edwards argues the motion to

withdraw alerted the court to a potential conflict of interest, triggering the requirement of an inquiry.

The exchange between Edwards, his attorney Steele, and the court was as follows:

> The Court: Mr. Steele, are you indicating that Mr. Edwards wants to make some statement?
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> Mr. Edwards: Yes.
>
> Mr. Steele: He does, but I'm 100 percent against it, your Honor.
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> The Court: All right. Go ahead then.
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> Mr. Edwards: . . . You know, saying yesterday I testified and my testimony changed due to his advice in a way that I see now that is actually ~~y it's it~~'s incriminating me instead of helping me. He told me, you know, instead of saying what really happened, to say something else, to say I threw my arm back, you know, and I'm saying now that that action is actually incriminating me and the State said it yesterday, and what she said is all of a sudden he's bringing this now. . . . He told me to do that, and it's a whole difference from me doing something and snatching my arm away like I really did.
>
> The Court: Well, Mr. Steele, what Mr. Edwards has said is what I would construe as an accusation of an ethics violation, and you're free to respond to an ethics violation even though there is an attorney-client privilege. The attorney client privilege does not apply to an ethics violations accusation. You're not required to make any statement at this time, Mr. Steele, and it's up to you whether you wish to say anything. The trial is going to continue with the jury deliberating, they're not going to be advised of any of this.
>
> Mr. Steele: Your Honor, I d~~o I~~ would love to respond, because that's not what happened. We talked abou~~t I~~guess I don't want to violate any attorney-client privilege, but there is definitely more to this story than meets the eye.
>
> The Court: Well, I'm certainly not expecting you to respond, I just didn't want to cut you off. But like I said, you're not required to say anything at this time. And I think we'll just leave it at that for the time being. Mr. Steele: And I think this would be appropriate for a post-conviction relief hearing if it gets that far. Based on the fact that my client is accusing me of an ethics violation, I ask to withdraw.
>
> The Court: Well, I'm not going to allow you to withdraw at this stage, and so that's not even a question, that's something that can be considered later if necessary. So we're adjourned at this time.

When Edwards made his allegation against his attorney, the jury had been deliberating the previous day and had returned for further deliberations that morning. Edwards voiced his claim against his counsel while the jury deliberated. Immediately thereafter, the court adjourned and did not reconvene until the jury returned with its verdicts several hours later. There were no in-court proceedings in Edwards's case in the meantime for substitute counsel to address.

The court later appointed new counsel and, several months later, scheduled a separate proceeding to hear the sentencing enhancement evidence. Edwards and his new counsel settled the enhancement issues. Sentencing took place two months after that, during which Edwards was represented by new counsel.[1] Edwards argues on appeal that the district court should have held an immediate hearing on his claim of unethical behavior by counsel and that this court must now remand for a hearing as to whether counsel's performance was affected by an actual conflict. *See State v. Powell*, 684 N.W.2d 235, 241 (Iowa 2004).

When the court became aware of the possibility of a conflict, it was required sua sponte to inquire into the existence of a conflict. *Watson*, 620 N.W.2d at 236. This inquiry need not be lengthy, depending on whether the court has knowledge of the pertinent facts. *See*, *e.g.*, *State v. Thompson*, 597 N.W.2d 779, 784-85 (Iowa 1999) (holding the trial court was not required to make a longer inquiry into a possible conflict of interest where court witnessed the

[1] We note that substitute counsel eventually was appointed and, during his representation of Edwards at the enhancements hearing or sentencing hearing, did not raise the allegation that trial counsel encouraged Edwards to lie during his testimony.

defendant assault his attorney but the attorney agreed to proceed to closing arguments).

In *Powell*, our supreme court elaborated on what constitutes a sufficient inquiry for purposes of investigating a conflict of interest. 684 N.W.2d at 240. Powell wrote the court before trial to request alternate counsel, asserting his counsel represented two other individuals involved in the same crime. *Id.* at 236. A hearing was held, and the court asked Powell's counsel if there was a conflict. *Id.* Counsel denied the existence of a conflict. *Id.* The court held there was only a possibility of a conflict, and that any further inquiry into the existence of a conflict could be made closer to trial when witnesses were disclosed. *Id.* No further hearing was held. Our supreme court held the inquiry was insufficient. *Id.* at 240–41. It wrote that once the trial court becomes aware of a possible conflict, "[t]he court has the heavy burden here to seek sufficient information to make an informed decision as to whether there is a conflict of interest." *Id.* at 241. It wrote this determination was independent of counsel's opinion as to whether a conflict exits, as "the right to counsel is not a question left solely up to the attorney—an especially tough call when that same attorney's loyalties have been questioned." *Id.* Here, the district court did not conduct a sufficient inquiry into the possibility of a conflict between Edwards and his attorney as required in *Watson*, and our record on appeal therefore is inadequate for a de novo review.

Our supreme court has required that an inquiry be conducted in cases in where the existence of a potential conflict has been made known to the court earlier in the proceedings, when substitute counsel could be appointed to represent the defendant. *See id.* at 242 ("There was a possibility of conflict

because of the potential witness problem in the future. More importantly, however, since the court did not determine the extent and nature of [the attorney's concurrent] representations, there was potential for divided loyalties in the present."); *see also Connor v. State*, 630 N.W.2d 846, 848-49 (Iowa Ct. App. 2001) (finding the possibility of a conflict where defendant filed an ethics complaint against counsel but no inquiry was made by the court into the nature of the ethics complaint). Here, the existence of a potential conflict was not made known to the court until after the close of evidence. However, the information referred back to Edwards's decision to exercise his constitutional right to testify and implicating the attorney's personal interest in his advice to his client about the content of his testimony. Iowa R. of Prof'l. Conduct 32:1.7(a)(2).

The district court postponed consideration of the claimed conflict but did not return to it when the jury returned its verdicts. The court did eventually appoint substitute counsel, and the delay in post-trial proceedings resulted in Edwards's representation by conflict-free counsel during those proceedings. Whatever counsel advised Edwards about his testimony, if anything, his loyalties did diverge as a result of the accusation. *See Powell*, 684 N.W.2d at 239. However, it is not clear whether those interests diverged "with respect to a material fact or legal issue or to a course of action." *See id.* Nor is it clear that a conflict actually affected counsel's performance. In defining an actual conflict of interest, the Supreme Court has stated: "[A]n actual conflict of interest' mean[s] precisely a conflict that affected counsel's performance—as opposed to a mere theoretical division of loyalties." *Mickens v. Taylor*, 535 U.S. 162, 163 (2002).

Unlike *Powell*, our required conflict inquiry here would have been historical—looking backward at events that have already happened rather than forward to determine whether counsel has a conflict that could affect his or her representation in the future—but the record is still inadequate for our review. We find further development of the record is required to determine whether a conflict arose, and if so, whether such a conflict affected counsel's performance. *See Mickens*, 535 U.S. at 163.

Edwards and the State agree that the remedy prescribed by our supreme court for an insufficient inquiry is affirmance of the defendant's conviction on condition and remand for further hearing into the possibility that an actual conflict existed. *Powell*, 684 N.W.2d at 241–42. Alternatively, the State argues that under these facts we should affirm the convictions and preserve the issue for a future postconviction action, characterizing Edwards's claim as ineffective assistance of counsel. We decline the State's invitation to delay the court's responsibility to conduct a conflict inquiry until the defendant may bring a potential postconviction proceeding.

We find the record before us shows an allegation of a conflict, not an actual conflict. *See id.* Where there is the possibility of a conflict, we must remand for inquiry into the allegations. *Id.* As part of its actual conflict inquiry, the district court must evaluate whether counsel's performance was affected. *See Mickens*, 535 U.S. at 163. "On remand, the record should be developed further in the district court to determine whether there was an actual conflict. . . . If an actual conflict is found, the district court must grant [Edwards] a new trial; if not, his convictions should stand." *Powell*, 684 N.W.2d at 241–42 (internal

citations omitted). We therefore affirm based on this condition. *See id.* We do not retain jurisdiction.

AFFIRMED ON CONDITION, REMANDED WITH DIRECTIONS.