STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAD EVERETT LEIST,

Defendant-Appellant.

UNPUBLISHED
December 20, 1996

No. 187721
LC No. 95-083707-FH

Before: Sawyer, P.J., and Markman and H.A. Koselka,* JJ.

PER CURIAM.

Defendant was convicted of resisting and obstructing a police officer, MCL 750.479; MSA 28.747, and operating a motor vehicle while under the influence of intoxicating liquor (OUIL), MCL 257.625(1)(a); MSA 9.2325(1)(a). He was sentenced to a term of one to three years on the conviction for resisting and obstructing a police officer and a term of ninety days for the OUIL conviction. Defendant appeals as of right and we affirm.

Defendant asserts that the trial court abused its discretion in precluding other witnesses from giving prior-acts testimony regarding the deputy who arrested defendant. Defendant states that the proffered testimony would have shown that the deputy had previously caused suspects to fall, in the same way that defendant claims he was made to fall on his face while restrained. Relying on *People v Woodle*, 121 Mich App 336; 328 NW2d 412 (1982), defendant also contends that the testimony should have been admitted as probative of the deputy's credibility and bias. However, defendant did not argue in the lower court that the evidence should have been admitted as probative of Chamberlin's possible bias, so the argument regarding bias has been waived. *People v Hamacher*, 432 Mich 157, 168; 438 NW2d 43 (1989).

With respect to the deputy's credibility, defendant has not shown that the court abused its discretion in excluding the prior acts testimony. *Woodle*, on which defendant relies, is distinguishable because it involved a court's ruling to limit inquiry into a witness' previous acts. *Woodle, supra*, 121 Mich App 340. In the present case, the court did not limit such inquiry; instead, it excluded extrinsic

* Circuit judge, sitting on the Court of Appeals by assignment.

evidence of the witness' past acts, in accord with MRE 608. See *People v Phillips*, 170 Mich App 675-681; 428 NW2d 739 (1988). *Woodle* can be distinguished further in that the prior acts evidence in that case dealt with a crime similar to that for which defendant was being tried, and the defendant contended that the witness had perpetrated both crimes. *Woodle*, *supra*, 121 Mich App 338-339. Thus, evidence of the prior act in *Woodle* was an essential part of the defense that was raised. In the present case, the deputy's prior acts were not an essential part of the defense. In fact, the alleged dropping of defendant on his face by the deputy would have taken place *after* the crimes with which defendant was charged. We find no abuse of discretion. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994); *Gore v Rains & Block*, 189 Mich App 729, 737; 473 NW2d 813 (1991).

Defendant next argues that he was denied the effective assistance of counsel, in that defense counsel's failure to timely raise notice of a diminished capacity defense resulted in the court barring testimony by defendant's proposed expert witness. This argument is without merit because defendant has not shown that he was prejudiced by the unavailability of a diminished capacity defense. A diminished capacity defense would have been relevant to the charge of malicious destruction of police property, but defendant was acquitted of this charge. With respect to the OUIL charge, defendant admitted his guilt. With respect to the charge of obstructing and resisting a police officer arising from his actions to prevent the taking of a blood sample, defendant admitted his intent to keep the police from obtaining the blood sample. Thus, defendant cannot show that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *United States v Cronic*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984); *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674, reh den 467 US 1267; 104 S Ct 3562; 82 L Ed 2d 864 (1984); *People v Stanaway*, 446 Mich at 687-688; 521 NW2d 557 (1994). Accordingly, he has not established ineffective assistance.

Affirmed.

/s/ David H. Sawyer
/s/ Stephen J. Markman
/s/ Harvey A. Koselka