IN THE COURT OF APPEALS OF IOWA

No. 1-757 / 11-0069
Filed November 23, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT MYLAN BUTTS,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady (motion to suppress) and James S. Heckerman (trial), Judges.

The defendant appeals from judgment and sentences imposed upon his convictions for second-degree kidnapping, first-degree burglary, going armed with intent, assault while participating in a felony, assault with intent to commit sexual abuse, carrying weapons, and possession of burglar's tools. **AFFIRMED.**

Keith E. Uhl, Des Moines, and John S. Berry of Berry Law Firm, Lincoln, Nebraska, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Jon J. Jacobmeier, Assistant County Attorney, for appellee.

Heard by Danilson, P.J., and Tabor and Mullins, JJ.

DANILSON, P.J.

Robert Mylan Butts appeals his convictions challenging the sufficiency of the evidence of confinement or removal to support a second-degree kidnapping charge. He also asserts a search warrant was unconstitutionally overbroad; the trial court abused its discretion in admitting evidence; there was insufficient evidence of specific intent to sustain several of the convictions; and the trial court erred in instructing the jury. Because the convictions were supported by substantial evidence; the search warrant was not overbroad; the district court did not abuse its discretion in admitting the redacted 911 recording or the stipulation of items found upon execution of a search warrant; and because the jury instructions on the defendant's defenses were not prejudicial, we affirm.

I. Background Facts and Proceedings.

At about 11:00 p.m. on November 11, 2009, Jennifer walked her boyfriend out of the apartment she shared with her sister Regina. After saying good night to him, Jennifer returned to the apartment and turned the deadbolt. She spoke with Regina for a few minutes and then went to her bedroom, which was past Regina's bedroom and at the far end of the hall.

Regina was lying on the couch watching television, but was startled when she looked up to see a stranger, later identified as the defendant, Robert Butts, coming through the locked door into her apartment. Butts shut the door behind him and locked the deadbolt. He was wearing plastic gloves and a grey hooded sweatshirt, with the hood pulled tight around his face. He was holding a gun. The intruder walked to Regina, held the gun near her at eye level, and asked if anyone else was there. Regina loudly told the intruder no one else was at home,

hoping to alert her sister to his presence. As Regina talked with Butts, she saw Jennifer creep down the hallway and quickly disappear.

Jennifer had gone into the hallway because she heard a noise. She saw a man in a hooded sweatshirt standing near Regina. Regina looked terrified. The man told Regina, "You're going to f***ing cooperate right now." Jennifer was able to get into the bathroom closet and call 911, whispering to the dispatcher.

Regina said the intruder "told me that I'm—that I am going to do what he wants. He didn't want to hurt me but he will if I scream." As Regina attempted to "buy time" by asking Butts questions, he grabbed her by the back of the arm, pulled her from the couch, and forced her to walk down the hallway while pointing a gun at her. Butts took Regina to the farthest bedroom and pushed the door shut behind him. The door closed but an item on the floor prevented it from shutting and latching entirely.

Butts sat Regina on the bed and stood directly in front of her. She pleaded with him: "You don't have to do this; you can't do this, this is rape. You can leave now and I won't say anything. I don't even know who you are." He responded by asking Regina if she had a boyfriend and if she was still a virgin. He ordered Regina to undress. When she refused, he put the gun in the back waistband of his pants and started coming toward her. She panicked, asking Butts if he had a condom; he said he did and motioned toward his back pocket. Regina continued to resist his demands that she disrobe. Butts forcibly removed Regina's sweater and tank top. He held her and unfastened her bra and pulled it off her. Regina pulled her knees up, but Butts straightened out her legs and unbuttoned, unclasped, and unzipped her pants.

At the 911 dispatcher's direction, Jennifer had crept to the front door to unlock it so officers could enter the apartment. Jennifer was able to peek into the bedroom and saw a shirtless Regina lying on the bed with the defendant standing over her. Jennifer could hear her sister pleading repeatedly, "You don't have to do this. I'm not going to tell anybody. Please don't do this."

Regina heard a knock at the door:

> Q. And what happened? A. [Butts]—he froze for a split second and he told me just to ignore it; they'll go away. If you scream, I'm going to hurt you.
>
> Q. Okay. What happened then? A. The defendant and I both heard footsteps like—like running for the steps out in the hallway and he turned his back to me and went towards the bedroom door and we both heard the front door unlock and people coming in so he was getting ready to open the bedroom door when I jumped off the bed and I grabbed him by the back of his hoodie. I pulled the gun out from behind his pants and kind of shifted him off balance into the hallway and then the cops were there and they said "get down on the ground," "drop the weapon" and so I dropped it and I hit the floor, both knees, just started crying hysterically.

Police officers took Butts into custody, but he was combative and not cooperative. He refused to comply with commands to be still and not talk, he resisted the officers and kept insisting "nothing happened, I wasn't going to hurt her." In addition to the gun Regina had taken from Butts, officers found Butts was carrying a knife and lock-picking equipment. As he was being led to a patrol car, Butts' continued noncompliance with directives to "keep walking, stop moving, stop turning" went unheeded and resulted in the officer sweeping Butts' legs from under him and then using a taser. While Butts was on the ground, the officer noticed Butts had removed one of the gloves he was wearing and had the other partially off. In the opinion of responding officers John Huey, Dana Schott,

and Joseph Hothersall, who were first on the scene and placed Butts in custody, Butts did not appear to be intoxicated or drunk.

Butts provided false names and social security numbers to police officers. At the time he was booked into the jail several hours after his arrest,[1] officers did not know his identity. Officers ultimately learned Butts' identity when he was required to give his name to make a telephone call. With his name provided, the officers were able to determine Butts' local address[2] and located his vehicle parked in front of the apartment building next to Regina's. The officers learned Butts' apartment was in the same complex as the sisters' apartment.

Officers obtained search warrants for Butts' apartment and vehicle. Upon execution of the search warrants, law enforcement seized, among other things, a stun gun; a rifle; a pistol; knives; ammunition; a backpack containing a camera, condoms, socks wrapped in plastic, and hair dye; a night vision scope; other monitoring equipment; and computers and digital storage/memory devices. An additional warrant was obtained to search the contents of the computer and digital storage devices, which were discovered to contain videos on picking locks, as well as pornography, including simulated rape scenes.

Butts was charged with second-degree kidnapping, first-degree burglary, going armed with intent, assault while participating in a felony, intimidation with a

[1] Butts was taken to the hospital before booking, but did not give his name at the emergency room.

[2] Butts' primary home was in South Dakota, but he worked in Omaha and had an apartment in Council Bluffs, Iowa.

dangerous weapon, assault with intent to commit sexual abuse, carrying weapons, possession of burglar's tools, and obstruction of prosecution.[3]

Butts filed notice he intended to raise defenses of insanity, diminished responsibility, and intoxication.

Butts moved to suppress items seized when police executed a search warrant of his apartment, complaining it was not supported by probable cause, was overbroad, and did not state an adequate nexus to the apartment. After a hearing, the district court denied the motion to suppress concluding:

> Butts had been arrested less than eight hours before the Application for Search Warrant was presented to Judge Eveloff. He had been arrested inside an apartment in another building in the same apartment complex. Butts had in his possession a firearm, a knife, latex gloves, and a lock picking kit. He was shoeless. A Deputy County Attorney had been consulted before the Warrant Application was presented. Officers were instructed to look for evidence pertaining to the offenses for which Butts had been arrested and also for evidence which might pertain to potential defenses to those charges. There was probable cause to issue a warrant to search Butts' apartment on November 12, 2009. A person of reasonable prudence would believe that evidence of a crime might be located there in Butts' apartment.
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> . . . .
>
> Butts is charged with burglary, weapons offenses, assaultive conduct, offenses of a sexual nature, obstruction of prosecution, and kidnapping. The warrant contained a lengthy list of items to be searched for. The number and breadth of the charges is great. The items listed are clearly related to the offenses charged—lock picks, lock pick instructions, containers and/or boxes which would store lock picks, receipts for lock picks, and latex gloves. Because Butts was allegedly engaged in a Burglary when he was arrested, stolen items would be related to the offenses charged. Items that would show mental status or competence or the ability to form specific intent would be relevant. Pornography may be relevant to an element or defense related to the charges brought. The warrant is sufficiently specific regarding the items to be searched for and is not overly broad with regard to the items to be search for.

[3] Prior to trial, the State dismissed the charge of intimidation with a dangerous weapon.

> . . . .
>
> In this case, given the nature of the charges filed, the location of the break-in, and the location of Butts' apartment, it is reasonable to expect to find evidence pertaining to the crimes being investigated inside Butts' apartment. When this information is viewed in a common-sense manner, including all reasonable inferences that support a finding of probable cause, sufficient nexus was demonstrated in the Application for Search Warrant between Butts' apartment and the items to be seized.

Butts moved in limine to have the recording of the 911 call redacted from twenty-six minutes to fourteen minutes. He claimed the final twelve minutes, during which Jennifer was crying and sobbing hysterically, were unduly prejudicial. The court ruled the recording was admissible but should be redacted to omit "the screaming and yelling."

Butts also moved in limine to have "the graphic depictions of simulated rape" contained in his computer equipment deemed inadmissible as irrelevant and prejudicial. The State responded:

> The fact that he was somebody that was into rape pornography is certainly relevant to somebody that would head across the apartment complex and then commit this rape.
>
> They've raised not only insanity in this case but they've also raised intoxication and diminished responsibility. Those do not shift the burden. . . . . I still have to prove his specific intent, that he acted on it there that evening. So it is our intention to address these issues. We believe it squarely goes toward his intent.
>
> Additionally found on that—the computer were several videos about lock picking. I mean, he picked the lock into these girls' apartment. He was found with lock picks on him at the time. And so the contents of his computer, you know, we believe are . . . definitely probative. We have no intention of playing those. I don't think that's necessary or appropriate.

The prosecutor offered to enter into a stipulation of the contents of the computer. Butts acknowledged his psychiatrist's report mentions pornography

and agreed to discuss a stipulation with the State. The court reserved ruling to allow the parties to discuss a possible stipulation.

Trial was held October 12 through 18, 2010. The State presented the testimony of Jennifer, the arresting officers, and other detectives and identification technicians. A redacted fourteen-minute version of the 911 call was played during Jennifer's testimony. Each of the responding officers testified Butts did not appear intoxicated.

Thomas Payne, the business acquaintance who spent much of November 11, 2009, with Butts, testified about their activities that day, including drinks at dinner and then at a bar afterward. Payne stated Butts did not seem depressed. He stated Butts dropped him off at his hotel around 10 p.m., at which time Butts did not appear intoxicated and he "did not have any reservations about riding in the car with him or him driving."

On cross-examination, Payne testified his and Butts' work involved data bases for "the intel community," law enforcement, and the Department of Defense. He described Butts was an "[e]xceptional" employee who was involved in "classified work."

The following stipulation was read into evidence:

> Come now the State of Iowa and Robert M. Butts by and through counsel and hereby stipulate to the following facts:
>
> 1) Various computers, hard drives and electronic media storage devices were seized from the defendant's apartment pursuant to a search warrant executed on November 12, 2009.
>
> 2) These items were forensically examined by federal authorities on March 2, 2010.
>
> 3) Located on the hard drive of one of the computers were numerous pornographic pictures and videos. Many of the videos depicted simulated rape scenes.

> 4) These simulated rape videos appear to be placed on the hard drive from January 7th, 2007 to October 29, 2009.
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> 5) There is no evidence to suggest that any of these videos were accessed or viewed after October 29, 2009.
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> 6) Located on a memory card, SD card, were three Adobe portable document format or PDF files pertaining to lock picking. These files were placed on the SD card on November 30th, 2008 and are listed as follows. A: Secrets of lock picking. B: Ted the tool, MIT guide to lock picking. C: Mini lock picking manual.

The stipulation was a court exhibit only; it did not go to the jury.

Regina then testified. When asked about Butts' demeanor, Regina testified he did not seem drunk or asleep, noting he was "very aware of his surroundings. His eyes weren't glazed over. He wasn't stuttering. He wasn't blinking excessively. He was focused on me the entire time."

Just prior to resting, the State read a stipulation as to the measurements inside the sisters' apartment.

Following the State's case in chief, the defense moved for directed verdict, which was granted as to the obstruction of prosecution charge.

The defense then called Butts' mother, Jeanette Butts, who testified Butts had been a sleepwalker as a child; it was "his life dream to serve his country and to be as good an officer as he could be"; he became "a lot more quiet" upon his return from his 2005 deployment; Butts was not happy with his 2006 assignment in intelligence and cyber warfare; and his civilian career was very stressful.

The defendant's wife testified that as his twenty-year military career went on, Butts "was drinking more, sleeping less, angry more." When asked if he had sleepwalking incidents during the marriage, she stated:

> A. More like talking.

> Q. Talking? A. Yeah. He'd wake me up in the middle of the night and say something, some nonsense and then get mad and leave.
>
> Q. I'm sorry? A. And then he'd get mad and leave. You know, I—when I didn't understand what he was talking about, he'd get—
>
> Q. Leave where? A. Leave the—you know, leave the room.
>
> Q. All right. And you think he was asleep during those times? A. I have no idea. I don't know.

She related that on New Year's Eve 2004 after drinking, Butts chased his one son and shot him with a paint ball gun and then choked his other son until she poked him in the hand with a hat pin. Butts claimed not to remember much of the incident the following day. She offered it was not unusual for Butts—a career military man interested in history, the intelligence field, and gun collecting—to possess guns, night scopes, and the other items found in his apartment.

Psychiatrist Daniel Wilson testified he had determined Butts "suffers from several neuropsychiatric illnesses," including Gulf War Syndrome, Post-Traumatic Stress Disorder (PTSD), childhood closed-head injuries, anxiety, intoxication, and disassociation due to sleepwalking. Dr. Wilson opined Butts "was dissociated[4] and asleep at the time of these events. He was also under a great deal of secondary stress which predisposed him to that dissociation." He stated Butts did not have the requisite ability to form any type of criminal intent.

On cross-examination Dr. Wilson stated,

> I have opinions about a variety of factors, all of which led to a dissociative state as he was somnambulistic as was facilitated by having drunk too much and the other toxic factors in—that probably affected his brain, all of which were made worse by the anxiety and difficulties and mood disorder that lowered the threshold for dissociation, yes.

[4] Dr. Wilson stated dissociative "is a psychiatric term or neurologic term for when the conscious part of the brain is shut off from the unconscious part of the brain."

The prosecutor engaged in the following dialogue with Dr. Wilson:

> Q. . . . I understand what you're saying. There's a variety of things that came together in a synergy and led him to sleepwalk.
>
> I want it to be very clear though that your statement is that at the time of the events in the apartment on Littlejohn Circle of November 11th, 2009, he was sleepwalking. Is that your opinion? A. That is your opinion.
>
> Q. I'm asking you. Is that your opinion? A. I have testified what my opinion is and I've just said and I'll say it again. It does not reduce to that single point. That is a crucial point but that—I have never reduced my diagnosis in this case to Sleepwalking Disorder, period.
>
> . . . .
>
> Q. Okay. Then there's the dissociative state apparently of somnambulism, sleepwalking and my understanding is that's your interpretation or your opinion as to what he ended up in. I understand there's a variety of causes but he ultimately was sleepwalking at the time this event took place. A. Well, when you say ultimately, it's as if you're throwing away a number of other clinical factors which I'm unwilling to do. And if you wish to keep asking me about it, you can continue to ask me about it. But I think I've testified to the range and depth of his symptoms rather fulsomely.
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> . . . .
>
> THE COURT: Okay. Doctor, I'm sorry, and I'm not—I have no interest in the outcome of this case one way or the other. But it's a real simple question. Was he sleepwalking or was he not sleepwalking? THE WITNESS: Yes, I've testified that he was sleepwalking but it is not reduced to that.

Later still, Dr. Wilson stated: "I believe, as I've testified, that he has a sleepwalking disorder, potentiated by substance abuse, potentiated by encephalopathy possibly and potentiated by the general stress and depressive circumstances he found himself in."

Dr. Wilson was asked about his Axis I diagnosis, "Rule-out Paraphilia."[5] He acknowledged he was aware Butts was hypersexual at this time,

[5] Paraphilia is defined as "[a]ny of a group of psychosexual disorders characterized by sexual fantasies, feelings, or activities involving an object, a

masturbating often and viewing simulated rape pornography on his computer. Dr. Wilson testified he did not diagnose Butts with a sexual disorder; rather he attributed these symptoms to a mood disorder and PTSD.

> Q. You're aware in Iowa that temporary insanity caused by voluntary intoxication is not a defense to criminal activity? A. Yeah. I don't believe that I've testified that he was primarily intoxicated and I—I wasn't aware that in Iowa law but—but I don't see that as a salient factor here.
>
> Q. But you did testify that his dissociation and sleepwalking were likely facilitated by drinking? A. Yes.

Butts testified in his own defense at trial, discussing his military service and accompanying accolades in great detail. Butts was asked about the "really disturbing pornography" on his computer, about which he attempted to explain:

> Well, there's a long story to that. But, first of all, I won't deny the fact that I watched pornography, you know. I did. And like I told my son in that very personal letter that you heard an excerpt from, ...
>
> But, anyway, as part of my duties—I can't talk about a lot of them. As part of my duties in my last assignment in the Army there's a lot of that stuff, video files—not just pornography but video files that are a fairly important piece of—of how we do cyber warfare.

He stated he retired from the military in 2008 and began working for a military contractor. Butts testified he "poured [him]self into it to win work." The "work was challenging and exciting but every time we won more work, it meant more work for me and my office." He continued, "they wouldn't increase us. . . . [a]nd by the summer of 2009 I was thinking about killing myself." He testified he was experiencing more and more "combat-related memory stuff" and consequently he was "self-medicating" with alcohol, pornography, and masturbation.

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nonconsenting partner such as a child, or pain or humiliation." *American Heritage College Dictionary* 1009 (4th ed. 2004).

Butts testified that on November 11, 2009, he went out with a fellow business employee and had several drinks—one at dinner and six to eight shots of Irish Whiskey after dinner. He then dropped off his companion and went to a "strip joint" where he had one or two more beers. Butts then returned to his apartment and poured himself a half a glass of scotch: he was numb and depressed. He testified he has no further memory of that evening until he was standing in a hallway with lights in his face about a half hour to an hour later. His attorney asked him, "[Y]ou had to do a lot of gearing up. You had a holster, a gun. You had to put a magazine in. You had a knife; you had these lock picks. Do you remember doing any of those things?" Butts responded, "No, not at all. Imagine my own disappointment."

The defense's objection to the proposed jury instruction concerning Butts' insanity defense (Instruction No. 46) was overruled. The defense had proffered a proposed limiting instruction about pornography, but withdrew it. Defense counsel stated he had conferred with Butts and "we agreed that we do not want the instruction." The court offered to provide a more generic limiting instruction, which Butts rejected.

The jury convicted Butts of second-degree kidnapping, first-degree burglary, going armed with intent, assault while participating in a felony, assault with intent to commit sexual abuse, carrying weapons, and possession of burglar's tools.

Butts now appeals, contending (1) there is insufficient evidence of confinement or removal to sustain the kidnapping conviction; (2) the search warrant was unconstitutionally overbroad; (3) the trial court abused its discretion

in admitting evidence; (4) there was insufficient evidence of specific intent to sustain six of the seven convictions; and (5) the trial court erred in instructing the jury that temporary insanity as a result of intoxication is not a defense.

II. There Was Sufficient Evidence of Confinement or Removal.

> A person commits kidnapping when the person either confines a person or removes a person from one place to another, knowing that the person who confines or removes the other person has neither the authority nor the consent of the other to do so . . . accompanied by . . . [t]he intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.

Iowa Code § 710.1(3) (2009). Butts claims the State failed to prove a necessary element of kidnapping—confinement or removal of the victim.

In evaluating a sufficiency-of-the-evidence claim, our review is for the correction of errors at law. *State v. Hennings*, 791 N.W.2d 828, 832 (Iowa 2010). We review the record in a light most favorable to the State, including all legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record. *Id.* at 832-33. The jury's verdict is binding upon us if there is substantial evidence in the record to sustain it. *Id*. "Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *State v. Jorgensen,* 758 N.W.2d 830, 834 (Iowa 2008).

In *State v. Rich*, 305 N.W.2d 739, 742-45 (Iowa 1981), our supreme court reviewed other states' interpretations of kidnapping statutes and principles of construction and concluded:

> [O]ur legislature, in enacting 710.1, intended the terms "confines" and "removes" to require more than the confinement or removal that is an inherent incident of commission of the crime of sexual abuse. Although no minimum period of confinement or distance of

> removal is required for a conviction of kidnapping, the confinement or removal must definitely exceed that normally incidental to the commission of sexual abuse. Such confinement or removal must be more than slight, inconsequential, or an incident inherent in the crime of sexual abuse so that it has a significance independent from sexual abuse. Such confinement or removal may exist because it substantially increases the risk of harm to the victim, significantly lessens the risk of detection, or significantly facilitates escape following the consummation of the offense.

Rich, 305 N.W.2d at 745 (noting while "movement of the victim the short distance from the mall into the restroom in and of itself was not sufficient confinement or removal within the meaning of section 710.1," "his actions indicate that he sought the seclusion . . . as a means of avoiding detection"; and "binding of the victim's hands behind her back was not necessary to the commission of the sexual abuse and is not a normal incident of that offense"); *see also State v. Griffin*, 564 N.W.2d 370, 373 (Iowa 1997) ("[B]y ordering [the victim] to take off her clothes prior to the sexual assault, [the defendant] was able to keep her confined to the motel room prior to the assault, lowering his chances of detection and increasing the risk of harm to [the victim]."); *State v. Hardin*, 359 N.W.2d 185, 190 (Iowa 1984) ("From the evidence introduced at trial the jury could have found beyond a reasonable doubt that defendant assaulted the victim in her car, then dragged her out of the car and forced her into his residence where his actions would be less detectable and where he might batter her at will. In the house the risk of detection would be less likely, the risk of harm to the victim more likely.").

Butts argues any confinement and removal here was merely incidental to the attempted sexual assault.[6] We conclude, however, there was substantial

[6] We decline to address the State's request that this court hold the "incidental rule" is applicable only to cases involving first-degree kidnapping. *See State v. McGrew*,

evidence from which a rational jury could find, as they were instructed, that the period of confinement or distance of removal exceeded what is normally incidental to the commission of sexual abuse and increased the risk of harm to the victim and lessened the risk of detection. *See State v. Misner*, 410 N.W.2d 216, 222 (Iowa 1987) (delineating standards by which a jury could determine whether evidence demonstrated a confinement or removal sufficient to support a charge of kidnapping); *see also State v. Davis*, 584 N.W.2d 913, 916-17 (Iowa Ct. App. 1998) (noting that "[s]ecluding the victim lessens the risk of detection and further increases the risk of harm to the victim").

Butts entered the victim's apartment and then re-deadbolted the front door. The jury could infer that because the police could hear the television when they were at the door, Butts did too when he broke in and chose to secrete her to a different room. Butts asked Regina if there was anyone else there. Then, armed with a gun, which he pointed at Regina, he forced her from the front room to the farthest room down the hall. He attempted to shut the door to the room. He forcibly disrobed her. When there was a knock on the door, Butts told Regina if she screamed, he would hurt her. Butts' actions lessened the risk that persons might be able to hear any disturbance within, and increased the danger of harm to the victim. Butts' actions exceeded that which would have been necessary to sexually abuse the victim, and the court therefore properly submitted the offence of kidnapping to the jury.

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515 N.W.2d 36, 39 (Iowa 1994) ("The rationale behind the 'incidental rule' arises from our recognition that confinement of a victim, against the victim's will, is frequently an attendant circumstance in the commission of many other crimes, notably robbery and sexual abuse.").

Butts points out the confinement lasted only about fourteen minutes, but no minimum period of time is required, and the duration was cut short only because a 911 call was made and law enforcement officers arrived. The nature of the threat to Regina was substantial. The fact the victim was rescued does not alter the nature of the confinement. *See State v. Tyron*, 431 N.W.2d 11, 15 (Iowa Ct. App. 1988) ("The fact that the victim was adroitly able to abort defendant's scheme [by convincing him to untie her and not to kill her] does not alter the underlying nature of the confinement."). Sufficient evidence of independent removal and confinement was presented.

III. The Search Warrant Was Not Unconstitutionally Broad.

Butts next challenges the trial court's conclusion the search warrant was not overbroad. Because Butts challenges the validity of the search warrant on constitutional grounds, our standard of review is de novo. *State v. Thomas*, 540 N.W.2d 658, 661 (Iowa 1995).

Both the United States and Iowa Constitutions require the warrant and affidavits particularly describe what is to be searched and what is to be seized. U.S. Const. amend. IV; Iowa Const. art. I, § 8. The warrant applicant must show "a nexus between the criminal activity, the things to be seized and the place to be searched." *Thomas*, 540 N.W.2d at 663. The required nexus "can be found by considering the type of crime, the nature of the items involved, the extent of the defendant's opportunity for concealment, and the normal inferences as to where the defendant would be likely to conceal the items." *State v. Groff,* 323 N.W.2d 204, 212 (Iowa 1982).

> If, based on the showing that has been made in the application, a warrant is overbroad in the sense that it permits places to be searched or items to be seized for which probable cause has not been shown, it is nevertheless valid as to all places and items described in the warrant for which probable cause has been shown. *United States v. Brown,* 984 F.2d 1074, 1077 (10th Cir.), *cert. denied,* 510 U.S. 873, 114 S. Ct. 204, 126 L. Ed. 2d 161 (1993); *United States v. Blakeney,* 942 F.2d 1001, 1027 (6th Cir.), *cert. denied,* 502 U.S. 1008, 112 S. Ct. 646, 116 L. Ed. 2d 663 (1991).

State v. Randle, 555 N.W.2d 666, 671 (Iowa 1996).

> A description is sufficiently particular when it enables the searcher reasonably to ascertain and identify the things to be seized. When a warrant affiant has probable cause but cannot give an exact description of the materials to be seized, a warrant will generally be upheld if the description is as specific as the circumstances and the nature of the activity under investigation permit.

State v. Todd, 468 N.W.2d 462, 467 (Iowa 1991) (citations omitted).

The affidavit in support of the search warrant here sets out the particulars of the events of November 11, 2009. Officers received information that Butts had picked a lock, carried two weapons, and assaulted a young woman. The crime was interrupted because the victim's sister was hiding, called 911, related to police that Butts had taken the victim to the back bedroom, and police arrived and arrested Butts, who refused to provide any information as to his identity. During the booking process, Butts provided his name. Subsequently, an officer located a vehicle registered to Butts outside a building in the same apartment complex as the victim. The officer also spoke to a resident of the building who stated Butts resided there, lived alone, and related only that he was a "business man." The affiant stated "I believe there is relevant evidence stored inside . . . pertaining to this investigation."

The search warrant application described the property to be searched, including various specified types of financial documents; paper, tickets, and schedules relating to interstate travel; addresses and telephone books; indicia of occupancy; computer software; firearms and ammunition; lock picks and lock pick information; latex gloves and clothing.

Butts takes issue with the fact Detective Ray Robinson used language from other search warrants as examples in preparing his application in this case. Because Butts was accused of committing numerous offenses involving attempted sexual assault, lock-picking equipment, two weapons, and gloves, officers could reasonably believe items related to this and similar crimes might be found in his residence. We agree with the district court and the State that the significant number of items listed is more reflective of the nature of the crimes than it is the inadequacy of the warrant.

> The issuing judge "is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information," probable cause exists. *Illinois v. Gates,* 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527, 548 (1983); *accord State v. Hennon,* 314 N.W.2d 405, 407 (Iowa 1982). In doing so, the judge may rely on "reasonable, common sense inferences" from the information presented. *See* [*State v. Green,* 540 N.W.2d 649, 655 (Iowa 1995)].

State v. Gogg, 561 N.W.2d 360, 363 (Iowa 1997).

Butts also emphasizes Detective Robinson was less than certain about the relevance of some of the items requested in the application. However, Detective Robinson's answers at the motion to suppress hearing are irrelevant in evaluating the validity of the warrant. *See id.* (noting in reviewing the warrant for probable cause "we are 'limited to consideration of only that information, reduced

to writing, which was actually presented to the [judge] at the time the application for warrant was made'" (citation omitted)).

Upon our de novo review, we conclude the description of the items to be searched is "as specific as the circumstances and the nature of the activity under investigation permit." *Todd*, 468 N.W.2d at 467.

Our supreme court has summarized the applicable law in *Randle*, 555 N.W.2d at 671:

> Both the Iowa and United States Constitutions, as well as the Iowa Code, require that the warrant and affidavits particularly describe what is to be searched and what is to be seized. U.S. Const. amend. IV; Iowa Const. art. I, § 8; Iowa Code § 808.3 [(2009)]. The resolution of this issue turns on the probable cause issue discussed above. Iowa cases require a "nexus between criminal activity, *the things to be seized and the place to be searched.*" [*State v.*] *Weir*, 414 N.W.2d [327,] 330 [(Iowa 1987)] (emphasis added). The required nexus "can be found by considering the type of crime, the nature of the items involved, the extent of the defendant's opportunity for concealment, and the normal inferences as to where the defendant would be likely to conceal the items." *State v. Groff,* 323 N.W.2d 204, 212 (Iowa 1982).

Here, the application and warrant specifically refer to firearms, ammunition, any records pertaining to the firearms, lock picks, lock picking instructions, and latex gloves. All of these items have a nexus to the crime allegedly committed. The issuing magistrate could have inferred Butts' residence was the likely location for associated items that were connected to, or similar in nature to, the items in Butts' possession at the time he was arrested at the scene, and as attested to in the affidavit supporting the application. We would agree the financial records sought and evidence of travel have no nexus to the crime allegedly committed except to verify the true identity of Butts. The affidavit

provides in part, "At the time the officers first made contact with the suspect, he refused to provide any information relating to his identity."

Although his identity was later provided during the booking process, verification from other sources was reasonable. A search to aid in determining the true identity of a perpetrator was approved in *Blakeney*, 942 F2d.2d at 1027. In *Blakeney* the court stated,

> We do not conclude, however, that the other items listed lacked the requisite particularity. For example, the paragraph authorizing the seizure of "indicia of occupancy, residency, and/or ownership of the premises" gave specific examples of the types of documents that satisfied this general authorization. The magistrate knew that location to be searched was listed under a false name based on utilities records. . . . Consequently any document or other object that would tend to provide the true identity of the owners or occupants of the premises where evidence of a robbery is located would be relevant in determining the perpetrators of the robbery. Likewise travel documents, motel records, telephone records, maps and false identification would also aid in the identification of the perpetrators of the robbery. The specific examples of indicia of identity, records of travel to the location of the robbery, and instruments used to perpetrate the robbery detailed in the warrant were as limited as practicable under the circumstances.

942 F.2d at 1027. Although the facts in this case do not suggest the property to be searched was listed in a false name as in *Blakeney*, law enforcement officers in this case similarly could be compelled to verify the identity of the perpetrator due to his refusal to identify himself.

The warrant sufficiently described the items sought with particularity and was not constitutionally overbroad.

IV. The Trial Court Did Not Abuse Its Discretion in Its Evidentiary Rulings.

A. Standard of Review. We review a district court's evidentiary rulings regarding the admission of evidence of an abuse of discretion. *State v. Paredes*,

775 N.W.2d 554, 560 (Iowa 2009); see *also State v. Cox*, 781 N.W.2d 757, 760 (Iowa 2010) (reviewing district court's ruling regarding admission of prior bad acts evidence for abuse of discretion). "An abuse of discretion occurs when the trial court exercises its discretion 'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Rodriquez*, 636 N.W.2d 234, 239 (Iowa 2001) (citation omitted).

B. Redacted 911 Call. Jennifer testified she called 911; she was present in the apartment while Butts was there; and she had to unlock the door to allow the officers to enter the apartment. Emergency calls to 911 have been deemed properly admitted into evidence. *See generally State v. Augustine,* 458 N.W.2d 859, 860-61 (Iowa Ct. App.1990) (allowing the admission of a 911 tape into evidence). On appeal, Butts challenges only the final minute of that redacted recording, contending "the sounds of the hysterical cries and sobs were too prejudicial for the jury to hear."

The court ordered the final ten minutes of the recording excised and stopped the in-court version at the point the police arrived and Jennifer was safely out of the apartment. Butts contends the trial court abused its discretion in failing to further redact the 911 call. We find no abuse of discretion as the trial court tailored the 911 recording, omitting all but a few seconds of the caller's emotional release. We cannot agree the trial court abused its discretion or Butts was unduly prejudiced.

C. Stipulation of Evidence Relating to Pornography Depicting Simulated Rape. As noted above, Butts moved in limine objecting to the admission of pornographic videos found during the search of his computers and digital storage

devises. The district court asked: "Aren't you contesting what his intent was?" The defense admitted they were, that the videos might be material but because the videos hadn't been accessed the night in question, their probative value was lessened. Counsel noted there were twenty computer files and he did not know which the State intended to show the jury and asked the State specify which videos it intended to show the jury. The prosecutor responded he had "no intention of showing any pictures or playing any videos for the jury in this case." The court reserved ruling on that objection, and the parties subsequently entered into a stipulation as to the evidence found during the search.

On appeal, Butts argues "the district court abrogated its duty to rule on the admissibility of the adult pornography evidence and implicitly forced the defendant to accept the stipulation." During the hearing, the court stated:

> All right. It will be the ruling of the Court then that the—the parties engage some type of stipulation to be sent to the Court with respect to the existence of this material and the jury can be advised with respect to that. If there's not an agreement between the parties, the parties are directed to submit the same to the Court and the Court will make the final determination with respect to the content of that stipulation. Short of there being a stipulation, the Court will—will allow showing of a very limited portion of one of these to—to—so that the—the jury can decide with respect to—or be made aware of—I guess what I'm trying to avoid here is that—that we're—the content of the stipulation that you're trying to avoid rape and whatever, if—if you can't come up with precise language, then I suggest that we pick out one of those, show a very short portion of that and the jury can decide whether or not what they're simulating and—but I'm hopeful that you folks will be able to come up with some type of resolution.

We acknowledge that in hindsight the district court should have avoided commenting upon what he perceived might be his ruling. However, we find no basis to conclude the district court abrogated its duty or forced Butts to accept

the terms of the stipulation. The prosecutor had already conveyed that the State did not plan to show any pictures or play any videos for the jury before the court's comments. As observed by Butts, after the State offered to forego presenting the pictures and videos and to cooperate with defense counsel in formulating a jointly agreed upon stipulation, a stipulation was reached, and the court never ultimately ruled upon the motion.

Butts also contends the evidence was irrelevant and unfairly prejudicial, focusing his complaint on the fact he had not accessed the pornographic files since October 29, 2009, about two weeks before the crimes.

Relevant evidence is evidence having "any tendency to make the existence of any fact that is of consequence . . . more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. Unfair prejudice is an "undue tendency to suggest decision on an improper basis, commonly, though not necessarily, or emotional one." *State v. Cromer*, 765 N.W.2d 1, 9 (Iowa 2009).

Generally, evidence of an accused's other "crimes, wrongs, or acts" is inadmissible to prove the accused's propensity to behave in a certain manner. *See* Iowa R. Evid. 5.404(*b*) ("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."). However, such evidence is generally admissible for purposes other than proving propensity; for instance, such evidence may be used to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.; see, e.g.*, *State v. Elston*, 735 N.W.2d 196, 200 (Iowa 2007) (concluding pornographic images of young girls had great

probative value on the question of whether defendant touched minor "for the purpose of arousing or satisfying the sexual desires of either [himself or the child]"). Other states have ruled similar evidence found in the possession of the defendant is relevant for the purpose of showing intent. *See State v. Rossignol*, 215 P.3d 538, 545 (Idaho Ct. App. 2009) (concluding pornography shown to victim corroborated victim's story and incest stories found at defendant's house were relevant to the intent element of the crimes defendant was charged with and to show his motive and plan to engage in sexual acts with his daughter); *State v. Ramsey*, 124 P.3d 756, 767-68 (Ariz. Ct. App. 2005) ("We agree with the state that the pornographic material was relevant to Ramsey's 'intent and motive to have a sexual relationship with [A.].'")

The trial court concluded Butts' possession of pornography depicting simulated rape and lock picking equipment was relevant and probative of his intent when he broke into the sisters' apartment and forced Regina to disrobe. We note the evidence could also be found probative of motive, preparation, and absence of mistake or accident. *See* Iowa R. Evid. 5.404(*b*). The trial court did not abuse its discretion in concluding the materials were relevant.

We also do not find the evidence unfairly prejudicial. First, the prejudicial effect of the evidence was blunted in that the jury did not view any pornography; rather the jury received a rather sanitized statement. Further, the topic of pornography was raised in Dr. Wilson's report and was the subject of Butts' defense. In fact, Butts' attorney acknowledged,

> I do have to admit that Dr. Wilson did examine Mr. Butts on issues of pornography and masturbation and those things and they're

> mentioned in the report. I don't have any problem with that because it's done in a very subdued clinical way.

We also do not believe a passage of two weeks since Butts viewed the materials was so significant a passage of time as to render the information irrelevant. The fact Butts had not viewed the simulated rape scenes immediately before the crimes does not destroy their relevance; rather, it goes to the weight of the evidence. *See State v. Casady,* 491 N.W.2d 782, 785 (Iowa 1992) (stating a claim of remoteness generally goes to weight rather than admissibility). Here, the jury was instructed the stipulation was evidence, but also that they were entitled to determine the weight and value it deserved.

Further, Butts specifically rejected a limiting instruction on the subject of pornography, deciding it was "perhaps a red flag" for the jury. When informed of this tactical decision, the trial court offered to make the limiting instruction more neutral, referring to "any person in possession of pornography" rather than to the defendant. To the extent a cautionary instruction would have minimized any danger of the jury misusing the evidence of pornography, Butts declined to have the jury so instructed.

V. There Was Sufficient Evidence of Specific Intent to Sustain the Convictions.

Butts next contends the court erred in not dismissing all counts because the State failed to prove he had specific intent to commit the charged offenses. He relies upon the opinions of Dr. Wilson, who testified Butts was dissociated and sleepwalking, suffered from diminished responsibility, and lacked the requisite ability to form specific intent.

We first note all but one of Butts' convictions required a finding of specific intent: carrying weapons is a general intent crime. *See State v. Krana*, 246 N.W.2d 293, 295 (Iowa 1976) (noting, however, that the defendant "must be aware of the presence of the gun"). Butts' claim of diminished responsibility is not a defense to this general intent crime. *See Anfinson v. State*, 758 N.W.2d 496, 502-03 (Iowa 2008). We will discuss Butts' general awareness later.

The State bears the burden of proving specific intent, and the jury was so instructed. "Intent is 'seldom capable of direct proof' . . . and 'a trier or fact may infer intent from the normal consequences of one's actions.'" *State v. Evans*, 671 N.W.2d 720, 724-25 (Iowa 2003) (citation omitted). "[A defendant] will generally not admit later to having the intention which the crime requires . . . his thoughts must be gathered from his words (if any) and actions in light of surrounding circumstances." *State v. Radeke*, 444 N.W.2d 476, 478-79 (Iowa 1989) (quoting W. LaFave & A. Scott, *Handbook on Criminal Law,* § 3.5(f), at 226 (2nd ed. 1986)).

To convict Butts of second-degree kidnapping, the State was required to establish he had the specific intent to inflict serious injury on Regina or subject her to sexual abuse. The evidence at trial established Butts picked the lock to enter the sisters' apartment and, while wearing gloves, was armed with a knife and a gun. He asked Regina sexual questions, threatened to harm her if she screamed, and pulled her clothes off. The jury could reasonably infer he specifically intended to subject her to sexual abuse.

To convict Butts of first-degree burglary, the jury was instructed the State was required to prove he formed the specific intent to commit an assault. In

addition to the fact Butts carried two weapons into the apartment, he told Regina he would hurt her if she failed to comply with his demands or if she screamed. He pointed the gun at her; grabbed her; forced her into the bedroom; and forcibly removed her sweater, tank top and bra. This constitutes substantial evidence from which the jury could find Butts entered the sisters' apartment with the specific intent to commit assault.

To convict Butts of going armed with intent, the jury was instructed the State was required to establish he had the specific intent to use a weapon against another person. The evidence shows Butts—wearing plastic gloves—was armed with a knife and a loaded gun, which he pointed at Regina. The jury was free to infer the normal consequence of these actions was an intent to use the weapons against another person. *See Evans*, 671 N.W.2d at 725. Moreover, Butts had the gun pointing at Regina as he forced her from the couch in the living room to move into the bedroom.

To convict Butts of assault with intent to commit sexual abuse, the State had to demonstrate Butts assaulted Regina with the specific intent to commit a sex act by force or against her will. It has been said that in evaluating evidence of intent to commit sexual abuse, the following supported such a finding:

> a sexual comment made by the defendant to the victim, touching in a sexual way, the removal or request to remove clothing, or some other act during the commission of the crime that showed a drive to engage in sexual activity . . . .

Casady, 491 N.W.2d at 787. Butts asked the victim if she had sex with her boyfriend, forced her into a bedroom, and told her to disrobe; when she refused,

he forcibly disrobed her. These actions demonstrated his specific intent to commit a sex act.

To convict Butts of assault, the jury was instructed the State must prove he

> did an act which was intended to cause pain or injury or result in physical contact which was insulting offense or placed [the victim] in fear of an immediate physical contact which would be painful, injurious, insulting or offensive to her.

See Iowa Code § 708.1(1), (2). Both alternatives on which the jury received instructions are specific intent crimes. *State v. Fountain*, 786 N.W.2d 260, 265 (Iowa 2010). We have already found substantial evidence supported the crime of assault with the intent to commit sexual abuse and Butts pointed a gun at Regina, so further discussion is unnecessary.

Finally, to prove Butts committed an assault while participating in a felony, the State had to prove Butts guilty of assault while participating in the crime of burglary. Assault and burglary are specific intent crimes, which we have already discussed. Butts' actions also support the conviction of the general intent crime of carrying weapons as he carried a loaded gun in the city limits, voluntarily with full awareness, and not by accident or mistake.

Notwithstanding the State's evidence, Butts argues the evidence of specific intent was contradicted by the testimony of his expert witness, Dr. Wilson, who offered opinions that Butts was insane and did not have the ability to form specific intent. Dr. Wilson diagnosed Butts with a combination of Gulf War Syndrome, PTSD, anxiety, depression, childhood closed-head injuries, and alcohol abuse, as well as disassociation caused by sleepwalking during the

commission of the crimes. Dr. Wilson's diagnoses were vigorously challenged by the State and many of the foundations of his findings were found to be erroneous. Butts had no previous diagnosis of these conditions and had specifically denied mental illness and a history of sleepwalking on numerous documents.

The jury was free to believe all, some, or none of a witness's testimony. *State v. Forsyth,* 547 N.W.2d 833, 836 (Iowa Ct. App. 1996). The jury as finder of fact was free to give Dr. Wilson's testimony such weight as they thought it should receive. *See State v. Shanahan,* 712 N.W.2d 121, 135 (Iowa 2006) (stating a finder of fact is free to believe or disbelieve the testimony of witnesses as it so chooses); *Waddell v. Peet's Feeds, Inc.,* 266 N.W.2d 29, 32 (Iowa 1978) ("The fact finder is not obliged to accept expert testimony, even if it is uncontradicted, although testimony should not be arbitrarily and capriciously rejected."). The very function of a finder of fact is to sort out the evidence presented and place credibility where it belongs. *Shanahan,* 712 N.W.2d at 135.

The jury's rejection of Dr. Wilson's testimony was neither arbitrary nor capricious. The mental defense presented by Butts, especially in light of the somnambulism component, could properly be rejected as unconvincing. Given Butts' behavior of loading a gun; donning a hooded shirt, a knife, a gun and holster, a lock-picking kit, and latex gloves; then proceeding to an neighboring apartment; picking the lock; entering that apartment; relocking the deadbolt; speaking with and threatening the young woman; forcing her to another room; and forcibly disrobing her; the jury could find it difficult to believe he was unaware of his actions and did not intend the consequences of those actions. Through his

words and deeds, the jury could conclude Butts had the specific intent required for each of the charges upon which he was convicted. The jury was under no obligation to accept the defense expert's opinion to the contrary.

VI. The Trial Court Did Not Err in Instructing the Jury.

Butts' final complaint concerns a portion of jury Instruction No. 46 submitted by the court on the subject of the insanity defense, which reads:

> The Defendant claims he is not criminally accountable for his conduct by reason of insanity. A person is presumed sane and responsible for his acts.
>
> Not every kind or degree of mental disease or mental disorder will excuse a criminal act. "Insane" or "insanity" means such a diseased or deranged condition of the mind as to make a person either incapable of knowing or understanding the nature and quality of his act(s), or incapable of distinguishing right and wrong in relation to the act(s).
>
> A person is "sane" if, at the time he committed the criminal act, he had sufficient mental capacity to know and understand the nature and quality of the act and had sufficient mental capacity and reason to distinguish right from wrong as to the particular act.
>
> To know and understand the nature and quality of one's acts means a person is mentally aware of the particular act(s) being done and the ordinary and probable consequences of them.
>
> Concerning the mental capacity of the defendant to distinguish between right and wrong, you are not interested in his knowledge of moral judgments, as such, or the rightness or wrongness of things in general. Rather, you must determine the defendant's knowledge of wrongness so far as the act(s) charged is/are concerned. This means mental capacity to know the act(s) was/were wrong when he committed them.
>
> *Temporary insanity which arises from voluntary intoxication is not a defense. This is true even though the defendant's temporary state of mind may meet the requirements of legal insanity.*
>
> The defendant must prove by a "preponderance of the evidence" that he was insane at the time of the commission of the crime.
>
> Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.
>
> Insanity need not exist for any specific length of time.

(Emphasis added.)

Butts argued the "instruction generally is word for word out of the stock instruction except for the fourth paragraph from the bottom" concerning temporary insanity, which did not accurately state the current law of Iowa, "nor do I think the facts of this case support this particular instruction."

On appeal, Butts contends the instruction was erroneous because "[t]he State adduced no independent, objective evidence of Butt's intoxication." With this aspect of his argument we point out Butts testified he self-medicated with alcohol; he drank several drinks on November 11, 2009; he stated "I probably was" drunk; and his psychiatrist opined Butts was in "a dissociative state as he was somnambulistic *as was facilitated by having drunk too much* and the other toxic factors somnambulant state." Thus, there was evidence of voluntary intoxication.

We review challenges to jury instructions for correction of errors at law. *State v. Hanes*, 790 N.W.2d 545, 548 (Iowa 2010). "Our review is to determine whether the challenged instruction accurately states the law and is supported by substantial evidence." *State v. Spates*, 779 N.W.2d 770, 775 (Iowa 2010). "Errors in jury instructions are presumed prejudicial unless 'the record affirmatively establishes there was no prejudice.'" *State v. Murray*, 796 N.W.2d 907, 908 (Iowa 2011) (quoting *Hanes,* 790 N.W.2d at 551). We do not consider an erroneous jury instruction in isolation, but look at the jury instructions as a whole. *Id.*

The challenged part of the instruction reads: "Temporary insanity which arises from voluntary intoxication is not a defense. This is true even though the defendant's temporary state of mind may meet the requirements of legal insanity." The statement is a direct quote from a legal treatise cited by our supreme court in *State v. Booth*, 169 N.W.2d 869, 873 (Iowa 1969). *See State v. Broughton*, 425 N.W.2d 48, 49 (Iowa 1988) ("Intoxication of course, is not a complete defense to a crime; it is relevant, however, 'in proving the person's specific intent . . . or in proving any element of the public offense . . . .'" (citing Iowa Code § 701.5)). *But see State v. Marin*, 788 N.W.2d 833, 836 (Iowa 2010) ("We have never decided if a defendant can use involuntary intoxication as a complete defense to his or her criminal liability.").

Butts argues "the *Booth* language does not belong in Iowa's model insanity defense instruction." He asserts the language used was "incomplete" and "highly misleading" in part because it did not incorporate the modifier "wholly" as used the phrase in *Booth*. In *Booth* the court stated, "Defendant's affirmative defense of insanity depends wholly upon his state of voluntary intoxication at the time of the alleged offense." 169 N.W.2d at 873. It is apparent in *Booth* our supreme court used the modifier "wholly" because the facts in that case did not otherwise support an insanity instruction, although there was some evidence the defendant had a mental disorder. Ultimately, our supreme court affirmed the trial court's refusal to instruct the jury on insanity as a defense based upon voluntary intoxication. *Id*. at 874. Further, we observe the supreme court did not use the word "wholly" in its decision in *Broughton*, where it again stated "[i]ntoxication . . . is not a complete defense." 425 N.W.2d at 49.

Here the court placed language of intoxication within the insanity defense. The Uniform Instructions, however, do not do so. Rather, intoxication as a defense is addressed in a separate instruction, Iowa Uniform Instruction No. 200.14. The jury in this case received the uniform instruction pertaining to intoxication in Instruction No. 48, which correctly states that "even if a person is under the influence of an intoxicant, he is responsible for his act if he had sufficient mental capacity to form the specific intent necessary to the crime charged . . . ." The jury was also instructed in Instruction No. 47 (Iowa Uniform Instruction No. 200.13) that the State must prove "the defendant acted with specific intent" and the "lack of mental capacity to form specific intent is known as 'diminished responsibility.'"

"[A] trial court is not required to instruct in the language of requested instructions so long as the topic is covered by the court's own instructions." *State v. Doss*, 355 N.W.2d 874, 881 (Iowa 1984). "When a single jury instruction is challenged, it will not be judged in isolation but rather in context with other instructions relating to the criminal charge." *State v. Stallings*, 541 N.W. 2d 855, 857 (Iowa 1995); *see Murray*, 796 N.W.2d at 908. If the jury has not been misled when the instructions are considered as a whole, there is no reversible error. *Hanes*, 790 N.W.2d at 551 ("Our analysis of prejudice is also influenced by an evaluation of whether a jury instruction could reasonably have misled or misdirected the jury.").

Here, the trial court's statement that "temporary insanity that arises from a voluntary intoxication is not a defense," is, an incomplete statement of the law only as it relates to the "defense" of intoxication. In that regard, we decline to

consider Instruction No. 46 in isolation, but rather in conjunction with Instruction No. 48, which further illuminates or qualifies "[i]ntoxication is a defense only when it causes a mental disability which makes the person incapable of forming the specific intent." Thus, when the instructions are considered as a whole, the jury was properly instructed on the "defense" of intoxication. However, Butts does not complain the jury was improperly instructed on the "defense" of intoxication, rather his complaint pertains to the insanity instruction.

We also conclude Instruction No. 46, the insanity instruction, properly instructed the jury Butts could not avail himself to the defense of insanity if Butts' mental condition was caused by voluntary intoxication. *Booth*, 169 N.W.2d at 873; *see also State v. Hall*, 214 N.W.2d 205, 207 (Iowa 1974) (approving trial court's rejection of insanity instruction for voluntary ingestion of drugs, finding no distinction between intoxication by alcohol or drugs).

We reject Butts' contention "the challenged language allowed the jury to find Butts not insane if it determined voluntary intoxication played any part in rendering him" insane. The instruction only provides temporary insanity that "arises from voluntary intoxication" is not a defense. The instruction does not say insanity arising from any other cause is negated or nullified if intoxication or ingestion of alcohol acted in concert with any other cause, or if there is any evidence of intoxication or ingestion of alcohol. We note Butts does not argue he was prevented from making such arguments in his summation.

We also conclude no additional burden was placed upon Butts, as he alleges, to prove his insanity was not due to voluntary intoxication. In any case where there is sufficient evidence to instruct on both the defenses of insanity and

intoxication, the defendant would face the same burden to prove by a preponderance of the evidence he was insane at the time of the commission of the offense, and the cause of the defendant's insanity was not due to intoxication.

Finally, there was substantial evidence to support giving the intoxication instruction although the evidence of intoxication was contradictory. Moreover, we know of no authority, nor has Butts cited any, that requires the State to present "independent, objective evidence of Butts' intoxication" before the court must instruct on the issue. "It is well settled that the court must instruct on all material issues so the jury understands the matters which they are to decide." *State v. Jenkins*, 412 N.W.2d 174, 176-77 (Iowa 1987) (approving the court's instruction on the defense of intoxication although defendant did not request the instruction and further claimed it permitted the jury to disregard the defendant's primary defense of insanity).

We conclude the jury was not misled, but rather could clearly understand the law in respect to both the defense of insanity and voluntary intoxication when the instructions are read as a whole.

AFFIRMED.