IN THE COURT OF APPEALS OF IOWA

No. 2-607 / 11-1892
Filed August 8, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY MATTHEW JUERGENS,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge (ruling in limine), and Randal J. Nigg, District Associate Judge (trial).

Jeffrey Juergens appeals from conviction of indecent exposure. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Ralph Potter, County Attorney, and Christine O. Corken, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Jeffrey Juergens appeals a conviction for indecent exposure after a jury trial. He contends there was insufficient evidence to support the conviction and that the court erred in admitting evidence of a prior bad act. The insufficient-evidence claim is premised upon an argument that Juergens was not identified as the perpetrator. Upon our review, we conclude Juergens was sufficiently identified as the perpetrator. The trial court did not abuse its discretion in admitting the prior bad act. We affirm.

I. Facts.

On August 20, 2010, fifteen-year-old S.W. was in her back yard sunbathing when she heard a noise, looked up, and saw her neighbor, Jeffrey Juergens, standing at the property line between his yard and her yard masturbating. S.W. ran to the house of another neighbor, Bob Baker, "shaking like a leaf" and repeating "he was naked, he was jacking off." When Baker asked her, "Who?" she said, "Jeff Juergens." Baker called the police.

When police arrived, S.W. told officers that she had seen her neighbor, Juergens, in the backyard masturbating and pointed out which house was his. Captain Russell Stecklein went to Juergens' house and spoke with Juergens, who (eventually) told the officer that he went outside, and his shorts "fell down"; he had an erection and "he grabbed it just to put it back in his shorts." Juergens signed a written statement indicating that he had an erection that "popped out" and that he would like counseling.

At a subsequent indecent exposure trial, the State informed the court it intended to introduce evidence of prior reports by Gemma Spangler and her father, Richard Spangler, of their neighbor—Juergens—having been observed masturbating at his front picture window in 2007. Pursuant to Iowa Rule of Evidence 5.404(b), the State asserted the evidence was relevant to the defendant's intent and his claim that S.W.'s observations were mistaken. Juergens objected.

After a hearing on the admissibility of the Spangler's proposed testimony, the district court ruled testimony by Gemma Spangler would not be allowed. However, the court found Richard Spangler's testimony was "relevant to the legitimate disputed issue of defendant's intent," and his observations were sufficiently proven and similar to the asserted crimes to be allowed. The court concluded:

> Richard Spangler's testimony unquestionably is prejudicial. However, the Court does not conclude that "its probative value is *substantially* outweighed by the danger of *unfair* prejudice. Iowa R. Evid. 5.403 (emphasis added). There is sufficient similarity between the act Mr. Spangler has described and the crime charged. There also is genuine need for the evidence given the parties' positions as to the element of intent.

At trial, S.W. testified she saw Juergens masturbating on August 20, 2010. Baker testified S.W. came running to his house visibly shaken and upset, repeatedly saying their neighbor Juergens was naked and "jacking off." Richard Spangler testified he lived across the street from Juergens and that about three years prior to August 20, 2010, he observed Juergens masturbating while standing in the front window as Spangler's daughter was driving away. The jury

was instructed that the testimony of "other wrongful acts alleged to have been committed" by the defendant was "only to be used to show intent or absence of mistake or accident." The jury found Juergens guilty as charged.

On appeal, Juergens contends there is insufficient evidence that he was the perpetrator, because S.W. "only testified that the defendant at trial was the same man she had seen at the deposition." He also contends the State was impermissibly allowed to introduce propensity evidence. We reject both contentions.

II. Analysis.

Sufficency of evidence. At the close of the State's evidence, Juergens' attorney moved for a directed verdict of acquittal. We review sufficiency-of-the-evidence challenges for correction of errors at law. *See State v. Vance*, 790 N.W.2d 775, 783 (Iowa 2010). We will sustain the jury's verdict if it is supported by substantial evidence. *Id*. "'Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt.'" *Id.* (citation omitted).

Viewing the evidence in the light most favorable to upholding the jury's verdict, and accepting all inferences that arise from the evidence, *see State v. Sanborn*, 564 N.W.2d 813, 816 (Iowa 1997), we find substantial evidence identifying Juergens as the person who masturbated in S.W.'s presence. S.W. told her neighbor, Baker, the person she saw masturbating was their neighbor Juergens. She pointed out his house to police, who spoke with Juergens. Officer Stecklein testified he went to that house and spoke to a Juergens, who

admitted his erect penis "popped out" of his shorts. Captain Stecklein then testified the person that came to the door and identified himself as Jeffrey Juergens was the defendant.

Prior bad acts. We review rulings on the admission of evidence of prior bad acts for an abuse of discretion. *State v. Reyes*, 744 N.W.2d 95, 99 (Iowa 2008). "An abuse of discretion occurs when the trial court 'exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable.'" *State v. Greene,* 592 N.W.2d 24, 27 (Iowa 1999) (quoting *State v. Smith,* 522 N.W.2d 591, 593 (Iowa 1994)). The district court properly considered relevant factors and issued a well-reasoned and well-written ruling on the matter. We add that the need and relevancy for Spangler's testimony to show intent was heightened when Juergens directly refuted the intent element during Captain Stecklein's investigation. Moreover, the jury was given a cautionary instruction that the evidence of the other wrongful act could only be used to establish intent or absence of mistake or accident of the crime charged. We presume the jury followed the instructions given. *State v. Simpson*, 438 N.W.2d 20, 21 (Iowa 1989). We find no abuse of discretion. We therefore affirm.

AFFIRMED.