

IN THE COURT OF APPEALS OF IOWA

No. 3-400 / 12-0622
Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEROME NEAL WILLIAMS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Williams appeals his conviction for domestic abuse assault-third offense.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Michelle Wagner, Assistant County Attorney, and Adam Kenworthy, Student Legal Intern, for appellee.

Heard by Eisenhauer, C.J., and Vaitheswaran and Tabor, JJ.

EISENHAUER, C.J.

Jerome Neal Williams appeals his conviction for domestic abuse assault—third offense. He argues the district court abused its discretion by permitting the admission of prior bad acts evidence. We affirm.

I. Background Facts and Proceedings.

In October of 2008, Tessa and Williams moved in together, and Williams is the father of their young child. In February 2011, Tessa and Williams were arguing, and the police were called to their residence. Williams left before the police arrived. In April, Williams was charged with domestic abuse assault—third offense. He filed a motion in limine seeking to exclude evidence regarding his two prior convictions for domestic abuse assault of Tessa. Williams argued the challenged evidence would be relevant only to prove he acted in conformity with his past actions and the evidence would be unfairly prejudicial. The State resisted and argued evidence of Williams’s prior convictions was relevant to the issues of motive and intent and asserted prior assaults are especially relevant and probative in cases of domestic abuse. *See State v. Taylor*, 689 N.W.2d 116, 128 (Iowa 2004) (ruling the defendant’s “prior acts of violence . . . reflect his emotional relationship [and] is a circumstance relevant to his motive and intent on the day in question”).

The district court agreed with the State, but imposed a limitation:

There is apparently a history . . . throughout the relationship there allegedly have been problems, assaults by Mr. Williams against the alleged victim. And so how they have gotten along, why . . . he has acted as he has acted in the past [A]ll of those [past acts] would [bear] upon his motive and his intent and the jury ought to be informed that these two people have a history and that allegedly this man has assaulted her on various occasions

in the past You indicated though . . . you intend to have the alleged victim . . . testify . . . [Williams] was convicted. I do not want you to do that. [Just] have her give her testimony as to the previous events, the previous circumstances. I do not want her to go further and say he was convicted of it too.

During opening arguments, defense counsel highlighted Tessa's statement to the police denying an assault by Williams and stating the scratches on her neck were caused by the children and not by Williams.

In February 2011, Williams returned home from his evening work shift. Williams became angry and confronted Tessa in the third-floor bathroom. Tessa was scared, and she ducked under his arms and went down the stairs. Tessa testified: "We got to the bottom of the stairs and from there he had pushed me up against the wall and his hands were on my neck." Tessa did not lose consciousness, but the choking was painful and left marks on her neck. During this struggle, Williams broke Tessa's cell phone. Tessa pushed away and tried to get to the basement where her sister, Marley, was sleeping. Tessa wanted Marley to call the police. Further:

Q. [Tessa,] has there been previous times, and I just need a yes or no answer, where Mr. Williams has physically assaulted you? . . . A. Yes.

Q. And could you please describe how he came into physical contact with you? A. Shoving, like throwing, slapping at the jaw, strangling, a lot.

Q. Did you suffer injuries from those physical contacts? A. Yes.

Q. And do you recall where those injuries would have been? A. To the face and neck area, mostly body shots.

Q. And what is a body shot? A. Like to the ribs.

Q. Did you suffer pain on those days? A. Yeah.

During cross-examination and after the recording of the police encounter was played, Tessa changed her testimony and admitted that when the police

arrived, she denied Williams had assaulted her and stated her children made the marks on her neck when she put them to bed. On re-direct, Tessa explained she lied to the police due to her fear of Williams.

Marley testified she awoke to “stomping on the floor and [Tessa] was screaming for someone to call the police.” Marley observed Tessa start to come down the basement steps and Williams “was behind her, grabbing her shirt” and “pulling her back.” Marley called the police.

Williams did not take the stand. During closing arguments, defense counsel highlighted inconsistencies:

Maybe [Tessa] just didn't know that we have a recording of her [statements to the police]. She wanted to bolster her claim it was [Williams] who caused these injuries and not herself. It certainly sounds bad obviously if she told the police immediately after it occurred, no, he didn't do this and now she's on the stand saying he did do this. It's inconsistent, very inconsistent. It's the exact opposite.

The jury returned a verdict of guilty and this appeal followed.

II. Scope and Standards of Review.

“We review a district court's evidentiary rulings regarding the admission of prior bad acts for abuse of discretion.” *State v. Cox*, 781 N.W.2d 757, 760 (Iowa 2010). “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. Rodriguez*, 636 N.W.2d 234, 239 (2001).

III. Admissibility of Prior Bad Acts Evidence.

Williams requests a new trial arguing prior bad acts evidence was erroneously admitted. He maintains the evidence was improper character evidence. Our rules of evidence provide:

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). This rule “seeks to exclude evidence that serves no purpose except to show the defendant is a bad person, from which the jury is likely to infer [he] committed the crime in question.” *Rodriguez*, 636 N.W.2d at 239. Prior bad acts evidence is admissible when:

(1) the evidence is “relevant and material to a *legitimate* issue in the case other than a general propensity to commit wrongful acts,” and
 (2) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice to the defendant.

Cox, 781 N.W.2d at 761 (quoting *State v. Reynolds*, 765 N.W.2d 283, 289 (Iowa 2009)).

A. Relevance. Williams argues “[t]here was no need for the jury to hear about the past in this case. The victim testified that Mr. Williams assaulted her. Mr. Williams was silent at trial. The past was not relevant.”

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.” Iowa R. Evid. 5.401. During a discussion of the relevance of prior acts of violence, the Iowa Supreme Court, after noting intent is an element of domestic abuse assault, ruled:

[T]here is a logical connection between a defendant’s intent at the time of a crime when the crime involves a person to whom he has an emotional attachment, and how the defendant has reacted to disappointment or anger directed at that person in the past, including acts of violence In other words, the defendant’s prior conduct directed to the victim of a crime, whether loving or violent, reveals the emotional relationship between the defendant and the

victim and is *highly probative of the defendant's probable motivation and intent in subsequent situations.*

Taylor, 689 N.W.2d at 125 (finding defendant's prior acts of violence toward his wife were relevant to motive and intent on the day of the alleged domestic abuse assault) (emphasis added). Additionally, the *Taylor* court explained:

Our conclusion that the evidence at issue here is relevant is not a retreat from [prior cases] [I]n the present case, the prior misconduct and the present crimes are connected: “Domestic violence is never a single isolated incident. Rather, domestic violence is a pattern of behavior, with each episode connected to the others.” Thus, “[e]vidence of prior bad acts is especially relevant and probative in domestic violence cases because of the cyclical nature of domestic violence.” The relationship between the defendant and the victim, especially when marked by domestic violence, sets the stage for their later interaction. It is precisely the type of situational factor that is determinant of human behavior. See generally *State v. Brown*, 569 N.W.2d 113, 116 (Iowa 1997) (stating “[t]he list of admissible ‘other purposes’ in rule 404(b) is not exclusive”).

Id. at 129 n.6 (citations omitted); see *State v. White*, 668 N.W.2d 850, 854 (Iowa 2003) (allowing prior incident of domestic abuse assault as relevant to intent element of subsequent crimes involving same victim); *Rodriquez*, 636 N.W.2d at 242 (allowing evidence of prior “intentional, violent acts” towards same victim).

We agree with the trial court’s conclusion the evidence is relevant. The evidence showed a rocky domestic relationship and, if Williams and Tessa had an acrimonious relationship rather than a loving relationship, it is more likely Williams acted with the intent and motive to assault Tessa in February 2011. See *Taylor*, 689 N.W.2d at 128 (recognizing prior acts of violence are evidence of motive—a “hostility showing him likely to do further violence”); *White*, 668 N.W.2d at 854. Here, the prior bad acts evidence tends to negate both the evidence highlighted by the defense (Tessa’s statements to the police denying

an assault by Williams) and the defense theory (Tessa herself created the marks on her neck). See *State v. Mitchell*, 670 N.W.2d 416, 422 (Iowa 2003) (ruling prior abuse evidence was properly admitted to rebut a defense theory). Evidence of Williams's prior assaults was relevant to explain why Tessa hesitated to tell police about the current assault—her fear of Williams. Accordingly, the court did not abuse its discretion in concluding the evidence is relevant.

B. Prejudice. Having concluded the evidence is relevant, we now consider the balancing of probative value and prejudicial effect. Williams contends it is unlikely he would have been convicted without the challenged evidence. Specifically,

The case against Mr. Williams was not strong. The victim testified [he] attacked her physically because he believed that she had thrown out some leftover pork loin that he wanted to eat. She had marks on her neck, but told police at the scene that Mr. Williams had not caused the marks, and that her children had done it. Defendant argued that the nature of the marks indicated [the marks] were self-inflicted.

Relevant evidence should be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *Taylor*, 689 N.W.2d at 124. “Unfair prejudice” is “an undue tendency to suggest decisions on an improper basis, commonly . . . an emotional one.” *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988). The factors to be considered in the balancing process are “the need for the evidence in light of the issues and other evidence available, whether there is clear proof the defendant committed the prior acts, the strength or weakness of the evidence on the relevant issue,” and the degree to which the jury “will be prompted to decide the case on an improper basis.” *Taylor*, 689

N.W.2d at 124. “Recognizing that ‘[w]ise judges may come to differing conclusions in similar situations,’ we give ‘much leeway [to] trial judges who must fairly weigh probative value against probable dangers.’” *Id.* (quoting *Rodriquez*, 636 N.W.2d at 240)).

After analyzing these factors, we conclude the record shows a need for the challenged evidence. Defense counsel highlighted the inconsistencies in Tessa’s testimony. Therefore, there was clearly a need for evidence that would clarify the circumstances of the parties’ relationship in the context of the evening’s events. As in *Rodriquez*, “evidence of the [Williams’s] prior intentional, violent acts towards the victim . . . makes it more probable that he intended to” assault her in February 2011. *Rodriquez*, 636 N.W.2d at 242. Similarly, the challenged evidence makes Williams’s argument Tessa inflicted the injuries on herself less probable. Further, without this evidence, the jury would have been presented with an artificially-sanitized version of the parties’ domestic relationship. See *Taylor*, 689 N.W.2d at 129 n.6 (stating “domestic violence is a pattern of behavior, with each episode connected to the others”). Thus, we conclude the strength of the challenged evidence on the pertinent issues was high and weighed in favor of admission.

Additionally, because Williams’s prior assaultive actions resulted in convictions and because Tessa, the prior victim, would testify to the prior assaults, the “clear proof” factor is met and supports admission.

Finally, we consider the likelihood of the prior bad acts evidence prompting the jury to base its decision on an improper emotional response. See *Rodriquez*, 636 N.W.2d at 243. The State did not seek to elicit details about the

prior assaults and spent a small amount of time on this line of questioning. See *id.* (noting testimony about prior assaults took “a relatively small amount of time”). Tessa’s answers were short and concise, making her testimony unlikely to elicit an emotional response. We acknowledge the evidence of Williams’s prior assaults reflected negatively on Williams. However, the specific prior bad acts were not more prejudicial than the evidence concerning the actual crime charged. See *State v. Larsen*, 512 N.W.2d 803, 808 (Iowa Ct. App. 1993) (finding challenged evidence “did not involve conduct any more sensational or disturbing” than the charged crime). Additionally, a trial is a search for the truth and the evidence was important to the jury’s truth-seeking function. *Taylor*, 689 N.W.2d at 130 (noting domestic abuse “often has a history highly relevant to the truth-finding process”). Finally, the danger of unfair prejudice was further diminished by jury instruction 15A limiting the use of the prior bad acts testimony.¹ We presume the jury followed this instruction and find it unlikely the jury based its decision on an improper ground. See *Larsen*, 512 N.W.2d at 808 (ruling danger of unfair prejudice was diminished by limiting instruction).

¹ Instruction 15A states:

Evidence has been received concerning other wrongful acts alleged to have been committed by the defendant. The defendant is not on trial for those acts.

This evidence must be shown by clear proof, and can only be used to show motive or intent.

If you find other wrongful acts (1) occurred; (2) were so closely connected in time; and (3) were committed in the same or similar manner as the crime charged, so as to form a reasonable connection between them, then and only then may such other wrongful acts be considered for the purpose of establishing motive or intent.

Accordingly, based on the circumstances of this case, we conclude the trial court's resolution of the delicate balancing process was reasonable and did not constitute an abuse of discretion.

We affirm Williams's conviction.

AFFIRMED.