IN THE COURT OF APPEALS OF IOWA

No. 23-0420
Filed March 27, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FELTY E. YODER,
Defendant-Appellant.

Appeal from the Iowa District Court for Allamakee County, Alan Heavens, Judge.

Defendant appeals his convictions and sentences. **AFFIRMED.**

Martha J. Lucey, State Appellate Defender, and Melinda J. Nye, Assistant Appellate Defender, for appellant.

Brenna Bird, Attorney General, and Anagha Dixit, Assistant Attorney General, for appellee.

Considered by Schumacher, P.J., Ahlers, J., and Potterfield, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

SCHUMACHER, Presiding Judge.

Felty Yoder appeals his convictions for sex abuse in the third degree; domestic abuse assault, third offense; and violation of the sex offender registry, second offense. He argues there was insufficient evidence to support his convictions for sex abuse and the district court improperly admitted evidence of past domestic abuse. Yoder also appeals his sentences, arguing the court improperly considered unproven offenses in its sentencing decision.

I. Background Facts and Prior Proceedings

A reasonable jury could find these facts. Yoder and his wife met in 2018 and were married in 2019. Over the next few years, they moved around through various communities and had two children together. In 2019 and 2020 Yoder was convicted of domestic abuse assault, with his wife as the victim. During this time Yoder was also convicted of an offense which required him to register as a sex offender. In 2020, Yoder and his family lived in Delhi. In 2021, they moved to Waterville.

In July 2022, Yoder became upset with his wife because she smoked in the home with their children present. Yoder slapped his wife across her face hard enough for her to "see stars" and black out momentarily. When Yoder left for work, his wife took the children and left the home to live with her sisters. While living with her sisters, his wife reported domestic and sexual abuse to law enforcement. In August, law enforcement executed a search warrant on Yoder's home and seized his electronic devices. An examination of those electronic devices revealed several unreported social media accounts in violation of Yoder's sex offender registry requirements. Yoder denied knowledge of the accounts, and he denied

any sexual abuse or domestic abuse. He maintained all sexual encounters between himself and his wife were consensual.

Yoder was charged with four counts of sex abuse in the third degree, class "C" felonies; one count of domestic abuse assault, third offense, a class "D" felony; and five counts of violation of the sex offender registry requirements, second offense, class "D" felonies. At trial, Yoder moved to exclude evidence of his previous convictions for domestic abuse, however, the court ruled evidence of the convictions admissible for showing Yoder's intent or motive. The State also presented the testimony of Yoder's wife as evidence of sexual abuse.[1] The jury convicted Yoder on all counts.

The district court sentenced Yoder to prison terms on all counts for a total of forty-five years, with a mandatory minimum of three years as to one of the counts. Yoder appeals.

II. Discussion

Yoder argues the State presented insufficient evidence to sustain his convictions for sexual abuse, the district court improperly admitted evidence of Yoder's prior bad acts, and the court impermissibly relied on unproven offenses in sentencing. We address each argument in turn.

a. Sufficiency of the Evidence

Yoder argues the State failed to present sufficient evidence to support his convictions for sexual abuse in the third degree. We review challenges to the

[1] The State also called as witnesses a domestic abuse advocate, a law enforcement officer, a witness on family dynamics and domestic violence, and a family member of Yoder's wife.

sufficiency of the evidence for errors at law. *State v. Crawford*, 972 N.W.2d 189, 202 (Iowa 2022). Our review for sufficiency of the evidence is deferential to the jury's verdict, and we will not overturn a verdict supported by substantial evidence. *Id.* "Substantial evidence is evidence sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Id.* But "[t]he evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." *State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002).

Yoder argues that the only evidence presented to support his conviction was his wife's testimony, which he claims is too vague to be sufficient evidence. "[I]t is the jury's function to determine the credibility of a witness." *State v. Dudle*y, 856 N.W.2d 668, 677 (Iowa 2014). Even so, Yoder urges us to apply the principles in *State v. Smith*, 508 N.W.2d 101 (Iowa Ct. App. 1993). In *Smith*, the court disregarded the testimony of the victim as it was "as a whole . . . self-contradictory, lacks experiential detail, . . . [and the victim's] testimony lacks the probative value needed to support a guilty verdict." 508 N.W.2d at 104. Yoder argues his wife's testimony was too brief and lacked sufficient detail to support his conviction. But our supreme court has expressed skepticism regarding the principles behind *Smith*, which Yoder relies on to make this argument:

> *Smith* is an outlier case. It has been criticized in the commentary, and it has not been followed in any sexual abuse case in Iowa since. The primary flaw in *Smith* is that it is inconsistent with the standard of appellate review of jury verdicts, which requires that the evidence be viewed in the light most favorable to the verdict and which requires deference to the jury's resolution of disputed factual issues.

State v. Mathis, 971 N.W.2d 514, 518 (Iowa 2022). Although *Smith* has not been overruled, Yoder's wife presented no contradictions or deficiencies that would

make her testimony "so absurd that it must be rejected as a matter of law." *See id.* Her responses to questions during the trial were short, but they were consistent. This bears no similarity to the circumstances in *Smith* where our court found the testimony "contradictory" and "absurd." *See Smith*, 508 N.W.2d at 103–04.

We decline to apply *Smith* here to overturn the jury's credibility determination. There was evidence sufficient to convince a rational trier of fact of guilt beyond a reasonable doubt. *See Crawford*, 972 N.W.2d at 202.

b. Prior Bad Acts

Yoder argues the district court improperly admitted evidence of prior physical and verbal abuse by Yoder against his wife.

We review evidentiary rulings for an abuse of discretion. *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008). "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) (quoting *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997)).

Iowa Rule of Evidence 5.404 states that, "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Iowa R. Evid. 5.404(b)(1). Even so, "[t]his evidence may be admissible for another purpose such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Iowa R. Evid. 5.404(b)(2). In this case, the district court admitted evidence of past physical and verbal abuse by Yoder against his wife, ruling this evidence would be used to demonstrate intent

or motive, but not propensity. Under this rule, for the State to introduce prior bad act evidence:

> (1) "the evidence must be relevant and material to a legitimate issue in the case other than a general propensity to commit wrongful acts"; (2) "there must be clear proof the individual against whom the evidence is offered committed the bad act or crime"; and (3) if the first two prongs are satisfied, "the court must then decide if [the evidence's] probative value is substantially outweighed by the danger of unfair prejudice to the defendant."

State v. Richards, 879 N.W.2d 140, 145 (Iowa 2016) (quoting *State v. Sullivan*, 679 N.W.2d 19, 25 (Iowa 2004)).

Relying on *State v. Taylor*, where previous acts of domestic abuse were admitted to show defendant's intent and motive, the district court admitted the evidence. 689 N.W.2d 116, 127–28 (Iowa 2004). In *Taylor*, the defendant's intent was "hotly contested," and the court found acts of prior violence were admissible because "[t]he defendant's prior acts of violence toward his wife, while certainly illustrative of a propensity to use violence, also reflect his emotional relationship with his wife, which as our discussion shows, is a circumstance relevant to his motive and intent on the day in question." *Id.* at 128. This reasoning came from the court's conclusion that:

> there 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, rage, and physical control. 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.

Id. at 125.

Taylor is not our only case involving admissibility of other acts of domestic violence under rule 5.404(b). In *State v. Rodriquez,* the jury heard evidence "about prior occasions of abuse" by a defendant charged with attempted murder, willful injury, kidnapping, and assault against his girlfriend. 636 N.W.2d 234, 238 (Iowa 2001). Our supreme court concluded evidence of prior assaults was relevant to the defendant's intent because that evidence—which detailed "prior intentional, violent acts towards the victim"—made it "more probable that [the defendant] intended to cause [the victim] serious injury" on the day of the assault for which he was being tried. *Id.* at 242.

Yoder argues that because he denies ever harming his wife, his intent is not in dispute, and so it was wrong for the court to rely on *Taylor* in admitting evidence of his prior bad acts. But prior incidents of violence from a husband to wife can show a motive for further assaults. "'In addition to evidencing intent or the absence of an innocent state of mind, a defendant's prior acts of violence against the victim may also provide evidence of motive, in this case, a hostility showing him likely to do further violence.'" *Taylor*, 689 N.W.2d at 126 (quoting *People v. Illgen*, 583 N.E.2d 515, 520 (Ill. 1991)).

And although Yoder fully denies the domestic violence, he asserts the sex acts were consensual rather than nonconsensual. Evidence of violence between two individuals in a relationship can be used to contextualize that relationship and show whether sex between the individuals was consensual, even though it may involve presenting evidence of prior bad acts. *State v. Goodson*, 958 N.W.2d 791, 801 (Iowa 2021).

Even if we were to conclude the introduction of this evidence was improper, we conclude the admission of such was harmless error. "When a district court commits a nonconstitutional error by admitting evidence it should have excluded, we do not reverse the defendant's conviction if the error was harmless." *State v. Thoren*, 970 N.W.2d 611, 636 (Iowa 2022). To determine whether error is harmless, we consider "whether the rights of the objecting party have been 'injuriously affected by the error' or whether the party has 'suffered a miscarriage of justice.'" *State v. Parker*, 747 N.W.2d 196, 209 (Iowa 2008) (quoting *Sullivan*, 679 N.W.2d at 29). Additionally, overwhelming evidence of guilt can render an error harmless. *Thoren*, 970 N.W.2d at 636. We presume prejudice occurred unless the record affirmatively shows otherwise. *Id.* Prejudice can occur when "improperly admitted information was such that 'the information unquestionably ha[d] a powerful and prejudicial impact' on the jury." *State v. Hanes*, 790 N.W.2d 545, 551 (Iowa 2010) (citation omitted).

Yoder's wife gave compelling testimony at trial as to the abuse she suffered at Yoder's hands, and she detailed the incident where Yoder hit her, stating she "saw stars and blacked out for a little bit." She provided testimony about the sex abuse and the injury she received. His wife's sister also provided corroborating testimony about the abuse Yoder inflicted on his wife. And in his argument concerning the probative value of the evidence, Yoder admits his wife provided testimony and that her sister provided corroborating evidence. We find his wife's testimony, together with her sister's corroboration, and the additional evidence produced by the State, was overwhelming evidence of guilt sufficient to render any alleged error harmless. *See Thoren*, 970 N.W.2d at 636.

c. Sentencing

Yoder argues the court impermissibly relied on unproven offenses when sentencing him. We review sentences within the statutory limits for abuse of discretion, and abuse of discretion occurs when the court has exercised discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001).

Generally, the sentencing court may not consider unproven offenses in sentencing "unless (1) the facts before the court show the accused committed the offense, or (2) the defendant admits it." *Id.* However, "a district court's sentencing decision enjoys a strong presumption in its favor." *Id.* And "[t]o overcome the presumption a defendant must affirmatively show that the district court relied on improper evidence such as unproven offenses." *Id.* Additionally, "[t]he fact that the sentencing judge was merely aware of the uncharged offense is not sufficient to overcome the presumption that his discretion was properly exercised." *State v. Ashley*, 462 N.W.2d 279, 282 (Iowa 1990).

In this case, Yoder points out that his wife submitted a victim impact statement that referenced other allegations of abuse by Yoder against her and his children. These allegations were beyond the scope of the trial and charges here. Although the court did consider this victim impact statement, Yoder's assertion that reliance on the statement equals consideration of unproven factors is not supported by the record, and Yoder emphasizes only the select portions of the court's statement to support his argument. A fuller picture of the court's statement reads:

> I will extend the no contact order with [M.Y.] for a period of 5 years. And I understand that the children were put on that no contact order and that they were referenced in the victim impact statement. I understand that they may have been affected by some of these crimes; however, the children are not victims directly of any of these offenses. [M.Y.] is the victim of the offenses—of the domestic abuse offense and the sex offender or the sexual abuse offense. The sex offender registry, I don't know if I would say that there is an individual victim for that. And I understand there is a concern about Mr. Yoder's communication with his children, but I think that's better addressed through a dissolution proceeding, and a court can focus primarily on what's in the best interests of the children. That's not primarily my concern in the sentencing. My concern in the sentencing hearing with protecting the community and rehabilitating the defendant, so I'm not going to include the children in the no contact order. I am going to leave that to a separate potential civil proceeding. That visitation issue can be addressed in much more detail in a proceeding that focuses on the children.
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> Again, I heard the victim statement and I understand that the children have been affected here, but I do need to caveat what I'm doing to just the actual victim directly of the crime, and I think [M.Y.] is the victim and she is the one who should be protected by the no contact order. That's not to say one way or another when you think about what visitation, if any, may be appropriate. Again, I'll leave that to a separate proceeding that is more focused on that, and we'll get a better decision on that as opposed to trying to do that through a no contact order. So the no contact order with [M.Y.] will be 5 years, and she will be the only protected party.

The court's statements indicate an awareness of the other allegations contained in the victim impact statement, but it does not demonstrate a consideration of those allegations. The court made it clear that the children were not involved here, making statements such as "the children are not victims directly of any of these offenses. [M.Y.] is the victim of the offenses," "what's in the best interests of the children. That's not primarily my concern in the sentencing," and "I do need to caveat what I'm doing to just the actual victim directly of the crime, and I think [M.Y.] is the victim." Considering these disclaimers Yoder has failed to affirmatively show the court considered unproven offenses. *See Jose*, 636 N.W.2d

at 41. He has not shown the court was more than just "merely aware" of the offenses. *See Ashley*, 462 N.W.2d at 282. We determine no abuse of discretion.

III. Conclusion

We determine there was sufficient evidence to support Yoder's convictions for sexual abuse, the district court did not improperly admit evidence of prior bad acts, and the court did not rely on unproven offenses in sentencing. Accordingly, we affirm.

AFFIRMED.