IN THE COURT OF APPEALS OF IOWA

No. 0-343 / 08-2030
Filed July 28, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WENDELL KARL HARRINGTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Appeal from the convictions, sentence, and judgment for several criminal offenses. **AFFIRMED IN PART AND REVERSED IN PART.**

Mark C. Smith, State Appellate Defender, and Theresa Wilson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and Jim Ward, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor, J., takes no part.

SACKETT, C.J.

Wendell Harrington appeals from the convictions, sentence, and judgment for ongoing criminal conduct, eluding, theft in the first and second degrees, and three counts of burglary in the second degree as a habitual offender. He contends insufficient evidence supports his convictions, the court erred in admitting evidence of prior convictions, the court erred in overruling his motions for mistrial and for substitute counsel, the court erred in overruling his objection to a jury instruction, and he did not receive effective assistance of counsel. We affirm in part and reverse in part.

I. Background.

In the early morning hours of June 14, 2008, several neighbors, Mr. and Mrs. Graves, Ms. Bains, and Ms. Chicchelly, discovered their homes had been burglarized and Chicchelly's car had been stolen. Officer Singleton interviewed the neighbors. Ms. Chicchelly mentioned an incident that occurred the preceding morning. She was walking her dog when a man approached her and threatened to "stick" her with the knife he displayed to her if her dog bit him.

While the officer was meeting with the neighbors, they saw Chicchelly's car go by on a cross street. When Officer Singleton pursued the car, it sped away. The officer followed the car until it crashed while trying to make a turn. As Officer Singleton got out of his patrol car and ordered the other driver to stop and to lie on the ground, the other driver got out and ran away. The officer radioed a description of the driver to other officers, who set up a perimeter and started a search.

Officer Trimble saw a man matching the description of the driver walking behind some shrubs and carrying something in his hands. When Officer Trimble looked behind the shrubs, he found a stocking cap and white cotton gloves. Officer Trimble then got back in his car, drove down the street, and stopped the defendant. When the officer saw that the defendant had fresh dirt on his shirt and grass clippings in his hair, he handcuffed the defendant. Upon searching the defendant, Officer Trimble found a pocket knife with an ivory handle, a gold ring, a cigarette lighter, and cigarettes.

Police took Chicchelly to where police had detained the defendant to see if she could identify him. She identified the knife as the one used to threaten her the previous day. She thought the defendant was the man who had threatened her, but was not completely certain. When police searched Chicchelly's car, they found items taken from all three homes.

The State charged the defendant by trial information with eluding, theft in the first degree, theft in the second degree, and three counts of burglary in the second degree, all enhanced as a habitual offender. The State also charged the defendant with ongoing criminal conduct.

At trial, the court allowed the State to use several of the defendant's past convictions to impeach him in cross-examination during the defense case-in-chief. The jury found the defendant guilty of all charges. The court sentenced the defendant to twenty-five years for ongoing criminal conduct and fifteen years for each of the remaining six convictions, to be served consecutively, for a total of 115 years.

II. Scope and Standards of Review.

We review challenges to the sufficiency of the evidence for errors at law. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). A jury's verdict is binding on a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). "'Substantial evidence' is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt." *Rohm*, 609 N.W.2d at 509 (citing *State v. Pace*, 602 N.W.2d 764, 768 (Iowa 1999)).

> When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record.

State v. Leckington, 713 N.W.2d 208, 213 (Iowa 2006) (citing *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999)). We consider all the evidence introduced at trial, not just the evidence that supports the verdict. *State v. Adney*, 639 N.W.2d 246, 250 (Iowa Ct. App. 2001).

Our review of a district court's decision to admit or exclude evidence generally is for an abuse of discretion. *State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009). "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. Thomas*, 766 N.W.2d 263, 271 (Iowa Ct. App. 2009) (quoting *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997)). If a court does not exercise its discretion, our review is for errors at law. *See State v. Daly*, 623 N.W.2d 799, 802 (Iowa 2001).

III. Merits.

A. Ongoing Criminal Conduct. The defendant contends there is insufficient evidence to support a conviction of ongoing criminal conduct.

In particular, the defendant contends there was no evidence to show specified unlawful activity "on a continuing basis," either closed-ended or open-ended. *See* Iowa Code § 706A.1(5) (2007) (requiring "a continuing basis"); *State v. Reed*, 618 N.W.2d 327, 334-35 (Iowa 2000) (discussing "continuity" as both a closed- and open-ended concept). The district court instructed the jury that "'on a continuing basis' means on two or more occasions, combined with an intent by the defendant to continue to commit such acts in the future."

The defendant argues the three acts were limited in time to the early morning of June 14, 2008, so they were not on a closed-ended continuing basis because they did not occur over an extended period of time. *See Reed*, 618 N.W.2d at 335 (noting the State "may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time" such as a few weeks or months, with the threat of future criminal activity (citation omitted)). He further argues there is no evidence of a threat of future criminal activity, so the burglaries were not on an open-ended basis. *See Midwest Heritage Bank, FSB v. Northway*, 576 N.W.2d 588 591, (Iowa 1998) (requiring proof the unlawful activities "are related, and that they amount to or pose a threat of continued activity" (citation omitted)). "[L]iability depends on whether the threat of continuity is demonstrated." *Reed*, 618 N.W.2d at 335 (citation omitted).

The State argues "the very nature" of the burglaries "provided sufficient evidence that there was a threat of repetition." It further argues the evidence the defendant had not worked for several months and was living with various relatives supports an inference "the defendant subsisted on whatever valuables he could obtain from burglarizing residential homes and would have continued to do so had he not been arrested."

The evidence before the jury clearly proves three acts of burglary, all within a short time period in the early morning of June 14, 2008. We do not believe that the evidence the defendant was not employed, without more, would "fairly and reasonably" support a "legitimate inference" there was a threat of continued unlawful activity. *See State v. Leckington*, 713 N.W.2d 208, 214 (Iowa 2006) (citation omitted). Although the defendant is a habitual offender,[1] there was not substantial evidence before the jury in this case to support a finding "the defendant committed the acts on a continuing basis" as required in the jury

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[1] In the transcript of the court's consideration of the defendant's motions for directed verdict and to dismiss various counts, the court addressed the intent to commit future acts or the threat of future acts:

> The court in *Reed* talked about the methods by which the State could prove such an intent. And while we can debate perhaps the merits of the record before the defense put on its case, I think there's no question at this point that the State has satisfied the burden because of the evidence of your prior record. That is clearly one of the things that the—I'm talking about your convictions.
>
> That is clearly one of the things that the supreme court identified, prior acts by the defendant in the past as establishing intent to commit such future acts in the future.

The defendant asserts the court did not instruct the jury it could consider his past record as evidence the defendant committed acts "on a continuing basis" as instruction 24 defined this term as "on two or more occasions, combined with an intent by the defendant to continue to commit such acts in the future." In instruction 22, defining "ongoing criminal conduct" the court pointed only to the acts that occurred on June 14, 2008.

instruction on ongoing criminal conduct. We therefore reverse the defendant's conviction of ongoing criminal conduct and vacate the sentence imposed for that conviction.

B. Substantial Evidence. In his pro se brief, the defendant also challenges all his other convictions as unsupported by substantial evidence. He contends there is no evidence that he is the person who burglarized the homes or that he entered the homes. He argues the identification of him as the perpetrator is flawed because the testimony is inconsistent and not credible. *See State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 2005) ("The rule that it is for the jury to reconcile the conflicting testimony of a witness does not apply where the only evidence in support of a controlling fact is that of a witness who so contradicts himself as to render finding of facts thereon a mere guess." (citation omitted)). He further argues that his "alleged possession" of the stolen property, although it may support a conviction of theft or possession of stolen property, is not substantial evidence that he entered or broke into the three homes. *See* Iowa Code § 714.1 (defining theft and listing alternative means of committing theft).

From our review of the record, we do not find the testimony of the witnesses to be "so impossible, absurd, and self-contradictory that the court should deem it a nullity." *Mitchell*, 568 N.W.2d at 503. The defendant further argues the jury "was allowed to infer" it was he who entered the residences solely "from his alleged possession of stolen property." *See State v. Truesdell*, 679 N.W.2d 611, 618-19 (Iowa 2004) (discussing permissible inferences). We find substantial evidence in the record from which a reasonable jury could find the

defendant was the person who broke into the homes and stole the items found in his possession and in the stolen car. In addition to the defendant's possession of the stolen property, there is evidence he was in the neighborhood early the preceding morning, and he was seen getting out of the stolen car that had just fled the scene. He was wearing clothing that matched the description of the person fleeing the scene. Other items matching the description were found behind bushes where the defendant was observed. His clothes had grass clippings and dirt, allowing an inference from the circumstances that he had been hiding. These facts contradict his own testimony he was just walking to his sister's house when the police stopped him. Sufficient evidence exists from which a reasonable jury could find the defendant guilty of the theft and burglary charges as well as eluding. We affirm the convictions.

C. Balancing Probative Value and Prejudicial Effect of Evidence of Prior Convictions. The defendant contends the court failed to balance the probative value and the likely prejudicial effect of admitting evidence of his prior convictions. *See* Iowa R. Evid. 5.609. The State contends the defendant did not object to the admission of the evidence at trial, so failed to preserve error. *See State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999).

After the State rested, the court met with the State and the defendant and had the State identify what prior convictions, if any, the State intended to use for impeachment purposes if the defendant decided to testify. The court said it was a "*Martin* hearing." *See State v. Martin*, 217 N.W.2d 536, 542 (Iowa 1974) (setting the parameters for use of prior convictions to impeach a witness). After

discussion, the court, the State, and the defendant all understood how far the court would allow the State to go in raising prior felony convictions or convictions of a crime of dishonesty. On the day the defendant decided to testify, the court again met with the State and the defendant about the defendant's choice and things the defendant might wish to consider in making an informed decision whether to testify. The defendant stated, "I recall having the *Martin* hearing, your Honor, that I'm comfortable with the stipulations that we agreed upon." Moments later, the prosecutor, noting "I don't want to make a mistake this late in trial," again sought clarification. The court said, "If it involves something other than dishonesty, you can't mention the crime. The fact that it's a felony conviction that does involve dishonesty, you can do them both [i.e., date and type of crime]."

The defendant began his testimony by stating that "I have been convicted of some crimes and felonies, the dates being '94 and 2005." The cross-examination began as follows:

> Q. Well, Mr. Harrington, let's be clear about your record. On October 13th of 1994, you were convicted for a felony theft and a felony burglary; correct? A. That's correct.[2]
>
> Q. And on September 2, 2005, you were convicted for a felony theft and a felony burglary; correct? A. That's correct.

Error Preservation. We first address the State's contention the defendant did not preserve error on this claim because he did not object to the evidence. The defendant first raised the issue of his prior convictions in a pretrial motion in limine. Following a hearing on the motion, the court advised the defendant that

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[2] At the session on the habitual offender enhancement, the certified records of the defendant's convictions showed he was only convicted of burglary in 1994, not burglary and theft. This correction did not affect his habitual offender status.

the State would be allowed to introduce evidence of the defendant's prior felony convictions and misdemeanor convictions involving dishonesty if the defendant decided to testify. The court reserved ruling on this portion of the motion in limine pending a hearing after the State's case-in-chief.

That "*Martin* hearing" is described above, as are the ensuing events and decisions by the district court. The district court determined the prior convictions, subject to certain limitations, were admissible for impeachment purposes under Iowa Rule of Evidence 5.609. The defendant did not object when the State brought up his prior convictions.

> Ordinarily, error claimed in a court's ruling on a motion in limine is waived unless a timely objection is made when the evidence is offered at trial. However, where a motion in limine is resolved in such a way it is beyond question whether or not the challenged evidence will be admitted during trial, there is no reason to voice objection at such time during trial. In such a situation, the decision on the motion has the effect of a ruling.

Daly, 623 N.W.2d at 800 (citations and internal quotation omitted). From our review of the record before us, we conclude it was "beyond question" that the defendant's prior felony convictions and misdemeanor convictions involving dishonesty would be admitted if he testified. Therefore, it was not necessary for him to object in order to preserve error. *See id.*

Rule 5.609. The defendant contends the court did not balance the probative value against the likely prejudicial effect of admitting evidence of his prior convictions. Iowa Rule of Evidence 5.609 provides, in relevant part:

> a. General rule. For the purpose of attacking the credibility of a witness:
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> (1) Evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to rule 5.403, if the crime was punishable by death or imprisonment in excess of one

> year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
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> (2) Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

The defendant argues both that the prejudicial effect outweighs the probative value of the evidence and that the court failed to engage in the balancing required. He asserts the error was not harmless and he is entitled to a new trial. Based on the following analysis, we disagree.

The defendant was charged with two counts of theft and three counts of burglary. The defendant sought to exclude evidence of his prior convictions of theft and burglary. The district court allowed the State to refer to two prior convictions of theft because they were felonies punishable by imprisonment in excess of one year and involved dishonesty. *See* Iowa R. Evid. 5.609(*a*)(1), (2). It also allowed the State to refer to two prior convictions of burglary because they involved dishonesty. *See* Iowa R. Evid. 5.609(*a*)(2).

The situation before us may be distinguished from the circumstances in *Daly* and *Martin* because in those cases, the prior convictions, although for the same or similar offenses as the current charges, did not involve dishonesty. They fall, therefore, under rule 5.609(*a*)(1), which requires balancing. The theft and burglary convictions before us, however, as convictions involving dishonesty, fall under the second portion of the rule, which does not require balancing. We conclude the district court carefully exercised its discretion in allowing the State

to use the defendant's prior dishonesty-related convictions to impeach his testimony at trial.

D. Ineffective Assistance. The defendant contends trial counsel was ineffective in failing "to object to irrelevant and prejudicial evidence" of an encounter between the defendant and Lisa Chicchelly in the early morning hours the day before the burglaries. As she was walking her dog, the defendant approached and threatened to "stick" her with a knife he brandished if her dog bit him. The defendant sought to exclude this evidence as improper prior-bad-acts evidence and also relating to Chicchelly's identification of the defendant. The State sought to introduce the evidence to show the defendant was casing the neighborhood and had a knife that could be used to cut the window screens. The court denied the motion in limine as to Chicchelly's identification of the defendant.

At trial, Chicchelly testified a black man with dreadlocks approached her as she was walking her dog about 5:15 a.m. the day before the burglary. As he approached, he displayed a knife and said if her dog bit him, he would stick her. She identified the knife taken from the defendant when he was arrested as the knife the man had displayed during the early morning encounter. She further testified that on the morning of the burglaries, police took her to where the defendant had been apprehended. She thought he was the man who had threatened her the day before, but was not completely sure. At a later deposition, she identified the defendant as the man who had threatened her. Trial counsel did not object to Chicchelly's testimony.

The defendant argues the fact he possessed a knife that could be used to cut window screens could have been introduced through testimony of police officers present when the knife was found in his possession when he was apprehended. His presence in the neighborhood the morning before the burglaries could have been established by Chicchelly's testimony she saw him, without reference to the threat. He further argues the evidence he threatened Chicchelly is irrelevant and, even if relevant, unfairly prejudicial, so counsel was ineffective in not objecting to the evidence.

"[P]ostconviction proceedings are often necessary to discern the difference between improvident trial strategy and ineffective assistance." *State v. Ondayog*, 722 N.W.2d 778, 786 (Iowa 2006). Such is the situation before us. Although trial counsel did not object to this testimony, this record is inadequate for us to determine whether the lack of an objection constituted ineffective assistance of counsel. We therefore preserve this claim for possible postconviction proceedings. *See State v. Elston*, 735 N.W.2d 196, 200-01 (Iowa 2007).

E. Motion for Substitute Counsel or Mistrial. The defendant contends the court abused its discretion in overruling his mid-trial motion for substitute counsel or mistrial. Prior to trial, counsel had been appointed as standby counsel and the defendant represented himself. Just prior to the beginning of jury selection the court spoke with the defendant.

> Defendant: Your Honor, over the weekend I thought about my situation and came to realize that I think that I'm going to rely upon my counsel's expertise and allow him to direct these

> proceedings as opposed to me directing the proceedings, your Honor.
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> Court: So, in other words, you want to convert Mr. Reser from standby counsel to actually being your attorney? Defendant: Yes, your Honor.
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> . . . .
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> Court: I just want to make sure that this is what you're telling me. But when you and I talked on Thursday, I made it clear to you that this is not going to be a co-counsel situation. You have to elect either to represent yourself or to have Mr. Reser act as your attorney. And, as I understand it, you are telling me you wish Mr. Reser to act as your attorney; is that correct? Defendant: Yes, sir.

Counsel then made a record concerning the defendant's understanding and agreement that counsel made the decision which witnesses to call and what questions to ask, not the defendant. He further made a record that there had been some disagreement between himself and the defendant concerning how to question certain witnesses.

At trial, during the testimony of Officer Singleton, the defendant asked for a recess. He then told the court that Mr. Reser would not ask the specific questions the defendant wanted, so "I am going to have to ask Mr. Reser to stand down or give me a different attorney or I'm just going to have to proceed on my own." Counsel referred the court to the record made prior to jury selection, concerning counsel being in charge of witness selection and questioning. Counsel also stated that the defendant had threatened him and he was "reluctant" to continue as counsel. The court then discussed the issue with the defendant.

> Court: Well, what is your wish at this point? Do you want to represent yourself at this point, or do you want Mr. Reser to continue to represent you? Defendant: I think I would like a different attorney at this time.
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> Court: Well, that's not an option for you. Defendant: It's not an option?

> Court: We can't replace an attorney in the middle of trial. Defendant: Then may I have a mistrial and get me a different attorney then? Is that an option, your Honor?
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> Court: No, we're not going to do that. That is not an option. Your options at this point are to continue with Mr. Reser or to represent yourself without standby counsel because I am not going to have Mr. Reser sitting here under a threat. Defendant: Well, I'll—I am going to have to question the witness. He's not going—if he's not going to ask the questions, I'm going to have to ask them.
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> Court: Do I understand then that you want to represent yourself for the remainder of this trial? Defendant: No, I don't want to. But that is what you said is left for my options, so that's what I am going to have to exercise to do. But no, I don't want to.
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> Court: Well, Choice A is to continue to have—is to have Mr. Reser continue to represent you. Choice B is for you to represent yourself without standby counsel for the balance of the trial. Do you want Choice A or Choice B? Defendant: I will take Choice B. I will have to represent myself.

Where a defendant represented by court-appointed counsel requests that the court appoint substitute counsel, sufficient cause must be shown to justify replacement. *State v. Lopez*, 633 N.W.2d 774, 778-79 (Iowa 2001). "Sufficient cause includes a conflict of interest, irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant." *Id.* at 779 (citations and internal quotation omitted). The decision to grant a motion for substitute counsel is a matter within the trial court's discretion. *Id.* at 778. The court has considerable discretion whether to grant substitute counsel, and eleventh-hour requests for substitute counsel are generally disfavored. *State v. Tejeda*, 677 N.W.2d 744, 749 (Iowa 2004). Iowa case law makes it clear that a court may deny a request for substitute counsel based on such considerations as "the prompt and efficient administration of justice," and such a request may not be used to delay or disrupt the trial. *Lopez*, 633 N.W.2d at 779. The alleged conflict necessitating substitution of counsel was addressed and resolved prior to

trial. We find no abuse of discretion in the court's subsequent denial of the defendant's mid-trial request based on the same complaint.

A mistrial is appropriate when "an impartial verdict cannot be reached" or the verdict "would have to be reversed on appeal due to an obvious procedural error in the trial." *State v. Dixon*, 534 N.W.2d 435, 439-40 (1995). We review the district court's denial of a motion for mistrial for an abuse of discretion. *Id.* at 439. Neither factor making a mistrial appropriate is present in the record before us. We find no abuse of discretion in denying the defendant's request for a mistrial.

F. Jury Instruction. The defendant contends the district court erred in overruling his objection to Instruction No. 7, which provides, in relevant part:

> In deciding the facts, consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but if you cannot, you will accept the evidence you find more believable.
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> In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness's testimony.

The defendant raised two challenges to the second sentence of the instruction at trial: (1) that it "conveys or connotes . . . a comment or emphasis on [the] evidence" and (2) that "you will" is "like a mandatory type of thing that the jury would be subject to" or "is more a presumption as opposed to leaving it to their discretion." The court noted that the instruction was a stock jury instruction and it had "no reason to vary from those stock instructions in this case, and . . . it would be contrary to the defendant's interests and contrary to law to vary from those." The court overruled the defendant's exceptions and objections.

On appeal, the defendant contends: (1) the instruction is self contradicting, (2) it gives undue prominence to all of the evidence presented by the State, (3) it

forces the defendant to come forward with evidence, and (4) it invades the jury function. We limit our consideration to the challenges raised in the objections in the district court. *See State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996) (noting grounds not asserted at trial are not preserved for appellate review); *State v. Geier*, 484 N.W.2d 167, 170 (Iowa 1992) (limiting claims to the exceptions taken at trial).

The defendant argues the instruction "conveys or connotes . . . a comment or emphasis on [the] evidence." The instruction simply notes the ways in which the jury should evaluate the credibility of witnesses and consider what evidence to believe. It does not emphasize any evidence or comment on the evidence. The jury was free to reject certain evidence and credit other evidence. *State v. Anderson*, 517 N.W .2d 208, 211 (Iowa 1994). The credibility of witnesses, in particular, is for the jury. "A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive." *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). We note that the district court refused to vary from the uniform instructions unless the defendant could point to case law showing the instructions were incorrect. The uniform instructions are presumptively valid. *See State v. Weaver*, 405 N.W.2d 852, 855 (Iowa 1987). We are "reluctant to disapprove" of uniform instructions. *See State v. Johnson*, 534 N.W.2d 118, 127 (Iowa Ct. App. 1995); *see also State v. Beets*, 528 N.W.2d 521, 523 (Iowa 1995). As long as the instructions, when read together, correctly state the law, there is no error. *See State v. Scalise*, 660 N.W.2d 58, 62 (Iowa 2003); *State v. Predka*, 555 N.W.2d

202, 204 (Iowa 1996). We conclude the district court did not err in refusing to deviate from the uniform instructions.

G. Post-trial Psychiatric and Substance Abuse Evaluations. The defendant contends the district court abused its discretion in denying his motion for psychiatric and substance abuse evaluations after trial, but before sentencing.

In a conference before trial, the defendant indicated he would be filing a motion for the evaluations. The county attorney agreed he should have them. The court indicated it would order them without further hearing, once the defendant filed the motion. It does not appear from the record that the defendant filed any such motion before or during trial.

After the verdict was returned, the defendant filed a pro se motion for evaluations for substance abuse and mental illness, claiming he suffered from psychosis and other mental "dehabilitations" and chronic substance abuse. The court ruled:

> The court concludes that such evaluations are not appropriate at this time outside of the normal evaluations which are done as a part of the process of preparing the presentence investigation report, which has been ordered for defendant. There has never been any question of defendant's competency for these proceedings. Defendant's motions for independent evaluations pursuant to Iowa Code chapters 125 and 223 are denied.

On appeal, the defendant argues the federal court system allows psychiatric and substance abuse evaluations "to impact upon a defendant's sentence." *See generally United States v. Hartje*, 251 F.3d 771, 776-77 (8th Cir. 2001). Although the district court has a right to obtain "psychiatric recommendations regarding an appropriate sentence," it has no duty to do so, even when considering a life sentence. *See State v. Knutson*, 234 N.W.2d 105,

108 (Iowa 1975). We find no abuse of discretion in the district court's ruling. The defendant was not claiming he was incompetent to stand trial. Rather, he was seeking to affect the sentence imposed. The evaluations performed as part of the presentence investigation are sufficient for this purpose.

IV. Conclusion.

There is not sufficient evidence of ongoing criminal conduct. We reverse the defendant's conviction of ongoing criminal conduct and vacate the sentence for that offense. We affirm the defendant's other convictions as supported by sufficient evidence. For the reasons set forth in the preceding discussion, we conclude the district court committed no error warranting reversal. The record is not adequate for us to address the defendant's ineffective-assistance claim. We preserve this claim for possible postconviction proceedings. We have carefully considered all of the claims raised by counsel and by the defendant pro se. Those not addressed specifically in this decision are either disposed of by our resolution of other claims or are without merit. With the exception of the ongoing-criminal-conduct conviction and resulting sentence, we affirm all of the defendant's convictions and sentences.

AFFIRMED IN PART AND REVERSED IN PART.