

**IN THE COURT OF APPEALS OF IOWA**

No. 0-781 / 09-1687  
Filed December 8, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DAMION JOHN SEATS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge.

Defendant, Damion Seats, appeals following his convictions of murder in the first degree and burglary in the first degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Damion J. Seats, Fort Madison, pro se.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Douglas R. Hammerand, Assistant Attorney General, Paul L. Martin, County Attorney, and Carlyle D. Dalen, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ. Tabor, J., takes no part.

**SACKETT, C.J.**

Defendant, Damion Seats, appeals following his conviction of murder in the first degree in violation of Iowa Code sections 707.1 and 707.2 (2007), and burglary in the first degree in violation of sections 713.1 and 713.3. He contends the court abused its discretion in admitting prior bad act evidence. He claims this evidence was unduly prejudicial and he is entitled to a new trial. We conclude the evidence was properly admitted and affirm.

**I. BACKGROUND AND PROCEEDINGS.** Around one-thirty in the morning on Saturday, August 24, 2008, Isidoro Cervantes Erreguin was shot and killed as he was sleeping on a couch in a home in Mason City. His brother was sleeping on a nearby couch and witnessed the shooting but was not harmed.

Later in the evening of August 24, the defendant, Damion Seats, was arrested for the shooting. He first denied being involved and claimed he was at a party when the shooting occurred. He was questioned again a couple of hours later and agreed to tell the officers what he knew if he was allowed to first talk with his girlfriend and his mother. The conversations between Damion and his girlfriend and his mother were recorded, with Damion's knowledge. He made incriminating statements during these conversations and later admitted to officers that he shot Isidoro. He stated he thought he was shooting Reuben Ramirez but after the shooting he realized he had killed "a[n] innocent person." Damion had been in a fight with Reuben Ramirez several weeks before the shooting at the same house. During the fight Damion severely beat Reuben with a brick.

Damion feared Reuben might press charges over the incident or seek revenge against him.

Damion was charged with murder in the first degree and burglary in the first degree. Damion's attorney filed a motion in limine seeking to exclude any testimony about the prior alleged assault against Reuben. The court denied the motion in limine. It found the evidence was relevant to show Damion's "motive intent, opportunity, or plan." It determined the probative value was not outweighed by unfair prejudice because a jury was not likely to convict on an inference that one who "fights would likely kill another person." The court concluded this type of inference would be unreasonable, and so there was not a substantial danger of unfair prejudice outweighing the relevance of the evidence.

At trial Damion testified, recanted his confession, and denied shooting Isidoro. He admitted that he was nearby the house at the time of the shooting. He testified that he was dropped off near the house to complete a drug deal he had agreed to do. However, the drug deal did not occur. Instead, a group of drug dealers Damion knew pulled up in a sport-utility vehicle and asked to borrow Damion's shirt. Damion gave one of them his shirt and saw the dealer tie it around his face. As Damion walked away, he heard gunshots and believed the dealers had fired them. He testified that he originally confessed to the shooting because he was trying to protect one of the dealers and another dealer told Damion to confess and threatened to hurt his family.

A jury found Damion guilty on both charges. He appeals claiming the court's admission of evidence of the fight against Reuben was an abuse of

discretion. He also makes several claims in a separate pro se brief that challenge the sufficiency of the evidence.

**II. SCOPE OF REVIEW.** Our review of a court ruling admitting evidence of a defendant's prior bad acts is for an abuse of discretion. *State v. Cox*, 781 N.W.2d 757, 760 (Iowa 2010); *State v. Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009). There is an abuse of discretion "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 (Iowa 2001) (quoting *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997)). But even if the court abused its discretion in admitting prior bad act evidence, we will not reverse if the error was harmless. *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005). Challenges to the sufficiency of the evidence are reviewed for correction of errors at law. *State v. Serrato*, 787 N.W.2d 462, 465 (Iowa 2010).

**III. PRIOR BAD ACTS.** The 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). The goal of the rule is "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 or she committed the crime in question." *Rodriguez*, 636 N.W.2d at 239. It is based on the fundamental principle that one should not be convicted of a crime based on his or her previous misconduct. *State v. Sullivan*, 679 N.W.2d 19, 24 (Iowa 2004). Prior bad act evidence is excluded not because it is

irrelevant, but because the jury may give excessive weight to the evidence and base the decision on the defendant's past rather than the present charge. *Id.* at 24-25.

Prior bad act evidence may be admissible for the limited purposes listed in rule 5.404(b). Before admitting the evidence for these purposes, a court must

(1) find the evidence is "relevant and material to a legitimate issue in the case other than a general propensity to commit wrongful acts," and (2) determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant.

*Reynolds*, 765 N.W.2d at 289-90 (quoting *Sullivan*, 679 N.W.2d at 25). Under the first step, the evidence is relevant if 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; *Reynolds*, 765 N.W.2d at 290.

Damion contends the evidence of the assault against Reuben was not relevant to prove motive, opportunity, intent, plan, or knowledge. He first argues intent was not at issue in the trial; rather, the disputed issue was the identity of the shooter since Damion denied shooting the victim at the trial. He claims the State cannot use the prior assault to prove identity because it did not argue at trial that the assault was relevant for this purpose. In addition, he claims the evidence cannot be used to prove identity because the assault against Reuben and the shooting of Isidoro are not sufficiently similar to prove each crime was committed by the same person. Further, Damion argues a defendant's intent

during a prior bad act against a person, alone, is not admissible to prove the defendant's intent toward another person during a later act.

The State argues the evidence of the prior assault was relevant to the issue of motive. It contends the assault against Reuben helped prove that Damion's motive in the shooting was to prevent Reuben from filing charges for the assault or retaliating against Damion. It also argues the evidence was part of the chain of events leading to the shooting and admissible to complete the story of the crime.

We find the evidence was relevant to establish Damion's, specific intent, motive, and plan on the evening of the shooting. A defendant's malice aforethought and specific intent toward the intended victim is relevant evidence to support a conviction of murder when an innocent bystander is the actual victim. See *State v. Alford*, 260 Iowa 939, 941-42, 151 N.W.2d 573, 574 (1967), *overruled on other grounds by State v. Bester*, 167 N.W.2d 705, 707, 710 (Iowa 1969); *State v. Huston*, 187 Iowa 1000, 1002, 174 N.W. 641, 642 (1919); *State v. Williams*, 122 Iowa 115, 124, 97 N.W. 992, 996 (1904). The prior assault and resulting risk of criminal charges or retaliation were also relevant to provide a motive and plan for the shooting. The assault and shooting occurred at the same location. Statements Damion made to others before and after the shooting referenced the prior assault. It was part of the chain of events under the State's theory.

We now must balance the probative value of the evidence against the risk of unfair prejudice. Iowa R. Evid. 5.403; *Reynolds*, 765 N.W.2d at 290. The

evidence should be excluded if the probative value is substantially outweighed by the danger of unfair prejudice. *State v. Taylor*, 689 N.W.2d 116, 124 (Iowa 2004). “‘Probative value’ gauges the strength and force of the tendency of the challenged evidence to make the consequential fact more or less probable.” *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005). Even if it meets the threshold relevance requirement, we still must consider the strength of that evidence to determine its probative value. See *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988) (“Whereas ‘relevancy’ is the tendency to make a consequential fact more or less probable, ‘probative value’ gauges the strength and force of that tendency.”). The risk of unfair prejudice is measured by evaluating whether the evidence is likely to influence the jury to make a decision on an improper basis. *State v. Castaneda*, 621 N.W.2d 435, 440 (Iowa 2001). Unfairly prejudicial evidence is described as that which

“appeals to the jury’s sympathies, arouses its sense of horror, provokes its instincts to punish, or triggers other mainsprings of human action [that] may cause a jury to base its decision on something other than the established propositions in the case.”

*Id.* (quoting *Plaster*, 424 N.W.2d at 231-32). We consider several factors in balancing the probative value and danger of unfair prejudice, including the State’s need for the evidence in terms of the issues disputed and other evidence available, whether there is clear proof the defendant committed the prior bad acts, the strength of the evidence on the relevant issues, and the extent the jury will be compelled to decide the case on an improper basis. *Reynolds*, 765 N.W.2d at 290; *State v. Newell*, 710 N.W.2d 6, 22 (Iowa 2006); *State v. Taylor*, 689 N.W.2d 116, 124 (Iowa 2004).

In evaluating these factors, we conclude the evidence's probative value was not outweighed by the danger of unfair prejudice. The need for the evidence was great. There was little other evidence to establish malice aforethought or specific intent. There was clear proof Damion committed the prior assault because he admitted it. The strength of the evidence of the prior assault to establish intent and malice aforethought in the murder was significant as well. Without the context of the prior assault, there was no explanation for Damion's conduct. Despite the incriminating nature of the prior assault evidence, we also find it is unlikely the jury based its decision on an improper ground. As the trial judge pointed out, it is unlikely the jury would use the prior assault as evidence of Damion's propensity to commit crime. The prior assault was closely connected to the murder. The murder occurred only weeks after the assault and at the same location. The jury was likely to consider the prior assault as evidence of Damion's motive and as a fact in the chain of events leading to the murder. Accordingly, we find the district court did not abuse its discretion in admitting the evidence of the assault against Reuben.

We have also considered Damion's other arguments set forth in his pro se brief. These arguments essentially claim there is insufficient evidence to support the verdict. We find the jury's verdict is supported by substantial evidence. In addition to Damion's confession, multiple witnesses provided testimony that corroborated the confession and supported the State's theory, including Isidoro's brother who survived the shooting, persons who rode in the car with Damion to



and from the shooting, and persons at a party who heard Damion make incriminating statements after the shooting. We therefore affirm the convictions.

**AFFIRMED.**