

**IN THE COURT OF APPEALS OF IOWA**

No. 0-782 / 09-1776  
Filed December 8, 2010

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

**vs.**

**JEREMIAH CLARENCE JOHNSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Butler County, James M. Drew,  
Judge.

Defendant appeals from the conviction entered after a jury found him  
guilty of kidnapping in the first degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender and Stephan J. Japuntich,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney  
General, Gregory M. Lievens, County Attorney, and Douglas D. Hammerand,  
Assistant County Attorney, for appellee.

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

**SACKETT, C.J.**

Defendant, Jeremiah Johnson, appeals from his conviction of kidnapping in the first degree, in violation of Iowa Code sections 710.1(3) and 710.2 (2009). He contends the court erred in denying his motion for a mistrial when the State elicited prior bad acts testimony through an expert witness. We conclude the evidence was admissible and therefore the court did not abuse its discretion in denying the motion for a mistrial.

**I. BACKGROUND AND PROCEEDINGS.** On the morning of March 11, 2009, Johnson went to several homes in rural Butler County. He told each resident he was looking for his lost dog and left his name and phone number in case any of the residents found the dog. Miriam Sessler was watching her three-year-old and four-month-old daughters when Johnson knocked on her door. She allowed him into the front door and wrote down the information he provided. As she was finishing writing, Johnson grabbed her and pulled her out of the house toward his truck in the driveway. She struggled with him but stopped resisting after he showed her a knife and told her, "Don't do anything stupid." He wrapped her wrists and ankles with duct tape and put her in the extended cab portion of the truck.

Johnson drove to a forest preserve, got out of the truck, and took a drink of whiskey. He offered a drink to Sessler but she declined. He then raped Sessler in the truck. Afterward, he asked Sessler to kill him by slitting his wrists and told her she could not leave until he was dead. She refused to slit his wrists. He got out of the truck and began pacing. He returned to the truck several times

to check on Sessler. At one point Sessler freed herself from the duct tape but Johnson bound her again. Sessler convinced Johnson to leave the keys in the truck because she was cold. When Johnson was pacing outside the truck again, Sessler was able to free herself, get into the driver's seat and drive away. She went to a nearby farmhouse and called 911. Then she drove Johnson's truck back to her home because she was worried about her children. Officers came to her home and escorted her to the hospital where she was treated and evidence was collected.

Other officers used the information Sessler provided to look for a suspect. They found Johnson wandering out of the woods near the forest preserve Sessler described. He had a knife and cuts on his arms. The officers took him into custody and first transported him to the hospital. There, his cuts were treated and evidence was collected. He was then taken to the county jail and questioned. Johnson admitted he abducted and raped Sessler.

On March 19, 2009, Johnson was charged with kidnapping in the first degree. His attorney filed a notice that he planned to rely on the defenses of intoxication and diminished responsibility. At trial the defense presented evidence that Johnson intermittently used methamphetamines for ten years and had taken methamphetamines the night before the incident. They also presented evidence that Johnson suffered from depression and was suicidal that day.

When the State was cross-examining a psychologist testifying for the defense, it questioned the witness about whether Johnson had a history of

suicide attempts. In referring to a medical record made at a mental health institute in Johnson's past, the State asked,

And if you look at the third page on the social service intake note, they were trying to determine whether his claim of suicide threat was real or if it was just a game that he had played to manipulate himself out of Eldora, correct?

The witness reviewed the record and agreed with the State's depiction of the record. The State went on to say, "And then the physician's intake notes actually indicated the defendant admitted he just made that up about threatening to kill himself to get out of Eldora, correct?" The witness agreed but clarified, "Whether I concur with that diagnosis I cannot speak to that matter." The witness then conceded that this was the only reference to suicide in the medical records he was given to review.

After Johnson's attorney performed redirect examination and the witness finished testifying, the court excused the jury for a break. During the break, Johnson's attorney moved for a mistrial, arguing that during the State's cross-examination, it "intentionally elicited testimony from [the witness] that included the fact that my client had been incarcerated as a youth in Eldora." The attorney contended that introducing the fact Johnson was incarcerated in Eldora prior to being admitted to the mental health institute was prejudicial and thus mistrial should be declared. The State urged that it was not intentionally eliciting prejudicial evidence and it only wanted to use the medical notes to show Johnson had a history of making up information to manipulate a situation and that the witness relied on the records in forming his opinion. The court stated,

I don't believe the State did anything intentional. I wish [the State] hadn't made reference to Eldora but I don't think it was an intentional attempt to dirty up the defendant, so to speak. There were no details regarding that matter. It was noted that I think it was 1995, which is a long time ago, and I just—I don't believe it rises to the level of denying the defendant a fair trial in this matter.

The court added that if Johnson's attorney requested a special jury instruction to address the matter, the court would consider it.

A special instruction was not requested by the attorney or given to the jury. Johnson was found guilty of kidnapping in the first degree. His counsel filed a motion for a new trial and motion in arrest of judgment arguing in part that the court erred in failing to order a mistrial. The motions were denied and Johnson now appeals.

**II. SCOPE OF REVIEW.** Our review of a court's ruling on a motion for a mistrial is for an abuse of discretion. *State v. Newell*, 710 N.W.2d 6, 32 (Iowa 2006); *State v. Piper*, 663 N.W.2d 894, 901 (Iowa 2003). We will find an abuse of discretion if the defendant shows the court's ruling was based on clearly untenable or unreasonable grounds. *Piper*, 663 N.W.2d at 901. If the ruling is not supported by substantial evidence or is an erroneous application of the law, it is untenable and an abuse of discretion. *State v. Rodriguez*, 636 N.W.2d 234, 239 (Iowa 2001). A court's decision to admit evidence of defendant's prior bad acts is also reviewed for abuse of discretion. *State v. Casady*, 491 N.W.2d 782, 785 (Iowa 1992). Even if there is an abuse of discretion shown, reversal is not required if the error was harmless. *State v. Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009).

**III. ANALYSIS.** Evidence of a defendant's prior bad behavior is not admissible to prove "the defendant has a criminal disposition and was thus more likely to have committed the crime in question." *Id.* at 289. The applicable rule of evidence states,

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). When faced with a challenge that evidence is inadmissible under this rule, the court must evaluate the evidence's relevance and prejudicial effect. *See State v. Sullivan*, 679 N.W.2d 19, 25 (Iowa 2004).

First, the court must decide whether such evidence is relevant to a legitimate factual issue in dispute. *State v. Mitchell*, 633 N.W.2d 295, 298 (Iowa 2001). If the court determines the evidence is relevant to a legitimate factual issue in dispute, the court must then decide if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *Id.*; Iowa R. Evid. 5.403.

*Sullivan*, 679 N.W.2d at 25.

Johnson contends the district court abused its discretion by failing to expressly analyze the evidence's relevance and prejudicial nature before ruling. He also argues the evidence, if relevant, is unfairly prejudicial because it allowed the jury "to use the evidence for the purpose of finding that the diminished responsibility . . . defense was disingenuous." The State argues Johnson has not preserved error on this claim and alternatively contends the evidence was properly admitted to refute Johnson's defense of diminished responsibility.

We conclude error was sufficiently preserved. Although Johnson's attorney did not object immediately to the State's question about Johnson's previous alleged suicide attempt and its reference to Eldora, the attorney alerted the court to the concern by requesting a side bar outside the presence of the jury. When the witness was done testifying only a few minutes later and the court announced a recess, Johnson's attorney officially made the motion for a mistrial and obtained a ruling. Although the attorney did not specifically mention rule 5.404(b), he did object that the State referred to previous conduct of the defendant and it was prejudicial. The court did not articulate the required analysis but did conclude the evidence was not prejudicial to the extent that the defendant was denied a fair trial. We find this adequately meets the purposes of our error preservation rules. See *State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003) (noting error preservation is important because it affords the district court an opportunity to consider the claimed error, and gives the appellate court an adequate record to review).

To determine admissibility, the court first must evaluate whether the prior bad acts evidence "is relevant to some legitimate issue in the case for a reason other than to show the defendant's propensity to commit wrongful acts." *State v. Shanahan*, 712 N.W.2d 121, 137 (Iowa 2006). In this case Johnson's history of suicidal tendencies was relevant to prove or disprove his diminished responsibility defense. This defense allows "proof of a defendant's mental condition on the issue of the defendant's capacity to form a specific intent in those instances in which the State must prove a defendant's specific intent as an

element of the crime charged.” *State v. Jacobs*, 607 N.W.2d 679, 684 (Iowa 2000). If established, the defense negates the specific intent element of a crime by showing a mental defect prevented the defendant from forming the requisite specific intent. *Anfinson v. State*, 758 N.W.2d 496, 502 (Iowa 2008). Kidnapping is a specific intent crime. See *State v. Doughty*, 359 N.W.2d 439, 441 (Iowa 1984) (noting that while jury instructions need not use the word “specific,” it is a specific intent crime and conviction under Iowa Code section 710.1(3) requires a finding of intent to commit sexual abuse); *State v. Lawrence*, 559 N.W.2d 292, 296 (Iowa Ct. App. 1996) (stating that to establish second-degree kidnapping, the State had to prove the defendant had specific intent to commit the crime). Since Johnson admitted to removing Sessler from her home without her consent, and to having sex with her, the only contested issue at trial was his specific intent to subject her to sexual abuse. Whether he was able to form this intent due to his intoxication and suicidal thoughts was the main dispute at trial. Therefore, his previous suicide attempt, and whether it was genuine or feigned, was relevant.

Even though the evidence is relevant, it still must be excluded if its probative value is outweighed by its prejudicial effect. Iowa R. Evid. 5.403; *Rodriguez*, 636 N.W.2d at 239-40; *State v. Castaneda*, 621 N.W.2d 435, 440 (Iowa 2001). Unfairly prejudicial evidence is that which appeals to sympathy, arouses a sense of horror, incites an instinct to punish or another reaction causing the jury to make its decision on something other than the proof presented. *State v. White*, 668 N.W.2d 850, 854 (Iowa 2003). In weighing the probative value against the prejudicial effect, the court considers the actual need



for the prior bad act evidence in light of the issues and other evidence available to the prosecution, and weighs it against the extent it may improperly influence the jury. *State v. Matlock*, 715 N.W.2d 1, 6 (Iowa 2006).

The prejudicial effect of the references to Eldora and Johnson's previous suicide attempt do not outweigh the probative value. The evidence presented by the defense to support Johnson's diminished responsibility defense and his state of mind at the time of the crime, was presented through a psychologist and psychiatrist. These witnesses used Johnson's previous medical records, including the reports from the mental health institute, as a part of their evaluations of Johnson. Even though Johnson did not ask about the contents of the previous medical records on direct examination, the issue of Johnson's depression was raised on direct examination. The State was entitled to explore the validity of this diagnosis to rebut the defendant's theory. See *State v. Mitchell*, 670 N.W.2d 416, 421-22 (Iowa 2003) (finding no unfair prejudice when analyzing a prior bad act claim because, in part, the defense's direct examination alluded to a conspiracy against the defendant; therefore, the State was entitled to rebut the conspiracy theory on cross-examination with prior acts evidence).

In addition, the State did not repeatedly refer to Johnson's incarceration in Eldora. It was only briefly mentioned twice. See *id.* at 422 (finding no unfair prejudice when the State did not dwell on the prior bad acts or go into extensive detail about them). We also do not believe the jury was likely to base its decision on the references to Eldora and Johnson's previous alleged suicide attempt. The issue in the case was Johnson's state of mind at the time of the crime. There

was ample evidence on this issue from both sides. Johnson's expert witnesses described his state of depression and intoxication at the time. Sessler also testified that Johnson was suicidal. The fact that Johnson was found with cuts on his arms also supported his defense. It is unlikely the jury relied on the prior act evidence in reaching its decision. We therefore conclude the probative value was not outweighed by unfair prejudice. The court did not abuse its discretion in refusing to grant a mistrial after the State elicited prior act evidence.

**AFFIRMED.**