

IN THE COURT OF APPEALS OF IOWA

No. 2-1183 / 12-0210
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONALD MARTIN SANDUSKY,
Defendant-Appellant.

Appeal from the Iowa District Court for Madison County, Terry Rickers,
Judge.

A defendant appeals his conviction asserting the district court erred in
admitting prior bad acts evidence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, and Julie Forsyth, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Ronald Sandusky appeals his convictions for sexual abuse in the third degree and simple assault, in violation of Iowa Code sections 709.1, 709.4(1), 708.1(1), and 708.2(6) (2011). Sandusky claims the district court erred in admitting evidence he possessed guns and had once threatened the victim and her mother with a gun as he claims this evidence was inadmissible prior bad acts evidence. Because the district court limited the use of such evidence to support the claim that the alleged acts were coerced or nonconsensual, we find no abuse of discretion and affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Sandusky was accused of two counts of sexual abuse in the third degree for sexually abusing his minor stepdaughter. During the trial, the State offered into evidence testimony from both the victim and the victim's mother (Sandusky's wife) regarding prior incidents when Sandusky threatened both of them with a gun. In one incident, the victim was twelve years old, and she told her mother Sandusky had been touching her at night while she slept. When Sandusky was confronted with this allegation by his wife, Sandusky grabbed a gun, approached the victim in a threatening or menacing manner, and screamed at her. He then chased the victim out of the house after handing the gun to his wife. In another incident the victim, then age nine or ten, witnessed an argument between Sandusky and his wife when Sandusky followed his wife into the hallway with a gun.

This prior bad acts evidence was the subject of a motion in limine prior to trial. The court ruled in limine that the State could introduce evidence of the

presence of firearms in the home, but “only to the extent that the presence of the firearms is relevant to the State’s contention that any of the alleged sex acts between the Defendant and the complaining witness were coerced or nonconsensual.” Similarly the court ruled that the State could introduce evidence of prior threats made by Sandusky but such evidence would be “strictly limited to evidence of the Defendant threatening the complaining witness with a firearm or the Defendant threatening his spouse with a firearm in the presence of the complaining witness. No mention of any other instances of the Defendant allegedly threatening persons with a weapon shall be permitted.” With respect to the testimony of the victim, the court held, “The complaining witness may testify that she observed domestic abuse occurring in her presence if the observation of abuse was a psychological factor in any alleged sex acts being coerced or nonconsensual.”

During trial, Sandusky’s attorney objected to the wife’s testimony regarding Sandusky threatening the victim with a weapon, but did not object to the same testimony offered by the victim. The jury was instructed that “by force or against the will” of the victim as used in the sexual abuse marshaling instructions did not mean the victim had to physically resist Sandusky. The instruction stated it was sufficient for Sandusky to have threatened violence against the victim which overcame her will by fear.

The jury returned a verdict of guilty on the first count of sexual abuse in the third degree and a verdict of guilty on the lesser included offense of simple

assault on the second count.¹ Sandusky was sentenced to imprisonment for a term not to exceed ten years on the first count and thirty days in jail on the second count. He was also committed to the custody of the director of the department of corrections for the rest of his life pursuant to Iowa Code section 903B.1.

II. STANDARD OF REVIEW AND PRESERVATION OF ERROR.

We review the district court's evidentiary ruling regarding the admission of prior bad acts for abuse of discretion. *State v. Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009). We will find an abuse of discretion "when the trial court exercises its discretion 'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *Id.* (citation omitted). However, a reversal will not be warranted if the error was harmless. *Id.*

The State asserts Sandusky failed to preserve error on his claim that the court erred in admitting prior bad acts evidence through the testimony of the victim as Sandusky did not object to this testimony at trial. Sandusky claims that his motion in limine prior to trial preserved error on his claim. We agree.

"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

¹ The State asserts we should decline to consider this appeal with respect to the simple misdemeanor conviction of simple assault because Sandusky did not seek discretionary review as required under Iowa Code section 814.6(2)(d) but instead filed a notice of appeal. See Iowa Code § 814.6(1)(a). However, if a defendant has improperly sought review by filing a notice of appeal rather than an application for discretionary review, our rules of appellate procedure provide, "the case shall not be dismissed, but shall proceed as though the proper form of review had been requested." Iowa R. App. P. 6.108. We therefore treat Sandusky's notice of appeal as a request for discretionary review, and we grant the request and proceed. See *State v. Watts*, 801 N.W.2d 845, 850 n.2 (Iowa 2011).

objection at such time during trial. In such a situation, the decision on the motion has the effect of a ruling.”

State v. Alberts, 722 N.W.2d 402, 406 (Iowa 2006) (citations omitted). “[I]f the ruling reaches the ultimate issue and declares the evidence admissible or inadmissible, it is ordinarily a final ruling and need not be questioned again during trial.” *Id.* (citation omitted). Here the court ruled that evidence regarding the presence of firearms and Sandusky’s prior threats would be admissible so long it was strictly limited to the State’s contention the prior acts coerced the victim or rendered the sex acts nonconsensual. The court’s ruling also permitted the victim to testify regarding the observed domestic abuse if it was a psychological factor in any alleged sex acts being coerced or nonconsensual. The court’s ruling reached the ultimate issue of the admissibility of this evidence and, therefore, no objection was required.²

III. PRIOR BAD ACTS.

Pursuant to Iowa Rule of Evidence 5.404(b),

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.

As applied to this case, the evidence Sandusky threatened the victim and her mother and possessed firearms was not admissible to prove he was a bad man and thus more likely to have committed the acts alleged. But, if there was a legitimate purpose for the evidence other than to impugn Sandusky’s character,

² Sandusky also raises his claims under the ineffective-assistance-of-counsel rubric. Because we find the issue preserved, we need not address his ineffective-assistance claim.

then the evidence is admissible. *Reynolds*, 765 N.W.2d at 289. Rule 5.404(b) lists several purposes that are considered legitimate, but the list is not exhaustive. *State v. Nelson*, 791 N.W.2d 414, 425 (Iowa 2010). We must ask “whether the disputed evidence is ‘relevant and material to some legitimate issue other than a general propensity to commit wrongful acts.’” *Id.* (citations omitted). If it is relevant to a legitimate issue, then the court must determine whether the probative value is substantially outweighed by the danger of unfair prejudice. *Reynolds*, 765 N.W.2d at 289.

Sandusky alleges there was no legitimate purpose for the evidence because there was no evidence that he used a gun or threatened to use a gun in perpetrating the sex acts. His defense at trial was that the incidents never happened and the victim’s testimony was a complete fabrication. Because he did not place his intent or state of mind at issue, he contends the evidence of his ownership of or previous threats to use a gun were inadmissible.

The State asserts there was a legitimate purpose to introduce the prior threats and gun ownership, and we agree. While Sandusky did not place his own state of mind at issue, he did place the victim’s state of mind at issue when he accused her of fabricating the allegations. A recognized exception to the prior bad acts rule includes “proof of a sex abuse victim’s state of mind.” *State v. Alderman*, 578 N.W.2d 255, 258 (Iowa Ct. App. 1998). Sandusky testified at trial that the victim made up her story “just a few days” after he refused to purchase a car for her. In closing argument defense counsel stated,

The issue of the car the first week of September, I don’t think it’s just a coincidence that there was discussions about getting her a new car and the decision being made that she is not going to get

a new car and a couple of days later these charges are filed. They've all testified [the victim] never liked Ron throughout the ten years or so that they've known each other.

The victim claimed the first time Sandusky sexually abused her was in May, approximately four months before she reported the incident to authorities in September. The challenged evidence would help explain the victim's delay in reporting the conduct and tend to disprove Sandusky's claim that the allegations were only retaliation for refusing to buy her a car. The evidence showed that the last time the victim reported to her mother Sandusky's inappropriate touching Sandusky approached her in a menacing manner with a loaded gun and threatened her. The victim testified she waited to report the abuse because of her fear Sandusky would hurt her or shoot her. The prior bad acts evidence provides an explanation and support for this fear. This evidence also supported an element of the sexual abuse charge: "[T]he act is done by force or against the will of the other person." See Iowa Code § 709.4(1).

The risk of prejudice did not substantially outweigh the probative value of this evidence. The prior bad acts were limited to Sandusky's actions toward the victim or toward the victim's mother that occurred in the victim's presence. The court did not let in other bad acts evidence including the existence of an explosive device found in Sandusky's home or his other assaultive behavior toward others.³ In considering the balancing factors articulated in *State v. Taylor*,

³ The limiting instruction given by the court did not reference threats but read:
You have heard evidence that the defendant allegedly committed other acts with [the victim] before and/or after the date of the offenses charged. If you decide the defendant committed these other acts, you may consider those acts only to determine whether the defendant has a sexual passion or desire for [the victim]. You may not consider them as proving that the defendant actually committed the act or acts charged in this case.

we find the district court did not err in admitting the prior bad acts evidence in this case. 689 N.W.2d 116, 124 (Iowa 2004) (articulating the balancing factors in the relevance versus prejudice analysis to include: “the need for the evidence in light of the issues and the other evidence available to the prosecution, whether there is clear proof the defendant committed the prior bad acts, the strength or weakness of the evidence on the relevant issue, and the degree to which the fact finder will be prompted to decide the case on an improper basis”).

AFFIRMED.