

**IN THE COURT OF APPEALS OF IOWA**

No. 2-456 / 10-1902  
Filed August 8, 2012

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

**vs.**

**RANDALL TODD MOORE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Randall Moore appeals his convictions for first-degree murder, first-degree kidnapping, first-degree sexual abuse, and attempted murder. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John Sarcone, County Attorney, and Frank S. Severino, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**BOWER, J.**

Randall Moore appeals from the judgment and sentence entered upon jury verdicts finding him guilty of murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2 (2009); kidnapping in the first degree, in violation of sections 710.1 and 710.2; sexual abuse in the first degree, in violation of sections 709.1 and 709.2; and attempt to commit murder, in violation of section 707.11. On appeal, Moore contends the district court erred in denying his motion to exclude expert testimony and in denying his motion in limine as to alleged prior bad acts evidence. Upon our review, we find no abuse in the district court's discretion on either of these issues. Accordingly, we affirm.

**I. Background Facts and Proceedings.**

This case concerns the tragic death of TereseAnn Lynch Moore, the wife of Randall Moore and the mother of an infant son. TereseAnn and Moore met in 2008. Their son was born in March 2009, and they married in July 2009.

In October 2009,<sup>1</sup> TereseAnn's family members noticed TereseAnn was no longer the "high-spirited" and "spunky" woman they knew. On October 7, TereseAnn contacted her mother, Sheila Lynch, sounding "very scared" and "very hysterical." Shortly thereafter, TereseAnn contacted her brother, Michael Lynch, sounding "frantic" and "very terrified." They devised a plan for Michael to pick TereseAnn up from work on October 13. Michael and TereseAnn drove together to get TereseAnn's six-month-old son, Levi, from daycare and dropped him off at the home of their aunt, Ellen Schiltz. Michael and TereseAnn then

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<sup>1</sup> Unless noted otherwise, dates referenced took place in 2009.

drove to the courthouse, where TereseAnn obtained a temporary protective order against Moore.

Michael, TereseAnn, and their uncle, Rob Schiltz, went to TereseAnn's apartment to retrieve some of her belongings. Two Des Moines police officers met them at the apartment. No one else was there. Michael and Rob were taking apart Levi's crib as TereseAnn packed a bag. Within a short time, Moore arrived at the apartment. He became "irately mad" and got "into TereseAnn's face," "screaming and yelling" at her. TereseAnn was "shaking" and "terrified" of Moore. TereseAnn and Levi then moved in with TereseAnn's aunt and uncle, Ann and Dave Vaske. That evening, Ann photographed numerous bruises on TereseAnn's face, arms, neck, and back, along with several rug burns.

Several days later, Moore went to Ellen Schiltz's house for a supervised visit with Levi. Moore was "very angry" and was "pacing back and forth." Moore said, "She told me she would never leave. I didn't tell her she could leave. I can't believe she is going through with this." Moore talked about "his gun" and stated he bought shotgun shells at Wal-Mart. Moore said the family "was going to pay." Moore's comments caused Ellen "very much concern."

Moore contacted a friend, Michael Neal, and told Neal that TereseAnn "had left him." Moore told Neal that TereseAnn had "cleared out the bank accounts and wouldn't answer his phone calls." Neal recalled hearing the couple arguing at times. Moore admitted he "grabbed her by the arm and shoved her up against a dresser." Moore was in "constant contact" with Neal by calls and text messages after TereseAnn left Moore.

On October 26, a hearing took place on the no-contact order. TereseAnn attended the hearing, and Neal accompanied Moore. The hearing resulted in a protective order prohibiting Moore from having contact with TereseAnn. Moore was allowed limited supervised visitation with Levi. The court ordered Moore to immediately turn over his firearms to police. Neal offered to store Moore's shotgun for him. Moore declined and said he knew Neal "would not give it back to him if he wanted to do something with it." Moore made the comment, "I ought to just go to her hometown and kill her whole family."

Moore persuaded another friend, John Barnard, who lived in an apartment across the parking lot from Moore and TereseAnn, to store the shotgun at Barnard's apartment so Moore could "try and sell it, get some money for it, instead of turning it in to the police." Moore was "scared to have the gun in his possession," because "he was afraid that people were watching him."

Although Moore had a new car, Moore told his friends he rented cars because "TereseAnn had a private investigator following him around, and he didn't want them knowing what he was doing or where he was at." Neal indicated he saw Moore driving a Toyota Camry and a PT Cruiser that he rented.

On October 28, TereseAnn, her aunt Ellen, and two police officers went back to TereseAnn's apartment to pick up other belongings. As they were packing boxes, Moore arrived. Moore told TereseAnn she would "be sorry" and threatened to take Levi from daycare. TereseAnn was "shaking, trembling, and crying uncontrollably."

Later, Moore called Mary Nessel, TereseAnn's college friend, looking for TereseAnn. Moore said TereseAnn had left him and demanded to know where she was. Moore said he "beat her sometimes," but TereseAnn is "crazy" and "gets up in [his] face." When Mary refused to help Moore contact TereseAnn, Moore "immediately flips a switch and is angry."

Moore called his friend, Tim Noel, after TereseAnn moved out. Moore said TereseAnn "had a restraining order against him." Moore admitted he "push[ed] her, like on the couch or on the bed." Moore told Noel he had "bought some slugs and he had a gun and he was going to kill himself." In another conversation, Moore was "really upset" and told Noel, "I should have just went ahead and killed myself and killed her, too." Noel also recalled seeing Moore in a bar. Moore was "an emotional wreck," and told Noel "things weren't good." Moore said "he just wanted his family back."

Moore also called his friend, Tim Pilcher, after TereseAnn moved out. Pilcher met with Moore, and Moore told Pilcher "he was going to kill her and kill himself." Moore said "he had a shotgun and he was going to use it." Pilcher met Moore again a few weeks later. Moore told Pilcher "he hadn't been eating, hadn't been sleeping." Moore said he would "kill her" and kill himself, and that he was "about ready to do something extreme."

On the evening of November 10, Jamie Schick met Moore at the Game sports bar in Urbandale. After Moore exchanged the PT Cruiser he was driving for a Trail Blazer, he and Schick went to a couple other bars. They returned to Moore's apartment later, where Schick spent the night. The next morning,

November 11, Schick drove Moore to Hertz Rent A Car in Urbandale, where Moore rented a silver Toyota Camry. Moore said he “wasn’t sure if he was going to be followed.” Moore and Schick ate lunch together at Taco Casa in Des Moines. On the drive back to Schick’s car, Moore received a phone call from his attorney’s office “about when he was going to be able to see his baby.” Schick noticed Moore was “upset” and heard him say “that wasn’t what they had agreed on.” Moore then called Michael Neal and stated, “You will not believe what this bitch is doing to me now.” Moore dropped Schick off at her car at about 1:45 p.m. He called her a few minutes later to say “he had fun” and he “might stop in” at Schick’s work that night.

Moore contacted John Barnard and asked if he could go to Barnard’s apartment “to stay until [Barnard] got off work.” Barnard gave Moore the keys to his apartment. Sometime between 2:30 and 3:00 p.m., Moore returned the keys to Barnard, just as Barnard was getting off work. Barnard noticed Moore was “very mad,” and Moore told him TereseAnn was “trying to keep him from seeing his child.” Barnard heard Moore talking on his cell phone. Barnard later realized Moore’s shotgun “had been removed” from Barnard’s apartment.

TereseAnn had no plans to see Moore on November 11. TereseAnn spent the morning with Levi at the Vaskes’ home, and returned there after taking Levi to an 11:00 a.m. doctor appointment. That afternoon, TereseAnn planned to drop Levi off at daycare while she went to a 3:00 p.m. dental appointment, stop at the store, pick Levi up, and return to the Vaskes’ home.

Dental hygienist Annette Hayes spoke to TereseAnn while cleaning TereseAnn's teeth that afternoon. According to Hayes, the dental office schedules appointments six months in advance, sends out reminder postcards, and makes reminder phone calls.

After her dental appointment, TereseAnn drove across the street to the Target store at Merle Hay Mall. A Target surveillance video shows Moore pulling into the same parking lot approximately twenty-five seconds later, driving a silver Toyota Camry. While TereseAnn was in Target, Moore twice moved his car closer to TereseAnn's blue Chevy Malibu. TereseAnn walked out of Target just after 3:57 p.m. As TereseAnn got in her car, Moore parked the Camry behind TereseAnn's car, blocking her in. Moore got out and moved towards her.

Three women parked near TereseAnn witnessed Moore yell at TereseAnn, forcibly remove TereseAnn from her car, push her head first into the backseat of the Camry, and speed off. The women observed TereseAnn was "resisting" and that she "looked terrified" as Moore was "dragging," "pushing," and "forcing" her into the Camry.<sup>2</sup> The women noticed TereseAnn's car was running and her purse and cell phone remained on the front passenger seat. One of the women called 911.

Moore drove TereseAnn straight to his nearby apartment complex at 5517 Aurora. En route, Moore called Michael Neal and said "he had Terese in the car and that he was going to kill her and himself." Neal told Moore he did not believe

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<sup>2</sup> From the front entrance of the Target store, Target employee Margaret Besch saw "a car parked kind of in the aisleway in the parking lot" and saw "someone putting what looked to be a gun into the car and then take off."

him, but Neal heard TereseAnn's voice in the background before Moore hung up. Upon arriving at the apartment, Moore backed into his garage with the passenger side so close to the wall that he damaged the Camry's side mirror, front bumper, and front fender. No one saw Moore take TereseAnn from the garage up to his second floor apartment carrying a shotgun without the case.

A few minutes after 4:00 p.m., Moore sent a text message to fourteen people, including TereseAnn's mother, Sheila; brother, Michael; two aunts, Ann and Ellen; and Michael Neal; Tim Noel; and Joseph Nelson, which stated: "By the time u get this me and terese will be dead it didn't have to be this way but she has made bad choices with me seeing levi and that's not right now she doesn't!"

Sheila and Michael Lynch immediately tried calling TereseAnn's cell phone but got no answer. Moore called Jamie Schick at 4:07 p.m., read a paragraph from a mediation document to her, and abruptly hung up. Tim Noel called Moore and asked what he was doing. Moore said, "I can't deal with this anymore" and "she made some bad decisions with Levi and I." Noel heard TereseAnn in the background repeatedly "begging and pleading for her life." Noel heard Moore say "I'm sorry" and "I love you" before Moore hung up. Noel immediately drove to Moore's apartment complex to see if he could help.

Des Moines Police Officer Ryan Swagler was the first officer on the scene. He had entered the apartment building when he heard a shotgun blast at 4:23 p.m. Officer Todd Roland arrived next and parked behind Officer Swagler's car. Officer Roland exited his car and started walking when he "got shot in the hand" causing extensive damage and heavy bleeding. He crawled for cover and

remained on the ground until other officers arrived and were able to help him to safety and then into an ambulance. Officer Brett Routh arrived and saw Moore on a second floor balcony holding a shotgun and pointing it at officers while fanning it along the railing. Moore ignored commands to put the weapon down and paced back and forth from the apartment to the balcony two or three times over the next few minutes.

Michael Lynch reached Moore on his cell phone at 4:26 p.m. Moore told Lynch, "I shot her. Her brains are everywhere. You guys shouldn't have fucked with me. I killed her. I shot two cops, and now I'm going to shoot myself." Moore sounded "calm" and his tone was "taunting."

Moore called Neal and stated, "I just shot a cop, and I killed Terese. She is dead on the floor in front of me in the living room, and I'm going to blow my brains out." In the background Neal heard someone saying, "Officer down. Officer down."

John Barnard reached Moore on his cell phone at 4:28 p.m. Moore said, "I am just sick of this shit. I'm ready for it to be done." Moore then told Barnard he had "killed Terese" and "shot two policemen."

Moore called Sheila Lynch. Moore stated, "I did it. I killed her. You shouldn't—you shouldn't have messed with me. . . . I killed her. She is laying here at my feet. If you don't believe me, call the cops. They are everywhere. I just killed two cops."

Moore called Noel and said, "Tim, I just shot TereseAnn, and I shot a police officer." Moore asked Noel if he should "turn himself in" or if he should "kill himself."

Joseph Nelson called Moore, and Moore said, "I shot her. She's dead." Nelson said he did not believe Moore. Moore stated, "I swear on Levi's life. She is dead laying in front of me." Nelson noticed Moore kept repeating that he had killed TereseAnn, "not necessarily bragging, but [as if to say] believe me, believe me." Then Moore told Nelson, "I'm going to shoot myself. I'm going to cap myself in the head." Nelson asked him, "Why would you do that? [Y]ou have your son." Moore responded, "What does it matter? I am never going to see him again . . . . I am going to be prison for the rest of my f-ing life."

Dispatcher Nick Giampolo reached Moore on his cell phone at 4:27 p.m. for three minutes and again at 4:33 p.m. for four minutes. Moore repeatedly threatened to shoot any officers who came to his door or tried to come in. Moore said TereseAnn was "sitting right here," but did not say she was dead. During the second call from Dispatcher Giampolo, Moore demanded to speak to Sergeant Anthony Knox.

During a lengthy standoff with police, Moore mentioned child custody several times. While discussing with officers how he should give himself up, Moore stated several times he did not want to get hurt, and he was concerned the officers would hurt him or shoot him. Moore eventually left the shotgun on the dining room table and came out with his hands up. Right after Moore was arrested, Moore "mentioned there was a child custody issue and that is what had

brought it to a head that evening is that she was trying to deprive him of seeing his child.”

Later, during booking, Moore appeared “very calm, collected,” and “borderline arrogant.” He seemed very concerned about getting out on bail the next morning. He talked about his boat and had a large amount of cash in his wallet.

Officers found TereseAnn fully clothed and lying on the floor by the dining room table with a large gunshot wound to her face. In TereseAnn’s left hand was a letter Moore wrote to her dated October 24. Numerous envelopes and papers were laid out on the living room floor and picture frames were faced downward. A calendar on the kitchen wall noted TereseAnn’s 3:00 p.m. dental appointment.

Criminalist Victor Murillo determined Moore had used a Remington 12-gauge pump action shotgun with hollow point “deer slugs” designed to “mushroom” open to cause “much more damage.” Moore had fired the shotgun twice with three shells remaining. Officers found binoculars, a gun case, and a box of ammunition in the Camry.

Criminalist Michael Halverson identified TereseAnn’s blood in two places on the master bedroom door, the master bathroom toilet, paper tissue in the bathroom trash can, and on Moore’s shirt sleeve. Identification Technician Rex Sparks opined that one spot on the door was from impact contact, like a push or shove, and the other was a swipe pattern. He further opined the blood in the bathroom appeared to be expired from an airway like a nose or mouth. With respect to the shooting, Sparks determined TereseAnn had been in “somewhat

of a squatting position” with her legs horizontal and dropped over backwards when shot. Sparks opined the barrel of the shotgun to be between three to five feet away from TereseAnn when Moore fired.

Detective Mike McTaggart obtained Moore’s cell phone records and noted Moore sent and received 101 text messages between November 1 and November 11. A number of the messages related to food or going out. Moore made four outgoing calls after he sent the text message about killing TereseAnn and committing suicide.

Medical Examiner Dr. Gregory Schmunk performed an autopsy on TereseAnn’s body. Dr. Schmunk observed minor scrapes and bruises on TereseAnn’s forehead, nose, forearm, and right kneecap. The shotgun slug entered under TereseAnn’s tongue, fracturing her lower jaw, then traveled down her neck, through both lobes of her right lung, and exited her back. She died from bleeding caused by extensive damage to blood vessels in her mouth, neck, and lung. Dr. Schmunk found no evidence of injury to TereseAnn’s genitalia.

On December 21, the State filed a trial information charging Moore with murder in the first degree, kidnapping in the first degree, and attempt to commit murder. On April 12, 2010, the State amended the trial information to include a charge of sexual abuse in the first degree, after swabs taken from TereseAnn showed the presence of seminal fluid from the defendant. Trial commenced on October 4, 2010.

Prior to trial, Moore filed a motion to exclude the testimony of dental hygienist Annette Hayes, and the expert testimony of gynecologist Dr. Linda

Railsback. Moore argued Hayes's testimony would be irrelevant, hearsay, improper opinion, and cause unfair prejudice to him; and Dr. Railsback's testimony would be irrelevant, improper expert testimony, and would not assist the trier of fact. The district court heard arguments on Moore's motion to exclude at the pre-trial conference. The court denied Moore's motion, finding Hayes's testimony went "to [TereseAnn's] plan and existing state of mind." The court also found Dr. Railsback's expert testimony would be allowed, if proper foundation was laid, for the "limited" purpose of acknowledging a "lack of injury [to TereseAnn] isn't preclusive proof that there wasn't sexual abuse."

Moore also filed a motion in limine prior to trial seeking to exclude the following evidence: (1) prior criminal charges or convictions of Moore, (2) statements made by TereseAnn to any other person, (3) evidence the letter found in TereseAnn's hand was placed in her hand by Moore after her death, (4) statements that witnesses thought Moore was "controlling," (5) evidence that a protective order was in place between Moore and TereseAnn, and (6) evidence that women in prior relationships with Moore had made allegations of domestic abuse or sought protective orders against him. The district court both granted and denied parts of Moore's motion. The excluded evidence included: evidence of prior criminal charges or convictions of Moore; evidence the letter found in TereseAnn's hand was placed in her hand by Moore after her death; evidence Moore was controlling; and evidence that other women in prior relationships with Moore had made allegations of domestic abuse or sought protective orders against him. The court denied Moore's motion and allowed: observations of

others of TereseAnn's demeanor; statements from witnesses who heard raised voices or arguing between Moore and TereseAnn (but not the contents of those conversations); statements made by TereseAnn to other people regarding Moore's domestic abuse and her resulting fear of Moore; and evidence of the existence of a protective order.

Moore did not take the stand in his defense. Following a one-and-a-half week trial, Moore was found guilty of all charges. Moore filed a motion for new trial, arguing he did not receive a fair and impartial trial and was unfairly prejudiced by the admission of the prior evidence of domestic abuse by Moore against TereseAnn, evidence TereseAnn sought and obtained a protective order against Moore, and the testimony of Dr. Linda Railsback. The court denied the motion based upon the prior rulings.

On November 12, 2010, the court sentenced Moore to consecutive life terms on the murder, kidnapping, and sexual abuse charges. Moore was ordered to serve twenty-five years on the attempted murder charge, to be served consecutive to the other sentences. Moore now appeals.

## **II. Admissibility of Expert Testimony.**

We review the admission of expert testimony for an abuse of discretion. *State v. Newell*, 710 N.W.2d 6, 28 (Iowa 2006). We consider the district court's ruling in light of "the general rule" of "liberality in the admission of opinion evidence." *Id.*; *State v. Halstead*, 362 N.W.2d 504, 506 (Iowa 1985). We are also guided by our rules of evidence, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine

a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” Iowa R. Evid. 5.702. In other words, expert testimony “is admissible if it is reliable and will assist the trier of fact in resolving an issue.” *State v. Rodriguez*, 636 N.W.2d 234, 245 (Iowa 2001) (citation omitted).

The evidence at issue here consists of the testimony of Dr. Linda Railsback, a physician who is board certified in obstetrics and gynecology with extensive experience performing sexual assault examinations. Dr. Railsback testified that she sees injuries to the genitalia in some sexual assault cases but not in others. As Dr. Railsback explained, “There is no pattern of physical findings that is indicative one way or the other of sexual assault.” Dr. Railsback further testified it is common to find no injuries to sexual assault reporters because the adult sex organs are designed “to fit together.”

Prior to trial, Moore unsuccessfully moved to exclude Dr. Railsback’s testimony. The court ruled Dr. Railsback would be allowed to testify, if proper foundation was laid, to acknowledge that a lack of injury to TereseAnn was not preclusive proof sexual abuse did not occur. At trial, the State made an offer of proof and the court ruled Dr. Railsback could testify as long as she did not opine whether there was sexual abuse or not. The court thereafter overruled another objection by Moore’s trial counsel during Dr. Railsback’s testimony.<sup>3</sup>

On appeal, Moore does not challenge Dr. Railsback’s qualifications to render the testimony summarized above. Rather, Moore argues the testimony

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<sup>3</sup> Because trial counsel preserved error, we do not reach Moore’s alternative ineffective-assistance-of-counsel claim on this issue.

was “the same as directly opining on the truthfulness of Schmunk’s testimony.” Dr. Schmunk performed an autopsy on TereseAnn’s body and found no evidence of injury to TereseAnn’s genitalia. Moore also contends Dr. Railback’s testimony was “not relevant” because “testimony regarding the absence of an injury does not make a sexual assault any more or less probable” and “the jury was capable of assessing the sexual assault evidence without resorting to this expert testimony.”

Upon our review, we find that Dr. Railsback’s testimony did not comment on the credibility of Dr. Schmunk. See *State v. Hulbert*, 481 N.W.2d 329, 332 (Iowa 1992) (observing expert evidence “may not be used to merely bolster a witness’s credibility”). Indeed, Dr. Railsback stated she had never examined TereseAnn. We further do not find that Dr. Railsback’s testimony expressed an opinion as to whether TereseAnn voluntarily consented to a sex act with Moore. See *id.* (noting expert evidence may not “be employed as a direct comment on the guilt or innocence of the defendant”). Rather, Dr. Railsback set forth her expert opinion—derived from many years of performing sexual abuse examinations—regarding the significance of the presence or absence of injuries to the genitalia on the issue of consent to sexual intercourse.

The district court properly allowed Dr. Railsback’s testimony to assist the jury to understand the evidence regarding the lack of injury to TereseAnn’s genitalia. See *Rodriguez*, 636 N.W.2d at 245 (acknowledging expert testimony is admissible if it is reliable and would assist the trier of fact to understand the evidence or determine a fact in issue). Ultimately, it was up to the jury to

determine whether the sex act was by force, against TereseAnn's will, or under the threat of violence. Finding no abuse in the trial court's discretion,<sup>4</sup> we affirm on this issue.

### **III. Admissibility of Prior Bad Acts.**

Our standard of review is the same for this alleged error as it was in considering the admission of expert testimony: abuse of discretion. *State v. Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009). An abuse of discretion is found only when the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* (quotation marks omitted). "A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law." *Rodriguez*, 636 N.W.2d at 239 (quotation marks omitted). Even if an abuse of discretion occurred, reversal will not be warranted if the error was harmless. *Reynolds*, 765 N.W.2d at 288.

The admissibility of prior bad act evidence is controlled by Iowa Rule of Evidence 5.404(b), which 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

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<sup>4</sup> Even assuming, *arguendo*, Dr. Railsback's testimony was not helpful to the jury, we further observe Moore suffered no prejudice by the admission of the testimony. We will not disturb a district court's ruling on the admissibility of expert testimony at trial unless it constitutes an abuse of discretion *and prejudice has resulted*. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 531 (Iowa 1999). The circumstances of TereseAnn's abduction from the Target parking lot and confinement at gunpoint by Moore overwhelmingly support the jury's finding that the sex act between Moore and TereseAnn was not voluntary or consensual on TereseAnn's part. The State's evidence was highly indicative of Moore's guilt. We agree with the district court there was no prejudice in allowing the expert testimony in this case.

purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 5.404(b) seeks 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.” *Rodriquez*, 636 N.W.2d at 239. Therefore, to be admissible, the evidence must be relevant “to prove some fact or element in issue other than the defendant’s criminal disposition.” *Newell*, 710 N.W.2d at 20 (quotation marks omitted). Moreover, when evidence of prior bad acts is offered to establish “an ultimate inference of mens rea,” the prosecutor is required to “articulate a tenable noncharacter theory of logical relevance.” *State v. Taylor*, 689 N.W.2d 116, 123-24 (Iowa 2004) (quotation marks omitted).

The evidence at issue concerns the testimony of several witnesses regarding “domestic abuse by Moore against TereseAnn [including statements about TereseAnn’s demeanor], and that TereseAnn sought and obtained a protective order against Moore.” Prior to trial,<sup>5</sup> Moore unsuccessfully moved to exclude testimony on those issues.<sup>6</sup>

A. *Relevancy*. We are to employ a two-step analysis to determine whether this evidence is admissible. See *id.* at 124. We must first determine whether the evidence is relevant to a legitimate issue in the case other than a

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<sup>5</sup> Because trial counsel preserved error, we do not reach Moore’s alternative ineffective-assistance-of-counsel claim on this issue.

<sup>6</sup> However, the district court granted parts of Moore’s motion in limine and excluded: evidence Moore was “controlling”, the content of arguments between TereseAnn and Moore, evidence of prior criminal charges or convictions of Moore, evidence the letter was placed in TereseAnn’s hand by Moore after her death, and evidence that other women in prior relationships with Moore had made allegations of domestic abuse or sought protective orders against him.

general propensity by Moore to commit wrongful acts. *Newell*, 710 N.W.2d at 21. Moore argues “[t]he overriding purpose and the result of the admission of the challenge[d] evidence was to paint Moore as a bad person” and “tended only to establish Moore’s bad character and propensity to commit crime.”

It is undisputed Moore caused TereseAnn’s death and wounded Officer Roland. At issue is Moore’s degree of culpability. The district court admitted evidence of Moore’s prior domestic abuse against TereseAnn on the issue of intent. Before we consider the court’s decision, it is essential to identify whether intent was at issue in this case. See *State v. Sullivan*, 679 N.W.2d 19, 25 (Iowa 2004) (requiring evidence to be relevant “to a *legitimate* issue in the case other than a general propensity to commit wrongful acts”).

The charge of first-degree murder is found in Iowa Code sections 707.1 and 707.2. The basic crime of murder is defined as: “A person who kills another person with malice aforethought either express or implied commits murder.” Iowa Code § 707.1. Murder is in the first degree if the person “willfully, deliberately, and with premeditation kills another person,” or “kills another person while participating in a forcible felony” such as kidnapping or sexual abuse. See *id.* § 707.2.

The charge of first-degree kidnapping is found in Iowa Code sections 710.1 and 710.2. The basic crime of kidnapping is defined as follows:

A person commits kidnapping when the person either confines a person or removes a person from one place to another, knowing that the person who confines or removes the other person has neither the authority nor the consent of the other to do so; provided, that to constitute kidnapping the act must be accompanied by one or more of the following:

....

3. The intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.

*Id.* § 710.1. Kidnapping is in the first degree “when the person kidnapped, as a consequence of the kidnapping, suffers serious injury, or is intentionally subjected to torture or sexual abuse.” *Id.* § 710.2.

The charge of first-degree sexual abuse is found in Iowa Code sections 709.1 and 709.2. The basic crime of sexual abuse is defined as follows:

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person . . . , the act is done against the will of the other.

*Id.* § 709.1. Sexual abuse is in the first degree “when in the course of committing sexual abuse the person causes another serious injury.” *Id.* § 709.2.

Lastly, the charge of attempted murder is found in Iowa Code section 707.11, and is defined as follows:

[W]ith the intent to cause the death of another person and not under circumstances which would justify the person’s actions, the person does any act by which the person expects to set in motion a force or chain of events which will cause or result in the death of the other person.

Clearly, Moore’s intent was disputed at trial. In fact, aside from the sexual abuse charge,<sup>7</sup> intent was the *only* contested issue on these charges. Evidence of prior bad acts may be admissible to show “intent” or “absence of mistake or accident.” Iowa R. Evid. 5.404(b). However, intent is almost always an issue in

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<sup>7</sup> Moore alleged the sex act was consensual and not procured through threats of violence.

a criminal case. To ensure the rule 5.404(b) exception does not swallow the rule, it is important the evidence bear *directly* on intent, rather than passing through the filter of character or propensity. See *Sullivan*, 679 N.W.2d at 26–27; *State v. Williams*, 427 N.W.2d 469, 472 (Iowa 1988).

Upon our review, we find the evidence challenged by Moore was highly relevant to the issue of intent and malice aforethought. The evidence showed the relationship between Moore and TereseAnn and was pertinent to Moore's possible intent and plan for forcing TereseAnn to the apartment, confining her there without her consent, and killing her. In considering the admission of similar evidence in a prosecution for domestic abuse assault and burglary, our supreme court has observed:

[T]he 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.

The most obvious example of the legitimate use of prior-bad-acts evidence is the admission of evidence of a defendant's prior assaults of a victim in a prosecution of the defendant for the subsequent murder of the victim. Courts have admitted such evidence to show the defendant's motive and intent with respect to the actions giving rise to the charged crime when intent is disputed.

*Taylor*, 689 N.W.2d at 125 (citations omitted).

"[T]he prior relationship between the defendant and the victim, including bad feelings, quarrels, and physical acts, is a circumstance that may be shown to prove the defendant's state of mind and motivation at the time of the crime." *Newell*, 710 N.W.2d at 21 (concluding defendant's prior acts of violence and possessive and controlling behavior toward his wife were relevant to his intent

and motive on the day of wife's death); see *Taylor*, 689 N.W.2d at 128 (finding defendant's prior acts of violence toward his wife were relevant to his motive and intent on the day of the alleged assault); *State v. White*, 668 N.W.2d 850, 855 (Iowa 2003) (allowing prior incident of domestic abuse to prove intent element of kidnapping and burglary involving the same victim); *State v. Buenaventura*, 660 N.W.2d 38, 49 (Iowa 2003) (finding defendant's ill feelings toward his sister-in-law more relevant to his motive and intent on the day of sister-in-law's death); *Rodriguez*, 636 N.W.2d at 242 (allowing evidence of prior assaults against same victim on confinement element of kidnapping charge and on intent-to-cause-serious-injury element of willful injury and kidnapping charges); *State v. Emerson*, 375 N.W.2d 256, 260 (Iowa 1985) (admitting evidence of prior quarrels between defendant and victim in prosecution of defendant for first-degree murder); but see *Sullivan*, 679 N.W.2d at 27–28 (cautioning against indiscriminate introduction of prior-bad-acts evidence to prove mens rea where defendant was alleged to possess marijuana with intent to deliver).

Here, if Moore and TereseAnn had an acrimonious relationship rather than a loving relationship, it is more likely Moore acted with a fixed purpose to do harm at the time of TereseAnn's death. Similarly, if Moore was possessive and controlling of TereseAnn, it is more probable Moore intended to do physical harm to TereseAnn shortly after she left him. In addition, Moore repeatedly stated and texted that he did not want to kill TereseAnn, but he had to because she was "making bad choices" in regard to their son. Because Moore's intent to do harm to TereseAnn was in dispute and because the evidence in question was

probative of Moore's relationship with TereseAnn and his possible motive for harming her, the State "articulated a tenable noncharacter theory of logical relevance to support admission of this evidence." *Newell*, 710 N.W.2d at 22.

*B. Prejudice.* We must next determine if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *Taylor*, 689 N.W.2d at 124; see also Iowa R. Evid. 5.403. Evidence is unfairly prejudicial if it has "an undue tendency to suggest decisions on an improper basis commonly, though not necessarily, an emotional one." *Newell*, 710 N.W.2d at 20 (quotation marks omitted). "Because the weighing of probative value against probable prejudice is not an exact science, we give a great deal of leeway to the trial judge who must make this judgment call." *Id.* at 20-21.

In balancing probative value against prejudicial effect, we are to consider

the need for the evidence in light of the issue 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.

*Reynolds*, 765 N.W.2d at 290 (quotation marks omitted). If the probative value is substantially outweighed by the danger of unfair prejudice, the court must exclude the evidence. *Sullivan*, 679 N.W.2d at 25. Moore contends "this challenged evidence was not needed by the State to tell the story about what happened on November 11" because "Moore did not deny he was involved in the incident but rather he denied the degree to which he was involved."

Upon our review, we find the record shows a need for the challenged evidence. As Moore admits, it is clear he was the person who kidnapped and

killed TereseAnn and shot Officer Roland, but the prosecution had the additional burden to prove Moore acted with malice aforethought, or a fixed purpose or plan, at the time of those acts. The evidence of the abusive nature of the relationship between Moore and TereseAnn and threats toward TereseAnn was strong evidence of Moore's emotional and mental state on November 11.

The fact that the defendant had cruelly assaulted [the victim] in the past when she tried to leave him makes it more probable that his mere presence in the bedroom was intended—and perceived—to be a threat of harm calculated to prevent her from leaving. In addition, evidence of the defendant's prior intentional, violent acts towards the victim coupled with his prior threats to kill her if she left him also makes it more probable that he intended to cause her serious injury on [the day of the assault], in contrast to his claim that the injuries he inflicted that day were merely unintended, incidental consequences of his anger.

*Rodriquez*, 636 N.W.2d at 242.

In this case, several witnesses confirmed allegations of prior domestic abuse by Moore against TereseAnn, a change in TereseAnn's demeanor, as well as the fact TereseAnn sought and obtained a protective order against Moore. Similarly, several witnesses observed signs of physical abuse and given the context of these observations and TereseAnn's well-documented fear of Moore, we do not think the jury would have to speculate TereseAnn's injuries were caused by Moore. Finally, evidence of arguments between Moore and TereseAnn also came from several sources. We find there was clear proof Moore committed the prior acts.

"Balanced against the need for the evidence, its reliability, and its probative strength is the danger of unfair prejudice." *Newell*, 710 N.W.2d at 23. In determining the danger of unfair prejudice, we are to consider "the likelihood

that the prior bad acts evidence will prompt the jury to base its decision on an improper emotional response” toward Moore. *See id.* We acknowledge the evidence of Moore’s history of violence against TereseAnn and TereseAnn’s reaction to Moore’s conduct reflected negatively on Moore “and probably made him an unsympathetic character in the jury’s eyes.” However, “[a] trial is a search for the truth,” *Taylor*, 689 N.W.2d at 124 (quotation marks omitted), and “the evidence was critical to the truth-seeking function of the jury.” *Newell*, 710 N.W.2d at 23. Accordingly, we conclude the district court did not abuse its discretion in finding any potential danger of unfair prejudice did not substantially outweigh the probative value of the evidence at issue. *See id.*

#### **IV. Conclusion.**

Upon our review, we find no abuse in the district court’s discretion in denying Moore’s motion to exclude expert testimony and in denying Moore’s motion in limine as to challenged bad acts evidence. Accordingly, we affirm.

**AFFIRMED.**