

IN THE COURT OF APPEALS OF IOWA

No. 2-709 / 11-1672
Filed October 3, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RENARD ANDREWS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas Staskal,
Judge.

Renard Andrews appeals from his conviction for murder in the first degree,
contending the district court erred in numerous respects. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, John P. Sarcone, County Attorney, and James P. Ward and Daniel C.
Voogt, Assistant County Attorneys, for appellee.

Heard by Eisenhauer, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

Renard Andrews appeals from his conviction for murder in the first degree, in violation of Iowa Code sections 707.1 and 707.21 (2009). He contends the district court erred in denying his motions for judgment of acquittal and mistrial and in allowing admission of evidence concerning a prior bad act. He also argues the district court gave improper cautionary and jury instructions concerning his prior bad act. We affirm.

I. Background Facts and Proceedings.

LeCarlton Henderson was murdered in the early hours of November 18, 2010. From the evidence presented at trial, the jury could have reasonably found the following facts.

On the evening of November 17, 2010, Andrews, who uses a wheelchair, was at his girlfriend's house with Olando "Maf" Hawthorne playing video games. Henderson stopped by and picked Andrews and Hawthorne up to go to a club. On their way, Henderson stopped at his girlfriend's place of work so she and Henderson could swap vehicles. Henderson, Hawthorne, and Andrews then proceeded to a bar in Henderson's girlfriend's black SUV.

Henderson called his girlfriend around 2:00 a.m. to let her know he was on his way home. However, Andrews had Henderson drive them to an apartment parking lot. There, Andrews shot Henderson once in the mouth and once in the head. A couple in the apartment complex heard a loud noise from the parking lot around 2:45 a.m. The wife looked out the window and saw one person pushing a man in a wheelchair.

Hawthorne pushed Andrews to a nearby grocery store. Andrews called his girlfriend at 3:15 a.m. to pick them up, telling her that Henderson had left with some women and he and Hawthorne needed ride. She then picked the pair up.

Henderson's body was discovered later that morning in his girlfriend's black SUV in the apartment's parking lot. Henderson's girlfriend heard a report that a body had been found in an SUV, and she called Andrews to find out if he knew where Henderson was. Andrews told her Henderson had dropped him off at home the prior night and that was the last time he saw Henderson. Andrews talked to Henderson's girlfriend a few more times that morning, telling her he had warned Henderson about "messing with all those hoes" and trying to find out what she had learned about the police investigation.

Andrews was ultimately charged with murdering Henderson, and he was arrested and placed in the Polk County Jail. Already residing there on felony charges was Derek Hoover, a friend of both Andrews and Hawthorne. Andrews told Hoover all about the murder, including that used his "40" to murder Henderson. Andrews told Hoover that Hawthorne was supposed to get rid of the gun but had poorly hidden it behind Andrews's girlfriend's garage to set Andrews up. Andrews told Hoover he had shot Henderson because Henderson had stolen from him. Hoover ultimately told the police what Andrews had told him in hopes of receiving a more favorable deal. The police found the gun where Hoover told them Andrews had told him—behind Andrews's girlfriend's garage. Blood stains matching the known DNA profile of Henderson were found on Andrews's jacket.

A jury trial was held in September 2011, and Andrews took the stand in his defense. He testified that Hawthorne had his gun, and it was Hawthorne who shot Henderson. He stated Hawthorne told Henderson to pull into a parking lot and argued about money owed from a drug transaction. Andrews testified that he had just completed a phone call and was looking through his phone when Hawthorne shot Henderson twice. He stated he lied to the police about the events that night because he was scared and because Henderson was shot with his gun.

On cross-examination, the State asked Andrews about a shooting at a bar in June 2010, where Andrews was identified as the shooter by the bar's bouncer and was quoted to have told the bouncer when leaving, "I'll kill you." The casings from that shooting matched the casings found at the murder scene. The following exchange occurred:

Q. [Your attorney] asked you about this gun, and you said that was your gun; right? A. Yes, sir.

Q. You had it with you when you shot up the [bar], didn't you? A. I plead the Fifth.

Andrews's attorney objected and moved for a mistrial. The district court overruled the objection and the motion, and it ordered Andrews to answer the question. The following exchange occurred:

Q. . . . I asked you if you had admitted . . . that [the] Smith & Wesson .40-caliber[] was your gun. And it is your gun; right? A. Yes, sir.

Q. And then I asked you if that was not the same gun that you had used at the [bar] or fired at the [bar]. Remember the question? A. Yes, sir.

Q. All right. Well, it was the same gun, wasn't it? A. Yes, sir.

The jury ultimately found Andrews guilty of first degree murder. Andrews now appeals, asserting the district court erred in denying his motions for judgment of acquittal and mistrial, and in denying his objection to the admission of evidence concerning the prior bar shooting. He also argues the district court gave improper cautionary and jury instructions concerning Andrews's prior bad act. We address his arguments in turn.

III. Discussion.

A. Motion for Judgment of Acquittal.

Our review of Andrews's motion for judgment of acquittal "requires us to examine the sufficiency of the evidence supporting the jury's guilty verdict." *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). We review Andrews's challenge to the sufficiency of the evidence for correction of errors at law, and we will uphold the jury's verdict if it is supported by substantial evidence. See *id.* Evidence is considered substantial if a reasonable trier of fact could find Andrews guilty beyond a reasonable doubt. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). We consider all the evidence in the light most favorable to the State, drawing all reasonable inferences. *State v. Milom*, 744 N.W.2d 117, 120 (Iowa Ct. App. 2007). The evidence must "raise a fair inference of guilt as to each essential element of the crime," and must not raise only suspicion, speculation, or conjecture. *State v. Speicher*, 625 N.W.2d 738, 741 (Iowa 2001) (citing *Casady*, 597 N.W.2d at 787).

"Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence." *Nitcher*, 720 N.W.2d at 556 (quoting *State v. Anderson*, 517 N.W.2d

208, 211 (Iowa 1994)). “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). The “very function of the jury is to sort out the evidence and ‘place credibility where it belongs.’” *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993) (citation omitted). The “credibility of witnesses is for the factfinder to decide except those rare circumstances where the testimony is absurd, impossible, or self-contradictory.” *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011).

Here, Andrews’s argument challenges Hoover’s credibility, noting he had been convicted for several state and federal offenses. He argues Hoover knew how to play the system to get a better deal, and Hoover was better friends with Hawthorne and clearly wanted to protect Hawthorne. However, these arguments were made to the jury. The jury was free to reject them.

Henderson was shot with Andrews’s gun. Andrews lied to the police about the events of the evening, and his jacket had blood stains matching Henderson’s DNA. In addition, Hoover had very specific details of the crime that could only be known by one involved. Considering all of the evidence in the record in the light most favorable to the State and making all reasonable inferences that may fairly be drawn, we find the jury’s guilty verdict is supported by substantial evidence. We therefore find no error in the district court’s denial of Andrews’s motion for judgment of acquittal.

B. Prior Bad Acts Evidence.

Andrews contends the district court abused its discretion in allowing the State to introduce evidence of the June 2010 shooting at a bar, over Andrews’s

objection. We review a district court's evidentiary rulings regarding the admission of prior bad acts evidence for an abuse of discretion. *State v. Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009).

Iowa Rule of Evidence 5.404(b) governs the admissibility of a person's other crimes, wrongs, or acts, providing the evidence of other crimes, wrongs, or acts is not admissible to prove the character of the person in order to show that the person acted in conformity therewith. Iowa R. Evid. 5.404(b). 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. *Id.*

In order to be admissible, the evidence must be probative of some fact or element in issue other than the defendant's criminal disposition If a court determines prior-bad-acts 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. Evidence that is unfairly prejudicial is evidence that has an undue tendency to suggest decisions on an improper basis commonly, though not necessarily, an emotional one. 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.

State v. Newell, 710 N.W.2d 6, 20-21 (Iowa 2006) (internal citations omitted).

A pivotal issue at trial was the identity of the person who shot Henderson. The gun that shot Henderson was the same gun that was involved in an earlier bar shooting. To assist in proving that it was Andrews who shot Henderson, the State offered the evidence of the earlier bar shooting to show Andrews possessed the gun. The evidence was relevant under Iowa Rule of Evidence 5.401 to prove the identity of the possessor of the murder weapon.

Next we turn to the question of prejudice, that is, whether the probative value of this evidence was *substantially* outweighed by its prejudicial effect. See Iowa R. Evid. 5.403. In balancing the unfair prejudicial effect with the probative value, we consider

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.

Newell, 710 N.W.2d at 21. In applying these factors, we conclude the value of this evidence was not substantially outweighed by its prejudicial effect. Moreover, the district court gave the jury a cautionary instruction before the evidence was presented and a similar jury instruction was given to the jury upon submission of the case. The district court did not abuse its discretion in admitting the evidence.

C. Motion for Mistrial.

Andrews also argues the district court erred in not granting his motion for a mistrial after the State asked him about the earlier bar shooting. Andrews notes he was not on trial for that crime and asserts his Fifth Amendment right against self-incrimination was violated.¹ The district court has broad discretion in ruling on a motion for mistrial, see *State v. Brown*, 397 N.W.2d 689, 699 (Iowa 1986), and we ordinarily review such rulings for an abuse of discretion. See

¹ Andrews also argues his right to remain silent under *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), was violated when he was required to answer the question. However, *Miranda* does not come into play under these circumstances where Andrews voluntarily took the stand. See *Miranda*, 384 U.S. at 478-79 (establishing that an individual must receive certain warnings prior to custodial interrogation in order to protect the privilege against self-incrimination). Accordingly, we do not further address the issue.

State v. Thornton, 498 N.W.2d 670, 676 (Iowa 1993). However, because a constitutional right is involved in this claim, we review the issue de novo to determine whether the trial court abused its discretion. See *State v. Veal*, 564 N.W.2d 797, 809 (Iowa 1997).

Most constitutional errors do not require reversal if the error is harmless, including the erroneous admission of evidence in a criminal trial in violation of a defendant's Fifth Amendment rights. *State v. Walls*, 761 N.W.2d 683, 686 (Iowa 2009). "To establish harmless error when a defendant's constitutional rights have been violated, the State must prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *State v. Cox*, 781 N.W.2d 757, 771 (Iowa 2010). A two-step analysis is employed to determine whether the State has met its burden under the harmless-error standard. *Walls*, 761 N.W.2d at 686.

First, the court asks what evidence the jury actually considered in reaching its verdict. Second, the court weighs the probative force of that evidence against the probative force of the erroneously admitted evidence standing alone. This step requires the court to ask whether the force of the evidence is so overwhelming as to leave it beyond a reasonable doubt that the verdict resting on that evidence would have been the same without the erroneously admitted evidence.

Id. at 686-87 (internal citation and quotation marks omitted).

With respect to the evidence the jury actually considered in reaching the verdict, "we do not conduct a subjective inquiry into the jurors' minds." *State v. Peterson*, 663 N.W.2d 417, 431 (Iowa 2003). The inquiry "is not whether, in a trial that occurred without the error, a guilty verdict would surely have been

rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.” *Id.*

Even assuming without deciding Andrews’s Fifth Amendment right against self-incrimination was violated when he was required to answer the question about his prior bad act, we find the error was harmless. Here, omitting Andrews’s admission to the prior shooting, the jury clearly considered in reaching its verdict the facts set forth in detail above, including evidence Henderson was shot with Andrews’s gun, Andrews lied to the police about the events of the evening, his jacket had blood stains matching Henderson’s DNA, and Hoover’s very specific and detailed testimony. Furthermore, the jury heard testimony from the bar’s bouncer and Hoover that Andrews had shot up the bar earlier in the year with his gun. Andrews’s admission was merely cumulative, and the evidence against Andrews was strong. Considering the probative force of the evidence against Andrews with his presumed unconstitutional admission, we can only conclude the force of the evidence against Andrews was so overwhelming as to leave it beyond a reasonable doubt that the verdict resting on that evidence would have been the same without the presumed erroneously admitted evidence. The guilty verdict actually rendered in this trial was surely unattributable to Andrews’s admission of shooting up the other bar earlier in the year. Upon our *de novo* review, we conclude the district court did not err in denying Andrews’s motion for mistrial trial based upon the admission of Andrews’s prior shooting.

D. Instructions.

Finally, Andrews argues the district court’s cautionary and jury instructions concerning the earlier bar shooting were improper because the instructions

allowed the jury to use the evidence “to the extent [the evidence] may tend to corroborate other evidence of identity presented in this case.” Beyond setting forth the law on how this court is to rule upon alleged jury instruction error, Andrews again makes no argument how those legal concepts apply here. Accordingly, we deem this issue to be waived. See Iowa R. App. P. 6.903(2)(g)(3).

Nevertheless, even assuming the issue had not been waived, we find no merit in his claim. Challenges to jury instructions are reviewed for correction of errors at law. *State v. Hanes*, 790 N.W.2d 545, 548 (Iowa 2010). However, reversal is not required unless the error in the instruction was prejudicial to the defendant. *Id.* To make this determination, we are to conduct the same harmless-error analysis used for any alleged errors in a criminal trial. *Id.* at 550.

Andrews does not assert any constitutional error. Our supreme court has held the nonconstitutional harmless-error analysis begins with the question: “Does it sufficiently appear that the rights of the complaining party have been injuriously affected by the error or that he has suffered a miscarriage of justice?” *Id.* “Under this test, prejudice will be found where the information given unquestionably had a powerful and prejudicial impact on the jury or where the instruction could reasonably have misled or misdirected the jury.” *State v. Becker*, 818 N.W.2d 135, 141 (Iowa 2012).

Here, the instructions directed the jury to consider the bar shooting evidence for the limited extent of the question of identity and corroboration of other witnesses’ testimony. We have already found the evidence was relevant for this issue of identity. We presume juries follow the court’s instructions. See

Hanes, 790 N.W.2d at 552. Moreover, limiting instructions generally help minimize any potential prejudice. *Id.* Upon our review, we find the district court did not err in giving the instructions to the jury.

Furthermore, even if they had been improper, Andrews failed to establish the requisite prejudice. Andrews does not show, nor do we find, the use of the term “corroborates” in the instructions had a powerful and prejudicial impact on the jury. We also conclude the instruction could not have reasonably have misled or misdirected the jury. Accordingly, we affirm on this issue.

IV. Conclusion.

For the above stated reasons, we affirm Andrews’s conviction and sentence.

AFFIRMED.