

IN THE COURT OF APPEALS OF IOWA

No. 3-200 / 11-0646
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHARA HARRINGTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Nathan Callahan, District Associate Judge.

Defendant appeals her conviction for domestic abuse assault causing bodily injury. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., Doyle, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.**I. Background Facts & Proceedings**

Kenneth Young and Shara Harrington were previously in a relationship and they had a child together. On October 31, 2010, Harrington went to Young's apartment at about 4:30 p.m. She stated she wanted Young to care for the child for awhile because she needed a break. Dashauna Spates, who was at that time in a relationship with Young, testified she was at Young's apartment that afternoon.

Young testified he did not want to speak to Harrington. He stated, "She was just knocking on the door and knocking on the windows, because she wanted me to come out." Spates testified Harrington banged on the windows with a car scraper. Spates stated, "She was talking about me. She wanted to get at me and, you know." Eventually Young went out to speak with Harrington, where she yelled at him so he went back inside. Young called the police and Officer David Bovy of the Waterloo Police Department came to the apartment. Harrington had already left so no further action was taken at that time. Officer Bovy did not notice any injuries to Young when he saw him at around 4:30 p.m.

At about 7:30 p.m., Young and Spates were leaving Young's apartment when Harrington approached them. Young testified he grabbed Harrington because she was too close to him, and he pushed her so he could get back into his apartment. Harrington agreed that Young pushed her back, then shut the door to his apartment, stating he did not want to hear what she had to say.

Spates testified that as she and Young were leaving his apartment Harrington ran towards them, yelling and screaming. She stated Harrington yelled, "I'm going to get you." She testified Young got in front of her to stop Harrington from attacking her. Spates stated Young and Harrington fell on the ground and Harrington was biting Young. She stated Young told her to go, so she left the building and drove away.

Officer Bovy testified that shortly after 7:30 p.m. Young came down to the police station. At that time he observed a large bite mark on Young's cheek, which appeared fresh and had droplets of blood on it. Officer Bovy stated Harrington came to the police station shortly thereafter and she told him she had bitten Young.

Harrington was charged with domestic abuse assault causing bodily injury, in violation of Iowa Code section 708.2A(2)(b) (2009). She filed a motion in limine seeking to exclude evidence of the incident at 4:30 p.m. on the ground that it was evidence of prior bad acts which would not be admissible under Iowa Rule of Evidence 5.404(b). The State argued the incident was part of a continuous act and so did not constitute prior bad acts. The State also claimed that if the incident was considered a prior bad act, it was relevant to show Harrington's intent, and furthermore, it was not more prejudicial than probative.

The district court determined the 4:30 p.m. incident could be characterized as prior bad acts. The court found the evidence was relevant on the issue of Harrington's "state of mind and her intention." The court determined that when the prejudicial impact was weighed against the probative value, the probative

value came out on top. The court stated it would give a limiting instruction on the use of the evidence of other wrongful acts.

The case proceeded to a jury trial with the parties testifying as outlined above. The jury found Harrington guilty of domestic abuse assault causing bodily injury. She was sentenced to 365 days in jail, with all but fourteen days suspended. Harrington now appeals her conviction.

II. Standard of Review

We review a district court's ruling regarding the admission of prior bad acts evidence for an abuse of discretion. *State v. Richards*, 809 N.W.2d 80, 89 (Iowa 2012). A court abuses its discretion when its ruling is based on grounds or reasons clearly untenable or to an extent clearly unreasonable. *State v. Cox*, 781 N.W.2d 757, 760 (Iowa 2010).

III. Merits

A. Harrington claims the evidence of her earlier visit, at about 4:30 p.m., to Young's apartment was inadmissible as evidence of prior bad acts under Iowa Rule of Evidence 5.404(b). The State asserts the earlier incident was part of a continuous chain of events and does not fall within the rule governing admission of prior bad acts evidence.

The Iowa Supreme Court has stated, "Not all evidence of other crimes, wrongs, or acts falls within the scope of rule 5.404(b). One category of other crimes, wrongs, or acts evidence not covered by rule 5.404(b) is evidence deemed inextricably intertwined with the crimes charged." *State v. Nelson*, 791 N.W.2d 414, 419 (Iowa 2010). "Inextricably intertwined evidence is evidence of

the surrounding circumstances of the crime in a causal, temporal, or spatial sense, incidentally revealing additional, but uncharged, criminal activity.” *Id.* at 420. Such evidence is admissible only when “the other crimes, wrongs, or acts evidence is so closely related in time and place and so intimately connected to the crimes charged that it forms a continuous transaction.” *Id.* at 423. Also, the evidence is admissible only “when a court cannot sever this evidence from the narrative of the charged crime without leaving the narrative unintelligible, incomprehensible, confusing, or misleading.” *Id.*

We conclude the evidence of the 4:30 p.m. incident was so closely related in time and place to the incident at about 7:30 p.m. that they in fact formed a continuous transaction. If the evidence of the 4:30 p.m. incident was left out of the narrative of the charged crime, the resulting narrative would have been confusing and misleading. As the State points out, without the evidence of the earlier incident where Harrington yelled that she wanted to “get at” Spates, the jury would not have understood why Young grabbed Harrington as she approached Spates. The jury could have mistakenly believed that Young was the aggressor in the later incident. Evidence of the earlier incident also explains why Officer Bovy was able to observe Young, and saw that he did not have an injury to his face at that time.

“[I]nextricably intertwined evidence is subject to the same general admissibility requirements as other evidence that is used to provide the fact finder with a complete picture of the charged crime.” *Id.* at 420. We conclude the evidence in question was admissible under the inextricably intertwined

doctrine, and the district court did not abuse its discretion by determining the evidence was admissible.

B. Even if the evidence of the earlier incident was not admissible under the inextricably intertwined doctrine, we conclude the evidence would have been admissible under the rule concerning evidence of prior bad acts. Iowa Rule of Evidence 5.404(b) provides:

Other crimes, wrongs, or acts. 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.

In order for evidence of prior bad acts to be admissible under rule 5.404(b), the evidence must first be “relevant and material to some legitimate issue other than a general propensity to commit wrongful acts.” *State v. Duncan*, 710 N.W.2d 34, 40 (Iowa 2006). The State claims the evidence is relevant on the issue of intent. The offense of domestic abuse assault includes a specific intent component which requires the State to show a defendant committed an act intended to cause pain or injury to the victim, or to result in physical contact that would be insulting or offensive to the victim, or to place the victim in fear of physical contact that would be injurious or offensive. *State v. Fountain*, 786 N.W.2d 260, 265 (Iowa 2010) (citing Iowa Code § 708.1(1), (2)).

Harrington claims her intent was not an issue in this case. By denying the biting incident took place, however, she put at issue all the elements of the offense. See *Richards*, 809 N.W.2d at 94-95. Thus, evidence of intent was a legitimate issue in the State’s case.

The evidence must also be relevant. *State v. Reynolds*, 765 N.W.2d 283, 289 (Iowa 2009). “Evidence is relevant when 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.’” *Id.* at 290 (quoting Iowa R. Evid. 5.401). The emotional relationship between a defendant and victim is highly probative of the defendant’s probable motivation and intent in subsequent situations. *State v. Taylor*, 689 N.W.2d 116, 125 (Iowa 2004). We conclude the evidence of the earlier incident is relevant to the issue of Harrington’s intent.

Once a court determines evidence of prior bad acts is relevant to a legitimate issue in dispute, the court must determine if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. *State v. Newell*, 710 N.W.2d 6, 20 (Iowa 2006). Unfair prejudice arises when evidence has “an undue tendency to suggest decisions on an improper basis, commonly though not necessarily, an emotional one.” *State v. Castaneda*, 621 N.W.2d 435, 440 (Iowa 2001). Evidence that is unfairly prejudicial “appeals to the jury’s sympathies, arouses its sense of horror, provokes its instinct 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.” *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988). “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.” *Newell*, 710 N.W.2d at 20-21.

We conclude the district court did not abuse its discretion in determining the probative value of the evidence concerning the 4:30 p.m. incident substantially outweighed the prejudicial effect of this evidence. Evidence that Harrington yelled outside Young's apartment and banged on his windows does not seem like evidence that would cause jurors to decide the issues of the case on an improper basis when compared to the evidence of the crime charged, that she had intentionally assaulted Young by biting him.

We affirm Harrington's conviction.

AFFIRMED.