

**IN THE COURT OF APPEALS OF IOWA**

No. 3-494 / 11-1828  
Filed September 5, 2013

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

**vs.**

**RODNEY LEE BEAN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Washington County, Joel D. Yates,  
Judge.

Defendant appeals his convictions for involuntary manslaughter, two counts of second-degree theft, neglect of a dependent person, and two counts of dependent adult abuse. **AFFIRMED.**

Davis L. Foster and Christopher J. Foster of Foster Law Office, Iowa City,  
for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, and Larry Brock, County Attorney, for appellee.

Considered by Eisenhauer, C.J., Tabor, J., and Huitink, S.J.\*

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

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

The extensive record in this case provides support for the following facts. Joye Gentzler and her brother, William Robuck, were elderly individuals who owned a farm in rural Washington County, Iowa. They rented the property to Rodney "Joe" Bean. On June 7, 2002, Bean purchased the property by real estate contract for \$21,728. At that time the property had an assessed value of about \$90,000.

On March 9, 2004, Bean drove Gentzler and Robuck to an appointment with an attorney. Gentzler and Robuck each signed a general power of attorney appointing Bean as their attorney-in-fact. On the same day they both signed wills providing that if Robuck died first, all of his property would go to Gentzler, and if Gentzler died first, all of her property would go to Robuck. Bean was named as the beneficiary after the death of both Gentzler and Robuck.

Robuck was injured in 2005, and concerns arose that he and Gentzler could no longer live in their home. In May 2005 they moved to a low-income apartment for the elderly in Ainsworth. Although both Gentzler and Robuck received Social Security benefits and they were to receive payments from Bean on the real estate contract,<sup>1</sup> the apartment manager and other tenants noticed they had very little furniture and did not seem to always have enough food. Bean

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<sup>1</sup> There was no evidence of deposits into Gentzler's bank account or withdrawals from Bean's bank account that would correspond to payments on the real estate contract.

controlled Gentzler and Robuck's finances. There was evidence they may not have been fully cognizant of their own finances.

There was testimony Gentzler did not like going to doctors. On February 6, 2006, however, Gentzler saw Dr. Susan Chance-Reynolds for pain in her left shoulder. She was prescribed medication for high-blood pressure, osteoporosis, gastric reflux, and arthritis. Gentzler had follow-up visits with Dr. Chance-Reynolds in March, April, and May of 2006. Gentzler had a medical appointment with Mary Gieselman, a nurse practitioner, on November 21, 2006. At that time she weighed 134 pounds.

Robuck died on December 22, 2006. The following day, Bean moved Gentzler out of the apartment and into his house. Gentzler had no further medical appointments, and her prescription medications were not renewed after she moved to Bean's home. In short, she received no further medical care.

On November 29, 2007, Bean and his wife obtained a mortgage on their property for \$55,217. The amount of \$10,048 was paid to Gentzler from the proceeds to pay off the remainder of the real estate contract. The next day, however, through his power of attorney, Bean wrote a check to himself from Gentzler's checking account for \$7000 and a check to his wife for \$3000. There was also evidence that during 2007 Bean used a debit card on Gentzler's account to purchase chewing tobacco, cell phone minutes, motor oil, and dog food. Gentzler did not chew tobacco, have a cell phone or vehicle, or own a dog.

Gentzler died on February 27, 2008. At the time of her death she weighed seventy-four pounds. An autopsy showed she died from malnutrition and dehydration. Her right arm had been broken near the shoulder. Dr. Marcus

Nashelsky, a pathologist, testified there were signs of healing, which showed the break had occurred some time previously. He stated her arm would have remained floppy because it had not been set and the two bone ends had not mended together. Gentzler also had ten rib fractures, which showed signs of healing. She had bruising which was consistent with falling down. Gentzler's brain showed signs of Alzheimer's disease. Dr. Nashelsky gave the opinion Gentzler's death was the result of homicide because her medical and nutritional needs had not been cared met.

On January 29, 2010, Bean was charged with (I) involuntary manslaughter, (II) first-degree theft,<sup>2</sup> (III) first-degree theft,<sup>3</sup> (IV), first-degree theft,<sup>4</sup> (V) neglect of a dependent person, (VI) nonsupport of a dependent adult, (VII) intentional dependent adult abuse causing serious injury, (VIII) reckless dependent adult abuse causing serious injury, and (IX) dependent adult abuse by financial exploitation. He filed a motion in limine seeking to prohibit the State from presenting certain evidence, including evidence he obtained the farm from Gentzler and Robuck for less than the fair market value. The district court denied the motion in limine.

The criminal trial was conducted over several days in September 2011. Bean presented the testimony of Dr. John Fullerton, a geriatric internist. Dr. Fullerton testified he believed Gentzler died from Alzheimer's disease. He

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<sup>2</sup> This charge relates to the theft of \$10,000 from Gentzler's checking account immediately after that amount was deposited into her account for the payment of the balance of the real estate mortgage.

<sup>3</sup> This charge relates to the theft of Gentzler's Social Security payments from her checking account.

<sup>4</sup> This charge relates to the purchase of the farm for less than fair market value.

stated as Alzheimer's disease progresses it can lead to eating difficulties and weight loss, which is called Alzheimer's cachexia.

On Bean's motion for judgment of acquittal, the district court dismissed count IV (first-degree theft) and VI (nonsupport of a dependent adult). The other counts were submitted to the jury. The jury found Bean guilty of involuntary manslaughter, two counts of second-degree theft, neglect of a dependent person, intentional dependent adult abuse causing serious injury, reckless dependent adult abuse causing serious injury, and dependent adult abuse by financial exploitation.

The court denied Bean's motion for a new trial. Bean was sentenced to a term of imprisonment not to exceed two years on Count I, involuntary manslaughter; five years each on Counts II and III, second-degree theft; ten years on Count V, neglect of a dependent person; ten years on Count VII, intentional dependent adult abuse causing serious injury; and five years on Count IX, dependent adult abuse by financial exploitation. Count VIII, reckless dependent adult abuse causing serious injury, was merged into Count VII. The sentences for Counts II, III, and IX were to run concurrently to each other, and Counts V and VII were to run concurrently to each other. Otherwise, the counts were to run consecutively, giving Bean a sentence of seventeen years. Bean now appeals his convictions.

## **II. Prior Bad Acts.**

Bean contends the district court should have granted his motion in limine to preclude evidence of any financial dealings he had with Gentzler and Robuck prior to January 29, 2007, including evidence he purchased the farm for less than

the fair market value.<sup>5</sup> He claims the evidence should have been considered inadmissible under Iowa Rule of Evidence 5.404(b). Bean asserts the evidence was barred by the three-year statute of limitations found in Iowa Code section 802.3 (2009) and was thus irrelevant. Further, he states even if it was relevant, it was more prejudicial than probative.

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).

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.

The evidence must first be relevant. *State v. Reynolds*, 765 N.W.2d 283, 289 (Iowa 2009). 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*,

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<sup>5</sup> The State asserts Bean did not preserve error on this issue because he did not obtain a ruling on the motion in limine prior to trial. After the trial, defense counsel stated the court had ruled informally in chambers that it would deny the motion. The prosecutor agreed, stating, "I believe the court did clearly indicate that the court was not granting that motion in limine at that point." The court then stated, "what I'll do at this point is acknowledge for the record what I indicated off the record to the attorneys, that that motion in limine would not be granted." We believe there was a ruling on the motion in limine prior to the trial, but it did not appear in the record until after the trial. We conclude Bean has adequately preserved this issue for our review.

710 N.W.2d 34, 40 (Iowa 2006). “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.’” *Reynolds*, 765 N.W.2d 283 (quoting Iowa R. of Evid. 5.401).

As Bean recognizes, the evidence was relevant to Count IV, which alleged Bean had stolen the farm from Gentzler. The State asserted Bean had engaged a common scheme or plan from June 7, 2002, when he purchased by farm by a real estate contract, until February 27, 2008, when Gentzler died, to steal the property.<sup>6</sup> Although Count IV was dismissed by the court after the close of evidence based on the statute of limitations, certainly the State could present evidence to support that count prior to the time it was dismissed. See *State v. Wixom*, 599 N.W.2d 481, 487 (Iowa Ct. App. 1999) (noting where evidence is relevant to an element of a charged offense it is admissible).

Bean also claims the evidence should have been excluded because it was unduly prejudicial. Once there is a finding that 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

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<sup>6</sup> The State asserted Bean obtained the farm for less than the fair market value and did not make the payments due under the real estate contract. Then, as soon as he was able, he mortgaged the property. Instead of paying Gentzler the amount that remained due under the contract, he deposited money into her account and withdrew that money the next day.

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) (citation 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.” *Newell*, 710 N.W.2d at 20-21.

The evidence Bean obtained the farm from Gentzler and Robuck for less than the fair market value and did not make the payments he was required to make under the real estate contract is not unfairly prejudicial in light of the other evidence presented at trial, especially the evidence Gentzler died from malnutrition and dehydration and had not received medical treatment for her broken bones while she was in Bean’s care. The evidence of prior financial activities does not appear to be evidence that has “an undue tendency to suggest decisions on an improper basis, commonly though not necessarily, an emotional one.” *See Castaneda*, 621 N.W.2d at 440.

We conclude the district court did not abuse its discretion in denying Bean’s motion in limine.

### **III. Involuntary Manslaughter.**

Bean claims the district court should have dismissed the charge of involuntary manslaughter because his conduct did not meet the elements of the statute. He asserts the offense of involuntary manslaughter requires an affirmative act, rather than an omission. He argues he did not commit an act that



caused Gentzler's death and at most he failed to provide Gentzler with appropriate care.

We review issues of statutory interpretation for the correction of errors at law. *State v. Allensworth*, 823 N.W.2d 411, 413 (Iowa 2012). It is the responsibility of the legislature to define crimes. *State v. Meyers*, 799 N.W.2d 132, 140-41 (Iowa 2011). In interpreting a statute, our first goal is determining legislative intent. *Id.* at 141. We consider the statute's language, the purpose and underlying policies of the statute, and the consequences of various interpretations. *Id.*

Bean was charged with involuntary manslaughter under section 707.5(2), which provides, "A person commits an aggravated misdemeanor when the person unintentionally causes the death of another person by the commission of an act in a manner likely to cause death or serious injury."

In considering section 707.5(2), the court has stated:

In order to interpret the statute in a logical way and at the same time to give the language of section 707.5 the strictest possible construction possible, it is necessary to construe the term "act" in section 707.5(2) as meaning an act that is not a public offense as defined in section 707.5(1).

*State v. Inger*, 292 N.W.2d 119, 123 (Iowa 1980); *see also State v. Dvorsky*, 322 N.W.2d 62, 66 (Iowa 1982). There must be some evidence of an act causing the death, other than a public offense. *State v. Royer*, 436 N.W.2d 637, 643 (Iowa 1989).

Additionally, recklessness is an implied element of section 707.5(2). *State v. Conner*, 292 N.W.2d 682, 684 (Iowa 1980). "Ordinarily, such conduct should be conscious and intentional, creating an unreasonable risk of harm to others,

where such risk is or should be known to defendants.” *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). It involves a willful or wanton disregard for the safety of others. *Id.*

We first note, “The term ‘act’ includes a failure to do any act which the law requires one to perform.” Iowa Code § 702.2. Thus, the statutory definition of “act” includes omissions, as well as affirmative acts of commission. See *State v. Velez*, 829 N.W.2d 572, 588 (Iowa 2013) (Wiggins, J., dissenting).

Contrary to Bean’s arguments, however, we do not believe he was convicted of involuntary manslaughter based only on his failure to act, or omissions. The evidence shows Bean committed acts likely to cause death or serious injury to Gentzler and in fact did cause her death. Bean affirmatively moved Gentzler to his home, removing her from others who could have provided her with care, and affirmatively placed her in his care. Gentzler did not have the physical or mental ability to leave his home unless Bean or another member of his family took her.<sup>7</sup> Bean engaged in affirmative acts so Gentzler was no longer in control of her own finances. She did not have the ability to go to the doctor or even to provide food or other necessities for herself unless Bean provided them. Because Gentzler did not have access to her own money, she was completely reliant upon Bean for every aspect of her life. Knowing Gentzler could not survive without his assistance, Bean recklessly neglected to provide her with medical care or with sufficient nutrition to keep her alive.

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<sup>7</sup> Gentzler did not have a vehicle, and there was evidence she did not know how to drive.

We conclude the district court did not err in denying Bean's motion for judgment of acquittal on the charge of involuntary manslaughter.

We affirm Bean's convictions.

**AFFIRMED.**