

IN THE COURT OF APPEALS OF IOWA

No. 3-542 / 12-1069
Filed September 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CORY DANIEL JURRENS,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, John D. Ackerman,
Judge.

Cory Jurrens appeals his convictions for going armed with intent and
second-degree burglary. **AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED.**

Debra S. DeJong of Klay, Veldhuizen, Binder, De Jong, De Jong,
Halverson & Winterfeld, Orange City, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, and Coleman McAllister, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

EISENHAUER, C.J.

Cory Jurrens appeals his convictions for going armed with intent and second-degree burglary. He does not appeal his contemporaneous conviction for assault causing bodily injury. Cory challenges evidentiary rulings and asserts the evidence is insufficient to support the convictions.

We conclude the district court abused its discretion in admitting evidence of prior bad acts. Accordingly, we reverse the conviction for going armed with intent and remand for a new trial. The district court did not abuse its discretion in admitting evidence of a defense witness's prior convictions involving dishonesty. Because sufficient evidence supports the conviction for second-degree burglary, we affirm the burglary conviction.

I. Background Facts and Proceedings.

An early-morning incident occurred in December 2011 involving Amber Mace, her ex-boyfriend Cory Jurrens, and Barry (Baernt) Wood. Subsequently, Cory was charged with going armed with intent (knife), assault causing bodily injury (Amber), and first-degree burglary (entry with the intent to commit an assault while in possession of a dangerous weapon—knife). The going armed with intent and burglary charges included habitual offender enhancements.

A. Pretrial Proceedings—Motion to Admit Prior Convictions of Defense Witness. The State filed a motion to admit the January 3, 2002 convictions of defense witness Cheri Topete for theft and for burglary with the intent to commit theft. Cory filed a motion in limine to exclude the convictions.

The State argued Cheri's crimes of dishonesty are significant to the issue of the credibility of Cheri's expected testimony Cory was not armed with a knife.

This testimony “goes to the heart of the State’s case . . . it is not merely cumulative evidence. Her testimony is critical to the trier of fact. Because the testimony is so critical, the evaluation of [her credibility] by the trier of fact is likewise critical.” Further, the convictions are ten years and three months old. If the convictions “were a mere three months younger, the trial court would lack the discretion to exclude them.”

Cory contended Cheri’s convictions, over ten years old, should be excluded. The court granted the State’s motion to admit.

B. Pretrial Proceedings—Motion to Exclude Prior Bad Acts Evidence. Cory’s motion in limine sought to exclude, as improper propensity evidence, an alleged threat by Cory one month before the events charged. Cory allegedly stated someone else would damage Amber’s home or slash the tires on her vehicle. Cory argued the only purpose of the evidence “is to portray [Cory] in a bad light,” and he contended the State sought to use evidence Cory threatened actions with a knife in order to show he had a knife on the evening in question.

The State responded it has the burden of proving Cory specifically intended to assault Amber and to burglarize her residence.¹ Citing the court to *State v. Taylor*, 689 N.W.2d 116 (Iowa 2004), the State asserted a prosecution involving intimate partners makes Cory’s prior threats to harm Amber’s property relevant to motive and to intent “to burglarize the home, also the intent to assault [Amber] In [the prior threat] he had threatened to do damage to the home.

¹ Nineteen-year-old Amber was staying at her father’s house and the incident occurred at her father’s house. Any references to Amber’s house or to Amber’s residence are references to her father’s house.

That's why she told him not to come [to her house] and attempted to lock the door." The prosecutor argued:

You have to look at the circumstances surrounding the crime as well as the past interactions between the parties so that you can have evidence of the intent, and there's no better evidence of intent available to the State . . . except the past interactions of [Cory and Amber].

THE COURT: But the past interaction you want [to admit into evidence] is a threat . . . [of] damage [to] her property, not break into her house to assault her.

PROSECUTOR: That's correct.

. . . .

THE COURT: So . . . the only people that are going to testify as to the events that took place in this home are the alleged victim and the defendant?

PROSECUTOR: That's correct.

THE COURT: Whether there is clear proof of the defendant committing the prior act, what you have is the victim's statement . . . ?

PROSECUTOR: Yes. We have no other evidence your honor.

THE COURT: How would you describe the strength or weakness of this evidence on the relevant issue, i.e., the intent to burglarize or to commit an assault on her?

PROSECUTOR: Well, it's the only evidence available to the State as to the defendant's intent independent of his behavior that evening.

THE COURT: And what do you think the risk is the jury will be prompted to decide this case on an improper basis if they hear that evidence?

PROSECUTOR: I believe the risk is low The defendant wasn't charged with that prior crime. It does not involve physical violence, it involves a threat

. . . .

DEFENSE COUNSEL: Your honor, [the prosecutor] just admitted that the State's evidence is weak. Therefore, they need to look for improper evidence to bolster their case

Immediately prior to trial, on April 10, 2012, the court filed a written ruling stating the evidence of the prior threat "is likely to be admitted," but the court would make a "final ruling" after hearing the evidence. *See State v. Reynolds*, 765 N.W.2d 283, 290 (Iowa 2009) (recognizing the importance of delaying final

ruling on the admissibility of prior bad acts because admissibility is contingent on the legitimate issues during trial). The court ordered the State “not attempt to introduce such evidence without notifying the court so the court may make a final ruling on the issue outside the presence of the jury.” The court found there “has been no prior history of physical abuse between” Cory and Amber. The court ruled the prior threat is relevant to Cory’s motive and intent “because it tends to reveal [Cory’s] motive and intent on the night in question. The prior threat shows [Corey] is angry with [Amber] and that he has a desire to see her property and home damaged.” The court recognized the charge of first-degree burglary requires the State show Corey “broke into [Amber’s] residence with the intent to commit an assault.” Further:

In addition, the charge of serious assault requires the State to establish that [Cory] committed an act which was intended to cause pain or injury, or which was intended to result in physical contact which would be insulting or offensive to another Finally, in regards to going armed with intent, the State must establish [Cory] was armed with a dangerous weapon with the specific intent to use the weapon (knife) against [Amber] Mace. Clearly, [Corey’s] intent is a critical issue in the case and is disputed. When a crime involves a person to whom the defendant has had an emotional attachment in the past, how the defendant has exhibited acts of anger directed at the person in the past reveals the emotional relationship between the defendant and the alleged victim. Such evidence is highly probative of the defendant’s probable motivation and intent in subsequent situations. *Taylor*, 689 N.W.2d at 125 [(finding defendant’s prior acts of violence toward his wife were relevant to motive and intent on the day of the alleged domestic abuse assault)]. [Cory’s] acts show a state of hostility towards [Amber] and he has the intent and motive to harm her in the future.

The court ruled the probative value of the evidence likely was not outweighed by any prejudicial effect.

C. Trial. During the prosecutor's opening statement he emphasized Barry saw Cory with a knife. Defense counsel responded Cory and Amber had a shouting match. Cory "attacked [Amber and Barry] with his mouth The State's job is to show the leap between verbal assault and having a knife. And your job is to hold them accountable for that."

The following facts were introduced during trial. For two months, Cory and Amber were in an intimate dating relationship. Their boyfriend/girlfriend relationship ended in mid-December 2011. However, on December 28, 2011, Cory stayed overnight with Amber and they had sex. The next evening Amber hosted a sleepover for girlfriends Kelsey, Sara, Shannon, and Jessica. Barry also attended. Barry testified he was not in a romantic relationship with Amber and she had invited him over to hang out. Barry did not know any of the other girls in the house prior to December 29.

During the evening Amber was texting and talking with Cory. Around 2:00 a.m. on December 30, Amber became upset because Cory wanted to come over. Twice, Amber told him not to come over. Amber explained Cory did not make any threats to her on the phone, but he became agitated and stated "he knew Barry Wood was at my house" and "he would show Barry a good fight." Amber didn't think Barry's presence was a problem because she wasn't "in a relationship" with Cory, and she was "just friends" with Barry. Amber was shaky, upset, worried about herself, "and somewhat [worried] for Barry." Kelsey thought Cory and Amber had broken up and she did not know about their December 28 sleepover. Kelsey believed Cory was coming over to the house to beat up Amber because their dating relationship had ended.

Barry is in the National Guard and has been trained in hand-to-hand combat and in how to use a weapon. Barry testified he was sleeping and woke up to girls screaming and telling him Cory was coming to beat him up. Barry saw “sheer terror” in Amber’s eyes. At that time Barry didn’t believe anything was going to happen, “talk is cheap.” Barry testified he didn’t believe Amber because she is full of drama and she blows things out of proportion. Barry was not acquainted with Cory. On redirect, Barry stated Amber did not blow things out of proportion on the night of the incident.

Because Kelsey was worried for Amber’s safety, she and Barry left in Barry’s truck to see if Kelsey’s friend Ethan “would be able to come over and hang with us just in case Cory did show up.” Barry put his gun into his truck’s glove box. Barry testified they left to get “manpower” because “the more men there are the better chance people will stand down.” As Barry and Kelsey were leaving, they saw Cory walking toward Amber’s house. They continued driving and Kelsey called the house and told the girls to lock the doors. Barry testified he didn’t think the police were needed at that time—“I figured we could take care of it.”

After the doors were locked, Amber told the other girls to lock themselves in a room upstairs. Amber testified one outside door has a tricky latch and she believes one of the other girls didn’t get it fully locked. Amber testified Cory came through the door uninvited—she did not open the door for him. Amber testified to seeing Cory holding one arm by his side and she saw the “blade of a knife” when Cory “first stepped through the door.” The knife’s handle was in Cory’s hand and Amber “could see the end of the blade just before the sweater

covered it.” Cory yelled at Amber and called her names. Amber estimated they spent ten minutes arguing inside the house and then “somehow we managed to make it out the door to the outside” where they argued for five minutes. During the argument, Cory hit Amber in the face and then left. Amber testified Cory “never pulled [the knife] out or threatened in any manner with it.”

During Amber’s direct testimony, the prosecutor requested permission to approach the bench. After the unreported conference, the prosecutor asked:

Q. Amber, prior to that evening, had [Cory] ever threatened you or your property before? A. Yes.

DEFENSE COUNSEL: Your Honor, we renew our objection as raised earlier.

THE COURT: The objection is overruled and she has answered.

Q. And what threats did he make prior to that night to you?

A. Not physically to me but to my property and my vehicles. But he told me that he wouldn’t be the one to do the damage, but he would have somebody do it.

Q. What property did he threaten to harm? A. Houses, house windows, car windows, and car tires.

Q. Did he use the phrase “slash your tires”? A. Yes.

Q. How do you slash tires? A. I’m not sure.

Q. Do you use a knife? A. I’m guessing so, yes.

During cross-examination, Amber stated Cory’s threat occurred during the two months they were boyfriend/girlfriend and “to an extent” she was scared. However, she still continued their sexual relationship. Amber believed she told Jessica and Sara about Cory’s threats to her property.

Kelsey and Barry testified that, after they were unsuccessful in obtaining help from Ethan, they drove around looking for a police officer. After Kelsey received a call from the girls stating Amber was outside arguing with Cory, they returned to Amber’s house and remained in the truck and talked to Amber. Cory was not there and Amber was upset and sobbing. Both noticed an injury to

Amber's eye. A car pulled up in front of Amber's house and Cory got out of the passenger seat. Cory was yelling and approached Barry's truck. Kelsey saw Cory's "fist clenched at his side with something [gleaming] in his hand." She believed it was a knife, but could not "say for sure it was a knife." Kelsey did not see Cory raise his hand and she "kind of looked away after I saw the gleam." She was not paying complete attention to Cory because she "was going through my own personal stuff in my head during that time." Kelsey agreed Barry would have had a better look at Cory as he approached.

Barry testified Cory exited the car and ran towards his truck with a knife gripped in his hand, arms out. The knife had a three to four-inch blade and a blackish handle. The knife was pointed at Barry's truck and Barry felt "extremely threatened." Cory yelled, "Let's go bitch." Barry believed that meant Cory wanted to fight him. Barry was 100% certain Cory had a knife in his hand and not an ink pen or a cell phone. Barry drove away quickly and flagged down a police officer around 2:25 a.m.

The officer, who had known Cory for several years, talked with Cory on the telephone and Cory stated he was "going to take care of business" if "someone disrespects him." Cory also told the officer he loved Amber. In the afternoon Cory called the police station and told the officer Cheri Topete and another man had been with him. Cory refused to identify the man, and he denied having a knife. Cory explained the first time he went to the house he had a cell phone in his hand and the second time he had a writing pen in his hand. Cory also told the officer he got out of the vehicle and went towards Barry saying, "Let's go, bitch."

Defense counsel moved for a judgment of acquittal on the going armed with intent and burglary counts, arguing the State failed to prove Cory had a knife. The court overruled the motion, and the defense presented two witnesses. Jesse Kratz, who had worked with Cory one summer, testified he drove Cory and Cheri to Cory's ex-girlfriend's house so Cory could "get his stuff." Jesse saw Cory and Amber arguing outside the house and then Cory got back in the car and they drove away. Jesse and Cory hung out for another hour and at no point during the evening did Jesse see Cory with a knife.

Cheri Topete is a friend of Cory's mother and Cory grew up with her kids. She testified Amber's text messages during the evening were upsetting Cory, who wanted to retrieve some personal belongings from Amber's house. Cheri testified: "They were provoking [Cory] and egging him on, come over, trying to start problems with him, and that bothered him." At Amber's house, Cory handed Cheri an ink pen and some papers from his pockets as he exited the car with his cell phone. Cheri witnessed a shouting match on the porch between Amber and Corey, but never saw Cory go inside the house. Cheri did not see Cory with a knife that evening. The State questioned Cheri about her prior convictions.

During closing arguments, the prosecutor argued the evidence supported a conviction for first-degree burglary, "not the lesser-included offenses." Cory came to the residence "armed with a knife. He entered that house without permission. He stayed at the house after he had been directed to leave. He went in there with the purpose to commit an assault. And while he was in that home, he had possession of the knife." Regarding burglary's intent element, the

prosecutor explained the State has to prove Cory broke into the residence with the specific intent to commit an assault.

What evidence shows that? Well, first of all, you [need] to look at his conduct leading up to the burglary and his conduct afterwards as well as what happened in the house. So what happened before he went to the house . . . [that shows] intent to commit an assault? The State believes the evidence showed that he called the home, threatening to come there to fight somebody. He came to the home armed with a knife in his sleeve, in his hand and hidden, concealed so he could bring it out if he needed it.

. . . While he was in the residence, he got in [Amber's] face, called her names right outside the residence. Within moments he assaulted her. All of the evidence . . . establishes [Cory] had the specific intent to commit an assault when he went to that residence.

. . . .

I want to talk . . . about [the State's burden to] prove that during the incident [Cory] possessed a dangerous weapon. And all we're talking about there is the knife. [Amber testified Cory] had the knife on his sleeve, in his hand, gripped in his hand with the blade up his sleeve. It's important that it says in the instructions the State only has to prove that he possess the knife. Not that he used the knife, not that he displayed the knife, [and] not that he threatened her with the knife in the residence. Don't be confused between going armed with intent and being in possession of a dangerous weapon while a burglary occurs. The State does not have to prove [Cory] used that weapon during the burglary, only that he possessed it, only that he possessed it.

Regarding the going armed with intent charge, the prosecutor argued the State has proven Cory, "when he came running at that car had the intent to hurt [Barry] or [Kelsey] or somebody else." He explained:

[Cory] was armed with the specific intent to use the knife against another person. What other purpose is there to have a knife in your hand, as [Barry] described . . . running towards another person yelling, "Let's go bitch?" What other purpose would there be except what the State believes has been shown in this case, that [Cory] had the specific intent to use the knife against another person It's clear that [Cory] was armed and aiming his intent towards the folks in that vehicle.

The prosecutor acknowledged conflicting testimony on whether Cory was armed with a knife and argued Barry, who clearly saw the knife in Cory's hand, is the more credible witness.

Defense counsel first argued: "[O]ne element is central to both Counts 1 (going armed with intent) and Count 3 (first-degree burglary), and that is the allegation that Cory had a knife. So Counts 1 and 3 must rise or fall on a factual determination. You have to decide whether Cory had a knife or not." Counsel pointed out the conflicting testimony of Barry and Kelsey and argued Barry's testimony is not credible: "Obviously from all the testimonies we had, there is no love lost between Cory and Barry. That is bias. So Barry had a stake in this testimony." Counsel also argued Barry's testimony is unreliable because Barry testified he had less than ten seconds to observe what Cory was carrying. Counsel contended Amber did not clearly see a knife during her fifteen minute encounter with Cory, and both Jesse and Cheri spent a longer period of time with Cory that evening and neither saw him with a knife. Additionally:

Now you see, it's easy to blame others for our own feelings. They were blaming Kelsey. Oh, she didn't have a clear view. Oh, Jesse was a convicted felon. Oh, Cheri had a theft conviction. Those are beside the point. The issue is did anybody, apart from those two people who had motives, could establish that Cory had a knife? And the answer is no. And the reason is that, well, Cory did not have a knife.

Regarding the burglary charge, counsel also argued Amber was the only person to testify Cory entered the house and her testimony is not credible; therefore, the State failed to prove *any* burglary offense. Counsel concluded by telling the jury Cory was guilty of the lesser-included offense of assault, but argued the State failed to prove a bodily-injury element.

The jury found Cory guilty of going armed with intent and assault causing bodily injury. Cory was also found guilty of the lesser-included charge of second-degree burglary. See Iowa Code 713.5(1)(b) (2011) (second-degree burglary—person does not have possession of a dangerous weapon while perpetrating a burglary). The court conducted a hearing on the sentencing enhancements and Cory admitted his prior felonies for the purposes of sentencing.

Cory filed a motion for a new trial asserting the court erred in admitting Cheri's convictions and in admitting the alleged threats "for the reasons stated in his original motion. Also, the threats were "were simply too remote in time, had no probative value but merely painted [Cory] as a violent person who acted in conformance with his supposed petulant character." The State filed a written resistance. At the start of the sentencing hearing, the court stated it had reviewed Cory's motion and the State's response, and it also reviewed the court's "pretrial and during-trial orders." The court denied the motion and sentenced Cory to indeterminate terms of fifteen years for going armed with intent (habitual offender), one year for assault causing bodily injury, and fifteen years for second-degree burglary (habitual offender). This appeal followed.

II. Scope and Standards of Review.

"We review a district court's evidentiary rulings regarding the admission of prior bad acts for abuse of discretion." *State v. Cox*, 781 N.W.2d 757, 760 (Iowa 2010). We likewise review the court's admission of prior convictions for abuse of discretion. *State v. Roby*, 495 N.W.2d 773, 775 (Iowa Ct. App. 1992). "An abuse of discretion occurs when the trial court exercises its discretion on grounds or for

reasons clearly untenable or to an extent clearly unreasonable.” *State v. Rodriguez*, 636 N.W.2d 234, 239 (2001).

Challenges to the sufficiency of evidence are reviewed for errors at law. *State v. Sanford*, 814 N.W.2d 611, 614–15 (Iowa 2012). Evidence is viewed in the light most favorable to the verdict and all legitimate inferences and presumptions are construed in that light. *Id.* at 615. “Evidence is considered substantial if, when viewed in the light most favorable to the State, it can convince a rational jury that the defendant is guilty beyond a reasonable doubt.” *Id.*

III. Error Preservation—Prior Bad Acts Evidence.

As a preliminary matter, the State asserts Cory failed to preserve error on this issue. The State notes Cory made an objection to the prior bad acts evidence at trial, “but the objection was made off the record and the basis for the objection was not provided when it was made. This is not sufficient to preserve error.” The State cites *State v. Kone*, 557 N.W.2d 97, 100-01 (Iowa Ct. App. 1996) and *State v. Rojas*, 524 N.W.2d 659, 662-63 (Iowa 1994)—cases discussing the necessity of the district court making specific findings on the record for each of the five elements required for the admissibility of evidence *under the residual hearsay exception*. See *Kone*, 557 N.W.2d at 101 (remanding for the limited purpose of more specific findings where district court’s findings were not made with sufficient specificity). The State also cites *State v. Mulvany*, 603 N.W.2d 630, 632 (Iowa Ct. App. 1999), where we held the defendant’s *general relevancy objection* failed to preserve his claim on appeal that the challenged testimony constituted prejudicial “bad acts” evidence.

We are not persuaded. Cory filed a detailed motion in limine; the State filed a detailed resistance. After each side argued their positions at the pre-trial motion hearing, the trial court entered a multi-page, preliminary order on this evidentiary issue and included a detailed analysis of the appropriate factors. The record shows the State, as ordered, requested a ruling before asking questions about the prior threats. Based on the fact the prosecutor immediately asked Amber a question about the prior threats, it is clear the court followed its preliminary ruling. After the verdict Cory again argued this issue in his motion for new trial and the State again responded with a written resistance. At the hearing discussing Cory's new trial motion, both parties stood on their written submissions and made no additional oral argument. Thereafter, the court specifically stated it had reviewed the parties' submissions and the court's prior orders, and it denied Cory's motion for new trial. Accordingly, error was preserved.

IV. Admissibility of Prior Bad Acts Evidence.

Cory contends the district court abused its discretion by admitting evidence of his alleged prior threats to damage Amber's home and car. He claims his defense did not focus on the issue of intent, and the evidence is irrelevant propensity evidence. Cory asserts the defense position on the going armed with intent charge was Cory never had a knife. Likewise, the defense position on the burglary charge focused on Cory not having a knife plus the defense witnesses' testimony Cory never made it past the front porch so there was no entry.

The State responds the district court correctly ruled the prior bad acts evidence was relevant to Cory's motive and intent, a non-character reason for admission. Specifically, the "motive and intent [Cory] had when traveling from the bar to Amber's home was to confront Amber Mace and Barry Wood, who had disrespected him, and to punish them both physically. He was not interested in retrieving property; he wanted to provoke a fight."

In resolving this issue, we consider 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.

This rule "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] committed the crime in question." *Rodriquez*, 636 N.W.2d at 239; *see also State v. Sullivan*, 679 N.W.2d 19, 24 (Iowa 2004) (noting "[e]mpirical studies have confirmed the courts' fear that juries treat 'bad acts' evidence as highly probative"). Prior bad acts evidence "diverts the jury's attention from the [crime charged] to the improper use of the defendant's bad character." *Sullivan*, 679 N.W.2d at 24.

Therefore, in order 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). 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 at 289.

We conclude the record lacks adequate support for the admissibility of Cory's alleged prior misconduct as evidence relevant to a legitimate factual dispute. As the district court recognized, there is no history of Cory physically abusing or assaulting Amber. In general, Cory's past threat to have someone else harm Amber's property is not highly probative of Cory's motive or intent to assault Amber or Barry one month later. Also, during the pretrial argument on Cory's motion in limine, the prosecutor's focus—and therefore the district court's focus—on the “going armed with intent” charge was Cory's actions towards Amber.² In contrast, during closing the prosecutor stressed: “It's clear [Cory] was armed and aiming his intent towards the folks [Barry and Kelsey] in that vehicle.”

Defense counsel's opening and closing statements show Cory's defense was focused on Cory not having a knife at any time that evening. Cory's defense did not challenge his being angry with Amber, his appearance at her house while angry, the fact Cory and Amber argued after he arrived at her house, or the fact Cory exited a car and went towards Barry stating: “Let's go bitch.”³ Accordingly, the State's theory of admissibility fails because the legitimate factual issue disputed by the defense is Cory's possession of a knife. We are unable to conclude Cory's alleged prior threats are relevant to this disputed factual issue. Consequently, the only purpose of this evidence was to show propensity. The district court's contrary conclusion is an abuse of discretion.

² In its pretrial written ruling, the district court found: “Finally, in regards to going armed with intent, the State must establish [Cory] was armed with a dangerous weapon with the specific intent to use the weapon (knife) against [Amber] Mace. Clearly, [Cory's] intent is a critical issue in the case and is disputed.”

³ The police officer testified Cory admitted getting out of a vehicle and going towards Barry saying, “Let's go, bitch,” and Cory denied having a knife during this conversation.

Because Cory's possession of a knife is a critical element of his going armed with intent conviction, we reverse that conviction and remand for a new trial on that charge.⁴

V. Admission of Prior Convictions of Defense Witness.

Cory argues the district court abused its discretion in admitting Cheri's convictions, which were over ten years old. Cory asserts the State failed to overcome the rebuttable presumption these convictions are more prejudicial than probative and therefore inadmissible. See *Roby*, 495 N.W.2d at 775.

In allowing the convictions into evidence, the court ruled:

[T]he only persons who can testify as to whether they observed a knife during the events that occurred at the home [Corey] is accused of burglarizing is the victim [Amber] and Corey. However, shortly after the alleged burglary, Cory apparently approached [Barry Wood] who was in a vehicle. According to [Barry, Cory] was displaying a knife in his hand. Another person in the vehicle, [Kelsey] apparently will testify she "thinks" she saw [Corey] with a knife when he approached the vehicle The defendant's witness [Cheri] Topete was not at the scene of the burglary but claims to have been in a vehicle with [Cory] when the incident involving [Barry] occurred. [Cheri] apparently will testify [Cory] did not have a knife at that time. [Defense witness Jesse Kratz] may also testify [Cory] did not have a knife in his possession at the relevant time. Obviously, whether [Cory] had a knife . . . is critical evidence [Amber's, Cheri's, Barry's, Kelsey's, and Jesse's] credibility are essential to ascertaining the true facts of whether [Cory] had possession of a knife. This case will be a swearing contest between the State's witnesses and the defendant's witnesses.

The court finds [Cheri's] convictions for theft and burglary, both of which are aggravated misdemeanors, directly bear on [her] honesty.

. . . .

⁴ We briefly address Cory's additional argument the evidence was insufficient to support a conviction for going armed with intent. We find no merit to this claim. Barry testified to Cory charging Barry's vehicle with a knife in his hand. Accordingly, Cory's sufficiency challenge fails.

The court finds that the probative value of [Cheri's] convictions substantially outweighs their prejudicial effect. The court finds it is in the interest of justice that the State be allowed to impeach [Cheri] with her prior convictions.

Prior convictions involving dishonesty or false statements more than ten years old are not admissible “unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.” Iowa R. Evid. 5.609(b). The rule is “not an absolute bar to the admission of evidence of convictions which are over ten years old.” *Roby*, 495 N.W.2d at 775 (finding no abuse of discretion in the admission of a thirteen-year-old conviction). We recognize, however, such convictions are to be admitted only in exceptional circumstances. *State v. Hackney*, 397 N.W.2d 723, 729 (Iowa 1986).

We conclude the district court's ruling did not constitute an abuse of discretion. Cheri's conviction was highly probative. Cory's defense relied primarily on her testimony and Jesse's testimony that Cory did not have a knife during the evening. As the primary issue at trial was whether or not Cory possessed a knife, the credibility of Cheri's testimony was critical to the resolution of the case. Accordingly, the district court properly found Cheri's convictions to be admissible impeachment evidence.

VI. Insufficient Evidence—Burglary in the Second Degree.

To convict Cory of burglary in the second degree, the State was required to prove (1) Cory broke into a residence, (2) the residence was an occupied structure, (3) Cory did not have permission or authority to break into the residence, (4) Cory broke into the residence with the specific intent to commit an

assault, and (5) Cory, while perpetrating a burglary, did not have possession of a dangerous weapon. See Iowa Code §§ 713.1, 713.5. Cory contends the evidence is not sufficient to establish Cory broke into Amber's home because "the only individual who testified to that fact was Amber," and "no one else actually in the house during that timeframe testified."

We presume error was preserved. "A fair inference of guilt with respect to each element of the crime charged is sufficient to uphold a verdict." *State v. Farnum*, 554 N.W.2d 716, 717 (Iowa Ct. App. 1996). 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). None of those circumstances are present here. A reasonable juror could credit Amber's testimony regarding the breaking element of the burglary charge. See *Farnum*, 554 N.W.2d at 718 (stating a "jury is in the best position to judge whom and what to believe"). Viewing the evidence in the light most favorable to the State, we conclude substantial evidence supports Cory's second-degree burglary conviction.

VII. Conclusion.

We reverse Cory's conviction for going armed with intent and remand for a new trial. We affirm his second-degree burglary conviction.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Potterfield, J., concurs; Tabor, J., concurs in part and dissents in part.

TABOR, J. (concurring in part and dissenting in part)

I respectfully dissent from the majority's decision to reverse and remand the conviction for going armed with intent. The majority finds the district court abused its discretion in admitting evidence Jurrens made a verbal threat toward Mace—suggesting the use of a knife to slash her tires, as well as other property damage—about one month before the confrontation in question. Under an abuse-of-discretion standard, we should reverse only if the district court exercised its discretion on clearly untenable or unreasonable grounds. *See In re Detention of Stenzel*, 827 N.W.2d 690, 697 (Iowa 2013). I find nothing untenable or unreasonable about the district court's ruling on the defendant's motion seeking to exclude his threat under Iowa Rule of Evidence 5.404(b). In fact, the ruling was well-reasoned and thoughtful, carefully setting out the arguments of the parties, plugging the relevant facts into the correct evidentiary test, and relying on pertinent case law. Just because another judge might decide the question of admissibility differently does not mean the court abused its discretion. *See State v. Castaneda*, 621 N.W.2d 435, 449 (Iowa 2001) (Cady, J., dissenting) (“Our role on appeal in an issue of this nature is not to substitute our judgment for the decision made by the trial judge but to look for a clear abuse of discretion of that decision.”).

When the State offers evidence of a defendant's prior bad acts, the prosecutor must “articulate a valid, non-character theory of admissibility.” *State v. Sullivan*, 679 N.W.2d 19, 28 (Iowa 2004). The prosecutor did so in this case, arguing:

[T]he State has the burden of proving that Defendant specifically intended to assault Amber Mace and to burglarize the residence where she was staying. Because this is a prosecution involving assault and burglary between intimate partners, the State contends the prior threats made by Defendant to harm Amber Mace or her property are relevant and bear on Defendant's motive and intent. See *State v. Taylor*, 689 N.W.2d 116 (Iowa 2004).

The district court determined the issue of defendant's intent in going to the residence where Mace was staying was "critical" and "contested." The court found the probative value of Jurrens's prior threat was "very high." I would agree. The probative value of a prior threat is particularly high when the defendant and alleged victim are involved in an intimate or dating relationship. See *State v. Rodriguez*, 636 N.W.2d 234, 243 (Iowa 2001) (noting prior threats tend to explain later interactions between the same parties).

The majority parses the proof at trial very finely—finding the State's theory of admissibility "fails" because the "legitimate factual issue" in dispute was Jurrens's possession of a knife. While his possession of a knife was one issue in dispute, it was not the only contested element of the crimes being prosecuted. The State was required to prove all the elements of the three offenses, including the defendant's specific intent, beyond a reasonable doubt. See *Castaneda*, 621 N.W.2d at 449 (Cady, J., dissenting) (noting "specific intent remains an element of the crime that the State is required to prove"). I believe the defendant's relatively recent threat to harm Mace's property was relevant to prove his motive and intent regarding all three offenses being prosecuted. I would affirm.