

IN THE COURT OF APPEALS OF IOWA

No. 7-047 / 05-0885
Filed June 13, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JARED JAMES YORK,
Defendant-Appellant.

Appeal from the Iowa District Court for Washington County, Michael R. Mullins, Judge.

Jared York appeals from the trial court's judgment and sentence entered upon his convictions for involuntary manslaughter and child endangerment causing bodily injury. **REVERSED AND REMANDED FOR NEW TRIAL.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Barbara A. Edmondson, County Attorney, and Eric R. Goers, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Vogel and Eisenhauer, JJ.

HUITINK, P.J.

Jared York appeals from the trial court's judgment and sentence entered upon his convictions for involuntary manslaughter and child endangerment causing bodily injury. York contends the trial court erred by: (1) excluding expert testimony explaining the reasons for York's allegedly incriminatory statements made during his interrogation by a police officer; (2) admitting a video entitled "Portrait of Promise: Preventing Shaken Baby Syndrome"; and (3) permitting improper impeachment of an expert witness. York also challenges the legality of his sentence. Because we find York is entitled to a new trial, based on the trial court's error in admitting the challenged video, we confine our opinion to that issue.

I. Background Facts and Proceedings.

On October 6, 2006, the State filed a two-count trial information charging Jared York with murder in the first degree and child endangerment causing serious injury. These charges were based on allegations that York violently shook his five-month-old daughter Rylie, resulting in serious injuries causing her death. York pleaded not guilty. He denied shaking Rylie and disputed the State's claims concerning Rylie's cause of death.

Prior to trial the State requested a ruling on the admissibility of a video entitled "Portrait of Promise: Preventing Shaken Baby Syndrome." The State alleged York watched this video shortly after Rylie was born and that the video was relevant evidence of the malice aforethought element of first-degree murder. York resisted the State's application on multiple grounds, including:

The contents of the video are overly broad, constitute hearsay, and are more prejudicial than probative.

York also argued:

[The video] is designed to appeal to the sympathy of the viewer, and as such is an impermissible appeal to the sympathy of the jury.

In reply to York's arguments concerning the video's emotional appeal, the State argued:

Certainly, I want to make sure it's clear we're not hedging our bets. We think the whole tape should be admissible and that would be most highly probative. In fact, the defense indicated it's highly emotional and, you know, heart warming or that kind of thing.

The State's point is that the more it is that way, the more probative it is because the reason it's offered is that the defendant, you know, knew this; and if it's highly emotional, it would have been highly emotional to him and he would have remembered that and it would have had a dramatic impact on him, that this is something that needs to be done.

Frankly put, the more emotionally heart wrenching or memorable it is, the more probative it is for the purposes offered by the State.

The court's resulting ruling states:

No one can know for sure what was in the Defendant's mind at the time of the alleged acts. The Court has viewed the videotapes. As a general proposition, there is information in the videotapes that would be probative as to the malice aforethought element if the Defendant had watched the videotape as alleged by the State. The State need not prove beyond a reasonable doubt that the Defendant watched the videotape, but must provide an adequate foundation. The emotional appeal of the videotapes is limited to such an appeal as is appropriate for the purpose of the videotape: that is, to appeal to the parents of a newborn infant. The videotapes also emphasize the common and expected frustration that parents sometimes have with crying babies. To that extent, the videotapes could be viewed as sympathetic to the Defendant.

The Court now rules as follows:

1. The State intends to offer into evidence a video entitled "Portrait of Promise: Preventing Shaken Baby Syndrome." That video is admissible if the State provides sufficient foundation that the defendant watched the video prior to his children being

discharged from the hospital, as asserted by the State in its application.

At trial York objected to admission of the video, claiming it was not relevant and the State failed to establish the requisite foundation for its admission. The court's ruling on York's objection states:

My recollection is the same as the State's with regard to the testimony of [the hospital social worker] and the parents having said that they had seen a video concerning shaken baby. That testimony, other testimony of [the social worker], together with the testimony of [the nurse] that Portrait of Promise was the only video concerning shaken baby, is sufficient to establish the foundation

The defense challenges go primarily to the weight to be given and not to the admissibility of the evidence. So, State's Exhibit 24 will be admitted

The video was thereafter shown to the jury in its entirety.

The State's case against York also included testimony by an array of physicians concerning Rylie's medical history, as well as their opinions concerning Rylie's diagnosis, mechanism of injury, and cause of death. The consensus opinion of the State's medical experts was that Rylie suffered a nonaccidental trauma resulting from a shaking or impact injury and that the cause of her death was a head injury. The state medical examiner testified that his autopsy findings confirmed the cause of Rylie's death was a head injury. He also testified that the manner of Rylie's death was a homicide. In addition, the State's case included testimony by police officer Lyle Hansen and Suzanne Witte, a social worker at the University of Iowa Hospitals. Witte testified York told her he "shook" Rylie. Hansen testified "[York] told me he felt like he was a monster" and "he knew he was responsible for the brain damage that was . . . occurring with Rylie due to the fact he had shaken her." Hansen recalled York

saying he began to “bounce” and “shake” Rylie out of fatigue and frustration. Hansen testified York showed what he had done using a doll and bouncing his knee up and down three to five inches, making the doll’s head move back and forth “violently.” According to Hansen, York said he did this “until I realized I was doing something I shouldn’t”; “I did not mean to do this”; “I don’t like hurting . . . and now I put one of [the twins] back there [in the hospital]”; “I might have been mad”; and “I must have been a little mad, but I didn’t want to hurt her.”

As noted earlier, York denied the State’s shaken baby theory of Rylie’s death. He expressly denied making the incriminatory statements attributed to him by Hansen and Witte. York testified, “I never said the word ‘shake’ to anybody;” “I never said the word ‘shake’ to [Witte];” “I never said the word ‘shake’ to [Hansen]. Because I never shook my daughter.” He denied saying he shook Rylie until he realized he was doing something wrong, that he knew it was wrong but got “carried away,” that he “did not mean to do this,” that he “put one of them back” in the hospital, that he was shaking her “faster and faster,” or that he must have been a “little mad.”

York testified he actually said, “I would never do anything to put them back in the hospital,” not that he *had* put one of the twins in the hospital. He testified instead of saying he thought he was a monster, he actually said people in the hospital “look at me like I’m a monster.” He further testified that he used a doll to demonstrate bouncing, but denied that it was as rough as Hansen depicted.

York’s defense also included expert testimony contradicting the State’s medical experts. A radiologist and two pathologists testified that Rylie’s brain

trauma was not the result of shaking or impact injuries. Their consensus opinion was that Rylie died of natural causes related to a seizure disorder or an infection.

The jury found York guilty of the lesser-included offense of involuntary manslaughter under the murder count and guilty of child endangerment causing bodily injury. The trial court subsequently sentenced York to two consecutive five-year terms of incarceration.

As noted earlier, York appeals, claiming the trial court abused its discretion in admitting the “Portrait of Promise” video.

II. Scope of Review.

We review the trial court’s ruling admitting the challenged video for an abuse of discretion. *State v. Sayles*, 662 N.W.2d 1, 8 (Iowa 2003). “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 (Iowa 2001). “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.” *Id.* “Even if an abuse of discretion is found, reversal is not required unless prejudice is shown. *State v. Buenaventura*, 660 N.W.2d 38, 50 (Iowa 2003).

III. The Merits.

Irrelevant evidence is not admissible. Iowa R. Evid. 5.402. Even if relevant, evidence is not admissible when “its probative value is outweighed by the danger of unfair prejudice.” Iowa R. Evid. 5.403. Therefore, the decision to admit evidence requires a two-step inquiry: (1) is the evidence relevant? and (2)

if so, is its probative value substantially outweighed by the danger of prejudice or confusion? *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000).

“‘[P]robative value’ gauges the strength and force of” the evidence “to make a consequential fact more or less probable.” Unfairly prejudicial evidence is evidence which “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.”

Rodriguez, 636 N.W.2d at 240 (citations omitted). In assessing the probative value of the challenged evidence, the court considers the actual need for the evidence in view of the issues raised, as well as other available evidence. *State v. Most*, 578 N.W.2d 250, 254 (Iowa Ct. App. 1998). In addition to the foregoing, we may conclude the defendant was unfairly prejudiced because the trial court made an insufficient effort to avoid the dangers of prejudice. *State v. Brown*, 569 N.W.2d 113, 117 (Iowa 1997). We defer to the trial court’s considerable discretion in the resolution of this balancing test. *State v. Taylor*, 689 N.W.2d 116, 124 (Iowa 2004). We, however, will withhold that deference and apply the pertinent factors if the trial court fails to articulate how it balanced the probative value of the evidence against its prejudicial effect. *State v. Henderson*, 696 N.W.2d 5, 11 (Iowa 2005).

The record indicates “Portrait of Promise: Preventing Shaken Baby Syndrome” is an approximately fifteen-minute video shown to parents of newborn babies by the University of Iowa Hospitals. The video describes the experiences of three children, Corey, Logan, and Patrick, all victims of shaken baby syndrome. Corey died as the result of his injuries. Logan and Patrick are profoundly disabled. The video shows Corey’s grave site as well as scenes

depicting the nature and extent of Logan's and Patrick's disabilities. The video also contains commentary by a physician and a narrator, as well as narratives by the children's parents. The doctor's commentary is interspersed with illustrative animations and CT scans. The video's dialogue, in its entirety, is as follows:

NARRATOR: Babies. They are so tiny and helpless. Yet, each new life is a portrait of promise. From their very first moments of life, they make their way into our hearts and almost too soon they begin to make their way into the world. There may be bumps and bruises along the way, but the world is a wondrous place, and each new experience is an adventure--a challenge. Joy or sorrow, triumph or setback, life is about growing. The lessons learned and relationships formed are the foundations for exploring a whole new world of exciting possibilities.

COREY'S MOTHER: It was when I picked him up out of his crib, and he didn't wake—he didn't respond to me—he didn't wake up, and he always did, you know? He didn't even flinch. He didn't move. And it was just like this moaning and groaning that he was doing. And I knew right then and there that something was wrong with him.

LOGAN'S MOTHER: And when I got him to the hospital, the nurse kind of assessed him, and then she just ripped him out of my arms and starting running down the hall and said, "Code Blue." And little did I know that night that he was going to have a lot more taken from him.

PATRICK'S MOTHER: I went and dropped him off. And I kissed him goodbye and he smiled at me, and that was the last time I saw him smile for a year and a half.

NARRATOR: Patrick, Logan, Corey. Three young lives so full of promise which will never be fully realized because of an adult's momentary loss of control. All three were victims of shaken baby syndrome.

DR. LEVITT: Shaken baby syndrome is a form of child abuse involving the violent shaking of infants and young children. Even vigorous shaking for a few seconds can kill and seriously injure young children.

NARRATOR: Shaken baby syndrome is usually the result of an adult taking out his or her frustration on a child. Often, it's because the baby is fussy or won't stop crying

COREY'S MOTHER: His father had told me that little Corey wouldn't stop crying and he had first spanked him and he still kept on crying, so he shook him.

DR. LEVITT: The younger baby is particular vulnerable because their head is large in relationship to the size of the body,

the baby has weak neck muscles, and the baby's brain is underdeveloped.

NARRATOR: Hard shaking causes babies' heads to whip back and forth uncontrollably. The brain slams repeatedly against the skull. Blood vessels are torn, which causes bleeding in the brain and on its surface. Often the retina of the eye is damaged, and the spinal cord may be injured

DR. LEVITT: You might want to compare a baby's brain to a bowl filled with gelatin, partially set. If you take the bowl and shake it, the gelatin will separate from the edge of the bowl, if you shake it even harder, the gelatin might crack in the middle. If you put a cover on top of the bowl and shake it really violently, the gelatin will liquefy and you can pour it out of the bowl. I think that's what happens to a baby's brain when the baby's shaken.

COREY'S MOTHER: His brain was swollen so much that the doctor didn't know if he'd make it. It was real serious. He was on life support because his brain wasn't functioning.

PATRICK'S MOTHER: Patrick is legally blind, and he has cerebral palsy. He is not able to hold himself up. He'll never walk, eat, roll over, or lift himself up by himself. He's one-hundred-percent totally dependent on somebody to help him.

PATRICK'S FATHER: It doesn't take long to change someone's life, particularly like Patrick's.

NARRATOR: Injuries from shaken baby syndrome include brain damage, blindness, paralysis, seizures, and fractures. Some babies even die.

DR. LEVITT: A normal CT scan of a baby's brain looks like this. All of this grey area represents healthy brain tissue. Now, here is the CT scan of a baby who was shaken. All of the dark areas are damaged brain. This tissue will never heal, and this child will never be able to walk, talk, or see.

NARRATOR: Taking care of a baby is a full-time job. Add in the stresses of day-to-day life, fatigue, family problems, financial worries, and overwork, and it's easy to see how someone could reach a breaking point and become frustrated or angry, especially if the baby is being fussy. It can happen to anyone--to mothers, fathers, family members, childcare providers, even friends and teenagers who are just babysitting for a few hours. And, it happens in every community

LOGAN'S MOTHER: It was real hard to believe that somebody had shaken and, and harmed Logan in the way that they did, and, and there was a lot of denial at first, but I learned later on that you can't speak for what anyone else would do or is capable of doing.

COREY'S MOTHER: This is the man I married, I loved, The father of my child and who would think that he would do something like that to him, to little Corey.

DR. LEVITT: I don't think that anyone wakes up in the morning and plans and says, "I'm going to shake by baby today if that baby cries one more time." But what's so scary about shaken baby syndrome, is it comes without warning. A person reaches the point of frustration and anger so that they shake this thing that they're holding, that they're supposed to be cuddling—that they're supposed to be caring for. And it is totally an act of violence.

NARRATOR: The good news about shaken baby syndrome is that it doesn't have to happen. Everyone who takes care of young children needs to know that it's never okay to shake a baby.

DR. LEVITT: We need to understand that crying is a way that babies communicate. It might mean the baby's hungry. It might mean the baby's tired. It might mean that the baby is sick or the baby just wants to be held. But it doesn't mean that the baby's angry. It doesn't mean that the baby is out to get the parent, or that the parent isn't doing a good job.

NARRATOR: When a baby is fussing or is crying, you might try feeding the baby slowly, offering a pacifier, taking the baby for a walk or a ride in the car, or simply holding the baby. Maybe the baby is too cold or too warm or isn't feeling well. If you think the baby might be sick, call a healthcare professional for advice. Sometimes, even the best of caregivers can't figure out why a baby is crying. It's when you're starting to feel frustrated or angry that you need to step back from the situation before you lose control. Put the baby in a crib or other safe place, close the door, and go to another room. Watch television, listen to music, or exercise to help you calm down. Call a friend or relative to talk out your frustration, or see if they can relieve you for a while

PATRICK'S MOTHER: Parents need to let their daycare providers or babysitters know that it's okay to call when they are uncomfortable or frustrated or they just don't feel right at the time taking care of the baby. And the parents need to come right away. They have to live up to that and relieve that person. Otherwise, something tragic could happen, like Patrick. I wish we had that opportunity.

COREY'S MOTHER: I have two kids now that will never know their brother because of this, and, it's going to be hard for them to understand why.

PATRICK'S FATHER: Please don't shake your children or any child. Just a moment's worth of thoughtlessness can change everyone's life

NARRATOR: Patrick, Logan, and Corey. These are only three children out of thousands who are victims of shaken baby syndrome each year. And unfortunately for these families, the hopes and dreams for their children will never come true. We all need to work toward the day when we will never again here someone say, "if only I had known." The key to preventing shaken

baby syndrome lies in our hands. It's up to us to let everyone know it's never okay to shake a baby and to fulfill the portrait of promise for every child.

The entire video is set to evocative background music.

York apparently concedes the video was relevant by arguing only that “[t]he video had very little relevance.” The next inquiry is whether the trial court abused its discretion in determining the probative value of the video was not substantially outweighed by the danger of unfair prejudice.

As noted earlier, the trial court found “there is information in the videotapes that would be probative as to the malice aforethought element” of murder. Beyond this general restatement of the video’s relevance, the trial court’s ruling fails to articulate how the court determined the strength or the force of the video to prove malice aforethought. More specifically, there is no indication the court considered the State’s need for the video or other evidence available to prove malice aforethought. We accordingly apply the pertinent factors to determine if the probative value of the video supports the trial court’s ruling. *State v. Henderson*, 696 N.W.2d at 11.

Malice aforethought is a fixed purpose or design to do some physical harm to another that exists before the act is committed. *State v. Myers*, 653 N.W.2d 574, 579 (Iowa 2002).

“Malice” is a state of mind which leads one to intentionally do a wrongful act to the injury of another or in disregard of the rights of another out of actual hatred or with an evil or unlawful purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the Defendant and the means used in doing the wrongful or injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of

the act and its consequences, as distinguished from an act done in the heat of passion. . . .

Id.

When considered in light of the other evidence of malice in this case, we conclude the State's need for the video evidence has been overstated. In addition to the video, there was evidence York was "mad" and "frustrated" with Rylie. There was also an abundance of evidence concerning the manner and extent of Rylie's injuries, as well as her cause of death. Moreover, at least two witnesses testified York had received information or watched a video cautioning him against shaking a baby. At best, the State's need for this evidence to prove malice aforethought was minimal.

Even if the probative value of the video was as great as the State claimed, its probative value is substantially outweighed by the unfair prejudice to York resulting from the video's sympathetic and emotional appeal. Although the State's contrary argument concerning the video's tone and depictions fairly describe the clinical portions of the video, the State's argument ignores the evocative tone and emotional appeal of the remainder of the video. We also note that the State's argument that the video's emotional appeal was minimal conflicts with the county attorney's characterizations of the video made at the hearing on the admissibility of the video and during final argument to the jury.

Additionally, the trial court's conclusion that the video's emotional appeal "is limited to such an appeal as is appropriate for the parents of newborn children" ignores the power of professionally produced videos in general and the profound emotional appeal of this video in particular. The depictions of an

innocent shaken baby syndrome victim's grave site, profoundly disabled shaken baby syndrome victims, as well as the poignant narratives and emotional pleas by their heartbroken parents, all set to evocative and stirring background music are sufficient to invite a sympathetic or emotional response from even the most detached and objective viewer. When the video is viewed in the context of all of the evidence, we find its overwhelmingly sympathetic and emotional appeal was inherently prejudicial. This evidence may well have caused the jury to make its decision on something other than the evidence in this case. Moreover, the fact that the jury acquitted York of murder does nothing to diminish the resulting prejudice to York. Although the video may have contributed to his acquittal of murder, its emotional appeal may have virtually assured York's convictions for manslaughter and child endangerment. Because the danger of unfair prejudice resulting from the admission of the video substantially outweighed any quantum of its probative value, we hold the trial court abused its discretion by admitting the video "Portrait of Promise: Preventing Shaken Baby Syndrome" into evidence in this case.

The remaining question is whether the trial court's error in admitting the video requires us to reverse and remand for a new trial. Reversal is required in cases of nonconstitutional error when it sufficiently appears "that the rights of the complaining party had been injuriously affected by the error so that he has suffered a miscarriage of justice." *State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004); see also Iowa R. Evid. 5.103(a). In applying this test, "we presume prejudice—that is, a substantial right of the defendant is affected—and reverse unless the record affirmatively establishes otherwise." *Sullivan*, 679 N.W.2d at

30. There is no resulting prejudice to the defendant if the evidence of guilt is overwhelming. *State v. Brodene*, 493 N.W.2d 793, 797 (Iowa 1992). For the same reasons cited earlier, we find York was prejudiced by admission of the challenged video. Moreover, it cannot be reasonably claimed that the record contains overwhelming evidence of York's guilt. We conclude the record fails to affirmatively establish a lack of prejudice. York's convictions must therefore be reversed and this case remanded for a new trial.

Because our resolution of the foregoing issue is dispositive of York's appeal, we need not address the remaining issues raised. The judgment of the trial court is accordingly reversed, and this case is remanded for a new trial.

REVERSED AND REMANDED FOR NEW TRIAL.