

IN THE COURT OF APPEALS OF IOWA

No. 7-138 / 06-0537
Filed April 11, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FRANKLYN LAROY DAUGARD JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Guthrie County, William H. Joy,
Judge.

Franklyn Laroy Daugard Jr. appeals from his convictions following bench trial of third-degree sexual abuse and wanton neglect of a resident of a health care facility. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Mary Benton, County Attorney, and Thomas E. Noonan, Assistant County Attorney, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

ZIMMER, P.J.

Franklyn Laroy Daugard Jr. appeals from his convictions following bench trial of third-degree sexual abuse in violation of Iowa Code sections 709.4(1) and 709.4(2) (2005) and wanton neglect of a resident of a health care facility in violation of section 726.7(1). Daugard contends the court erred in admitting evidence of his prior interactions with the victim and his work restrictions. We affirm.

I. Background Facts and Proceedings

During the fall of 2005, the Adair Community Health Care Facility employed Daugard as a certified nursing assistant (CNA). On August 10 or 11, 2005, Mary Gettler, the director of nursing at the facility, informed Daugard he was not supposed to provide care for any nonverbal, confused female residents by himself. The restriction was imposed because of concerns expressed by another employee regarding Daugard's interaction with a mentally disabled patient, Sharon Pearce.

During the evening of September 27, 2005, Daugard was on duty at the facility with Licensed Practical Nurse Lori Cullen. Daugard and Cullen were the only employees working in the facility. The residents were in their rooms. At about 8:00 p.m., Cullen received a work-related telephone call that lasted approximately ten minutes. When she finished the call, she could not find Daugard. Cullen had last seen Daugard with the facility's laundry cart. Cullen knew about Daugard's work restrictions.

Cullen began searching for Daugard. She looked in several rooms before she discovered the laundry cart Daugard had been pushing stashed behind a

privacy curtain in room 209. This was unusual because room 209 was unoccupied, and the laundry cart was supposed to remain in the hallway. Shortly after she discovered the laundry cart, Cullen approached room 213. At that time, room 213 was occupied by Sharon Pearce, a sixty-three-year-old resident who had lived at the facility since 1992, and another woman.

The door to room 213 was partially closed. Cullen noticed the privacy curtain closest to the door had been pulled completely to the wall and tucked behind a chair. At first, Cullen could only see the foot of the bed occupied by Pearce. She observed that a person wearing tennis shoes was in bed with Pearce. When Cullen entered the room, she saw Daugard lying on top of Pearce. Pearce's nightgown was rolled up above her breasts and her underwear were down around one of her ankles. Pearce was lying on her back with her legs spread apart, and Daugard "was going up and down on her" with their pelvises aligned. Daugard's head was between Pearce's breasts. Cullen testified there was no doubt in her mind Daugard was having intercourse with Pearce.

The nurse told Daugard "you need to get up off of her right now, and what do you think you're doing?" Daugard scooted down off the bed, stood up, faced away from Cullen, and appeared to manipulate the front of his shorts; Cullen believed he was fastening them.¹ Daugard said several times he had "messed up." Daugard was fired immediately. When Cullen returned to Pearce's room, Pearce was "agitated" and was thrashing in her bed with her legs going from side to side. Pearce appeared to be frightened and had to be restrained.

¹ Daugard was wearing a long t-shirt that came almost to his knees and covered most of his shorts.

Pearce suffered from Huntington's chorea, a genetic disorder that causes the body to produce abnormal protein in the brain. The disorder causes loss of motor control characterized by involuntary movements and psychosis. By 2005 Pearce was unable to walk, speak, and control other bodily functions. Pearce's doctor testified Pearce was not capable of consenting to a sex act and such an act would likely have caused her physical and mental injury. Pearce died before Daugard's trial.

Based on the circumstances we have just described, the State filed a trial information charging Daugard with third-degree sexual abuse and wanton neglect of a resident of a health care facility. Before trial, Daugard filed a motion in limine asking the court to exclude testimony from employees of the facility regarding Daugard's previous interactions with Pearce and a written notice he received restricting his contact with her. The court excluded evidence of the written notice, but permitted testimony by Daugard's coworkers regarding his experiences with Pearce and the resulting work restriction.

Daugard waived a jury trial. Following a bench trial, the district court filed a written verdict finding Daugard guilty as charged. The court sentenced Daugard to a prison term not to exceed ten years on the sexual abuse charge and a prison term not to exceed two years on the neglect charge. The sentences were ordered to be served concurrently. Daugard now appeals.

II. Scope and Standards of Review

We review rulings on the admission of evidence of prior bad acts for abuse of discretion. *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005).

Discretion is abused only when the trial court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable. *Id.*

III. Discussion

Daugard contends the court erred in admitting evidence of his prior interactions with the victim and his work restrictions. He argues that under the facts of this case, the trial court abused its discretion in admitting and considering evidence of his prior bad acts.

At trial, Carol Noland, a CNA, testified Daugard was not allowed to be left alone with female residents. Noland also described an incident involving Daugard that occurred about 7:00 or 7:15 p.m. on September 27. At that time, Daugard was discovered alone with Pearce, who was bare-breasted. Suzanne Caltrider, another nursing home employee, also testified Daugard was not permitted to be alone with nonverbal female residents. Director of Nursing Mary Gettler confirmed she had placed restrictions on Daugard's access to "non-verbal confused female[s]" on August 9 or 10, 2005, after hearing concerns from another employee about Daugard inappropriately checking on Pearce only ten to fifteen minutes after she had been helped into bed. At the time Gettler informed Daugard about the restrictions, she specifically mentioned Pearce.

In general, relevant evidence is admissible, and irrelevant evidence is not admissible. Iowa R. Evid. 5.402. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the case more or less probable than it would be without the evidence. Iowa R. Evid. 5.401.

Evidence of other bad acts is not admissible to show a general propensity to commit wrongful acts. Iowa R. Evid. 5.404(a). Such evidence may be

admitted, however, for one or more of the nonexclusive purposes listed in Iowa Rule of Evidence 5.404(b). *State v. Haskins*, 573 N.W.2d 39, 45 (Iowa Ct. App. 1997).

Iowa Rule of Evidence 5.404(b) provides:

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.

We find the district court properly exercised its discretion in admitting testimony from Daugard's coworkers regarding his experiences with Pearce and the work restriction. First, this evidence was relevant because it demonstrated Daugard's relationship with Pearce and explained the story of the crime. See *State v. Shanahan*, 712 N.W.2d 121, 137 (Iowa 2006) (holding that although evidence the defendant was a thief and a forger reflected badly on the defendant's character, it was an essential element in her plan to create the illusion the victim she had killed was still alive). The evidence challenged by Daugard shows he was aware of Pearce's condition and supports the district court's conclusion that he selected her as his victim because he knew she would be unable to effectively resist a sexual assault or accuse him later. Furthermore, as the district court noted, Daugard was able to execute his plan to sexually assault Pearce because "[f]rom caring for her in the past, he had developed a rapport with her so that he could touch her body and she would allow him to dress and undress her."

Second, we find the testimony from Daugard's coworkers relevant because it cast doubt on his defense of mistake or accident. Daugard did not

testify at trial, but he was interviewed at the sheriff's office on September 28. Daugard claimed his knees gave out when he was checking on Pearce, and he fell on top of her. He denied having sexual intercourse with Pearce and claimed he was merely checking her incontinence undergarments. Daugard claimed Cullen walked in the room to discover him lying on top of Pearce at the precise moment he had innocently fallen on top of the unclothed woman. Evidence that Daugard's behavior with Pearce had previously raised concerns with his coworkers and necessitated the imposition of work restrictions weakened his claim that the entire incident was accidental.

Finally, the record reveals the work restrictions placed upon Daugard and the reasons for those restrictions were related to the commission of the crime. Daugard was only able to sexually assault Pearce by sneaking into her room alone in direct violation of a specific order from his employer.

We recognize that relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Iowa R. Evid. 5.403. Unfair prejudice means "an undue tendency to suggest decisions on an improper basis, commonly though not necessarily, an emotional one." *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988) (citation omitted). Because Daugard does not appear to contend this is a situation where the probative value of the challenged evidence is substantially outweighed by its potential for unfair prejudice, we need not address this issue. We note, however, that any potential for unfair prejudice is diminished in this case because Daugard waived a jury trial. See *State v. Taylor*, 689 N.W.2d 116, 130 (Iowa 2004) (noting that "[c]learly

the likelihood of an improper use of [prior bad acts] evidence is reduced by the fact that the present case was tried to the court.”).

IV. Conclusion

We find the court did not err in admitting evidence of Daugard’s prior interactions with the victim and his work restrictions. Therefore, we affirm Daugard’s convictions of third-degree sexual abuse and wanton neglect of a resident of a health care facility.

AFFIRMED.