

IN THE COURT OF APPEALS OF IOWA

No. 8-051 / 06-0834
Filed February 27, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT LOYD PARKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson,
Judge.

Defendant appeals his convictions for child endangerment causing bodily
injury and neglect of a dependent person. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County
Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

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

On February 9, 2005, thirteen-year-old J.P. came home from school and ate a carton of yogurt. Her father, Robert Parker, got “really mad” because she ate a snack without permission. He called her into the kitchen, and his voice “got a lot meaner.” Parker then dragged J.P. into the computer room and started hitting and kicking her. J.P. tried to get away, but her father picked her up and threw her down on the floor. Parker started dragging J.P. again, and she hit her head on a door. He then threw her on the stairs and kicked her on the leg, causing a large bruise. J.P. was diagnosed with post-traumatic stress disorder after the 2005 incident.

Parker was charged with child endangerment causing bodily injury, in violation of Iowa Code section 726.6 (2005), and neglect of a dependent person, in violation of section 726.3. Parker waived a jury trial and agreed to have the case heard by the court.

Prior to trial Parker filed a motion in limine seeking to prohibit the State from presenting evidence that in 1999 he was convicted of assault regarding J.P. In 1999 Parker had repeatedly struck J.P. with a stick, causing severe bruising. Parker admitted the 1999 incident was relevant, but argued it was unduly prejudicial because it could cause the fact-finder to convict him for prior bad acts.

The State argued the evidence was relevant to show Parker’s knowledge and specific intent. The district court ruled the 1999 conviction was admissible,

but stated, “I’m going to consider the 1999 conviction and the underlying facts of that conviction strictly in terms of knowledge and intent.”

During the trial evidence was presented regarding the 1999 conviction. The district court entered written findings of fact and conclusions of law finding Parker guilty of child endangerment causing bodily injury and neglect of a dependent person. Parker was sentenced to a term of imprisonment not to exceed five years on the child endangerment charge and ten years on the neglect charge, to run concurrently.

Parker appeals his convictions, claiming the district court erred in admitting evidence of his prior assault conviction involving the same victim.¹

II. Standard of Review

A district court’s ruling on the admission of evidence of prior bad acts is reviewed for an abuse of discretion. *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005). “An abuse of discretion occurs when the trial court ‘exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable.’” *Id.* (citations omitted).

III. Merits

Parker contends the prejudicial effect of admitting evidence of his 1999 conviction substantially outweighed the probative value of the evidence. He claims the evidence was very prejudicial because it involved the same type of

¹ Parker filed a post-trial motion for reconsideration. Prior to the district court’s ruling on the motion, however, he filed a notice of appeal. The notice of appeal was filed on May 11, 2006, and the district court ruled on the motion on May 12, 2006. Generally, the filing of a notice of appeal extinguishes the district court’s jurisdiction to rule on post-trial motions. *State v. Anderson*, 308 N.W.2d 42, 45 (Iowa 1981). We conclude the district court did not have jurisdiction to rule on Parker’s post-trial motion, and we do not consider the court’s ruling.

crime and the same victim. Parker also complains that the district court did not engage in a weighing of the probative value of the evidence against its prejudicial effect on the record.

Iowa Rule of Evidence 5.403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Additionally, rule 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 note that in his written brief to the district court on this issue, defendant stated, "Following the two-step analysis in *Castenada* this prior criminal conviction is clearly relevant to the present action."² Under rule 5.404(b), evidence of the 1999 incident was admissible to show intent and knowledge. The evidence was probative of a fact or element other than the defendant's criminal disposition. See *State v. Taylor*, 689 N.W.2d 116, 123 (Iowa 2004).

We turn then to the question of whether the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. "Probative value" refers to "the strength and force of the evidence to make a consequential fact more or less probable." *State v. Martin*, 704 N.W.2d 665, 671

² This is referring to *State v. Castenada*, 621 N.W.2d 435, 439-40 (Iowa 2001).

(Iowa 2005) (citation omitted). Evidence is considered unfairly prejudicial if the evidence has “an undue tendency to suggest decisions on an improper basis commonly, though not necessarily, an emotional one.” *State v. Newell*, 710 N.W.2d 6, 20 (Iowa 2006) (citations omitted). In weighing probative value and unfair prejudice, the court considers: (1) the need for the proffered evidence; (2) whether there is clear proof it occurred; (3) the strength or weakness of the evidence to support the issue sought to be proved; and (4) the degree to which the evidence would improperly influence a fact-finder. *Martin*, 704 N.W.2d at 672.

The State was required to prove in this case that Parker knowingly or recklessly exposed a dependent person “to a hazard or danger against which such person cannot reasonably be expected to protect such person’s self,” Iowa Code § 726.3, and knowingly acted “in a manner that creates a substantial risk to a child or minor’s physical, mental or emotional health or safety,” Iowa Code § 726.6. The evidence of the 1999 conviction was needed to show Parker knew his conduct was not acceptable parental discipline. There was clear proof the incident occurred because Parker was convicted of assault as a result of the incident. Evidence of the 1999 incident supported a finding that Parker knowingly engaged in criminal conduct.

On the last factor, we note the evidence of the 1999 incident involved the same type of conduct as that in the present case, and therefore, was no more horrible or shocking than the evidence in the present case. Furthermore, “[c]learly the likelihood of an improper use of the evidence is reduced by the fact

that the present case was tried to the court.” *Taylor*, 689 N.W.2d at 130; see also *State v. Casady*, 491 N.W.2d 782, 786 (Iowa 1992) (noting the potential for prejudice from evidence of prior bad acts “is reduced in the context of a bench trial”).

Considering all of the factors, we conclude the district court did not abuse its discretion in determining the evidence was not more prejudicial than probative. See *Newell*, 710 N.W.2d at 20-21 (noting we give a great deal of leeway to the district court in weighing the probative value of evidence against the danger of unfair prejudice).

Parker has raised an additional claim that the district court failed to engage in a balancing of the various factors on the record. Our review shows the district court set forth the correct test, and then after arguments of the parties, reached a conclusion. In *Henderson*, 696 N.W.2d at 11, the supreme court stated:

Our review of the trial court’s exercise of discretion in this case is hampered by the court’s failure to articulate how it balanced the probative value of this evidence against its prejudicial impact. Nonetheless, when we apply the pertinent factors, we conclude the unfair prejudice arising from the admission of this evidence substantially outweighed its minimal probative value.

We conclude there is no requirement that the district court specifically articulate on the record the implementation of the balancing test.

We affirm Parker’s convictions.

AFFIRMED.