

IN THE COURT OF APPEALS OF IOWA

No. 9-890 / 07-1478
Filed December 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHARON L. WELLS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

Defendant appeals from her convictions for two counts of theft in the
second degree and ongoing criminal conduct. **AFFIRMED.**

Shane C. Michael, Des Moines, for appellant.

Sharon L. Wells, pro se appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, John Sarcone, County Attorney, and Justin Allen, Assistant County
Attorney, for appellee.

Considered by Sackett, C.J., Vaitheswaran and Danilson, JJ.

SACKETT, C.J.

Defendant, Sharon Wells, appeals from her convictions of two counts of theft in the second degree in violation of Iowa Code sections 714.1(6) (2005) and 714.2(2), and one count of ongoing criminal conduct in violation of sections 706A.1 and 706A.2(4). She contends the district court erred in (1) admitting other acts evidence that was unfairly prejudicial, and (2) overruling her motion for judgment of acquittal on the ongoing criminal conduct conviction. We affirm.

I. BACKGROUND AND PROCEEDINGS. Wells had power of attorney over Arlando Butts, Donnell Jenkins, and Tonika Thompson. Fraudulent checks were written on each person's account between January and April 2006. The checks were written to Brodkey's Jewelers and Hy-Vee. As a result of an investigation into the fraudulent checks, Wells was charged with two counts of theft in the second degree and one count of ongoing criminal conduct.

During trial, Wells objected to two exhibits presented by the State. One was a video depicting Wells shopping at a Gordman's store and a Hy-Vee store, and the other was a binder containing the actual checks shown in the video, as well as other checks written to Hy-Vee, and a check written to Maxine's Gifts from the accounts of Jenkins and Thompson. Wells argued each exhibit contained irrelevant and prejudicial evidence because the video and binder showed conduct unrelated to the charges. Wells was not charged with writing fraudulent checks at Gordman's or Maxine's; therefore, Wells argued video and checks relating to these purchases were irrelevant and prejudicial. The State argued the video and checks were relevant to show examples of Wells's actual

writing. Through the video and checks, the State questioned an investigator about how he used the timing of the videotapes, and the check transactions to identify Wells as the writer of the checks. The investigator then testified how the known writing samples were compared to the fraudulent checks to identify Wells as the writer. The district court admitted the exhibits and instructed the jury that it was to consider the video and checks for the purpose of establishing a known writing of Wells and for no other purpose.

At the close of trial, Wells made a general motion for a judgment of acquittal. The court overruled the motion. The jury returned a verdict of guilty on all charges. Wells appeals.

II. ERROR PRESERVATION. The State claims Wells has not preserved error on either of her claims. It argues, among other things, that Wells did not specifically object to the admitted exhibits because they displayed other bad acts evidence.

The general rule with respect to error preservation is that unless the reasons for an objection are obvious a party attempting to exclude evidence has the duty to indicate the specific grounds to the court so as to alert the judge to the question raised and enable opposing counsel to take proper corrective measures to remedy the defect, if possible.

State v. Decker, 744 N.W.2d 346, 353 (Iowa 2008). Wells did not specifically refer to “other bad acts” evidence when she made the objections. She noted that she was objecting because the evidence was irrelevant and prejudicial because it related to uncharged conduct. We find this substantively alerted the court to Wells’s objection to evidence of other bad acts and error was preserved.

At the close of the State’s evidence, the following exchange took place.

THE COURT: Do you want to make any motions?

...

MS. WELLS: I would, to make a motion for a judgment of acquittal due to insufficient evidence.

THE COURT: And is the State resisting that motion?

MR. ALLEN: The State resists, Your Honor. Contends that the evidence viewed in the light most favorable to the State, which is a nonmoving party, the standard of this motion given is it clearly presents a jury question, and that the defendant committed the counts for which she is charged.

THE COURT: And having heard the evidence and viewing it in the light most favorable to the State, which the court is required to do on this motion, the court believes that the State has met its burden and that this case should be submitted to the jury. So the motion is denied.

In moving for a judgment of acquittal, she stated the ground was due to “insufficient evidence.” She did not specify which charge or charges her motion pertained to or what elements were insufficiently supported. She now contends she should have been granted the motion on the ongoing criminal conduct charge. When a motion for judgment of acquittal does not make reference to the specific elements of the crime on which the evidence was claimed to be insufficient, error is not preserved on a claim based on insufficient evidence. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005); *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). There is an exception to this general rule “when the record indicates that the grounds for a motion were obvious and understood by the trial court and counsel.” *Williams*, 695 N.W.2d at 27; see *In re Detention of Hodges*, 689 N.W.2d 467, 470 (Iowa 2004). We find no indication in the record that it was obvious to the court or any participating party or attorney that Wells was challenging the evidence on the ongoing criminal conduct charge. Although Wells represented herself with the aid of standby counsel, self-representation is

not an excuse for failure to preserve error. See *Johnson v. Nickerson*, 542 N.W.2d 506, 513 (Iowa 1996) (refusing to depart from error preservation rules on the basis that the appellant appeared at trial pro se). Error was therefore not preserved.

III. SCOPE OF REVIEW. Our review of a trial court's ruling admitting evidence of other bad acts is for an abuse of discretion. *State v. Matlock*, 715 N.W.2d 1, 3-4 (Iowa 2006); *State v. White*, 668 N.W.2d 850, 853 (Iowa 2003). We will find an abuse of discretion if the court exercises its discretion on grounds or for reasons that are clearly untenable or unreasonable. *State v. Helmers*, 753 N.W.2d 565, 567 (Iowa 2008); *State v. Bayles*, 551 N.W.2d 600, 604 (Iowa 1996). We recognize that weighing the costs and benefits of admitting prior acts evidence is not trivial and give much leeway to trial judges who must weigh the probative value of such evidence against probable dangers. *State v. Rodriguez*, 636 N.W.2d 234, 240 (Iowa 2001).

IV. OTHER BAD ACTS EVIDENCE. The admissibility of other bad acts evidence is governed by 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.

Iowa R. Evid. 5.404(b). In determining the admissibility of evidence under this rule, the court must employ a two step analysis. *State v. Duncan*, 710 N.W.2d 34, 40 (Iowa 2006). First, the court must determine whether the evidence is relevant and material to a legitimate issue in the case other than tending to show

an inclination to commit wrongful acts. *Id.* Second, even if the court finds the evidence relevant, it must evaluate whether the probative value of such evidence substantially outweighs the danger of unfair prejudice. *Id.*

In *State v. Uthe*, 542 N.W.2d 810, 813-14 (Iowa 1996), a defendant on trial for forgery challenged the admission of a video showing the defendant signing a check and the check itself. The defendant argued the video and check were inadmissible under rule 5.404(b) because they implicated him in another crime unrelated to the specific acts for which the defendant was being tried. *Uthe*, 542 N.W.2d at 813-14. The court determined that using the video and check for the purpose of producing a known handwriting of the defendant was permissible. *Id.* at 814. It was highly relevant to prove the identity of the person who committed the crime and was not unfairly prejudicial. *Id.* It also found other checks written on the victim's account by the defendant around the time of the forgeries were relevant to show that the defendant had the opportunity to commit the crime. *Id.*

In this case, the video and checks were submitted for the very same purpose as in *Uthe*, to provide known writing samples to compare to the fraudulent checks at issue at trial and establish identity. The highly probative nature of the evidence is not outweighed by unfair prejudice caused by its introduction. The court also warned the jury, at the time of the admission of the video and the binder of checks, that it could only consider the exhibits as evidence of Wells's handwriting. Such cautionary instructions help limit any prejudice potentially caused by other acts evidence. See *Rodriguez*, 636 N.W.2d

at 243 n.2; *State v. Delaney*, 526 N.W.2d 170, 176 (Iowa Ct. App. 1994). We find no abuse of discretion in the district court's admission of the videotape and checks and affirm Wells's convictions.

AFFIRMED.