

IN THE COURT OF APPEALS OF IOWA

No. 7-163 / 96-1008

000469

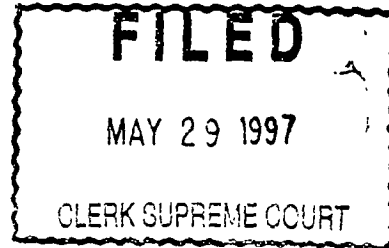
STATE OF IOWA,

Plaintiff-Appellee,

vs.

GARY WHITMORE,

Defendant-Appellant.



Appeal from the Iowa District Court for Muscatine County, James R. Havercamp, Judge, and James A. Weaver, District Associate Judge.

Defendant appeals from the judgment and sentence entered upon his conviction for assault causing injury, a serious misdemeanor in violation of Iowa Code sections 708.1 and 708.2(2) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Christopher Cooklin, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Richard R. Phillips, County Attorney, and Kerrie L. Snyder, Assistant County Attorney, for appellee.

Heard by Habhab, C.J., Sackett, P.J., and Streit, J.

SACKETT, P.J.

Defendant-appellant Gary Whitmore appeals from the judgment and sentence entered upon his conviction for assault causing injury, a serious misdemeanor in violation of Iowa Code sections 708.1 and 708.2(2) (1995). He contends in his brief on appeal the trial court erred in admitting evidence of his prior bad acts because the crime with which he was charged required only general, not specific, intent. We affirm.

Defendant was charged following an injury to Gloria Fox, the mother of defendant's girlfriend, Janelle Entsminger. On January 5, 1996, Gloria and her husband, Donald Fox, were told defendant broke a window in a truck the Foxes owned. The Foxes went to the apartment complex where defendant was staying and confronted defendant about the window. After a heated conversation, Gloria suggested she and Donald leave, and she moved toward the apartment door. Defendant slammed the door shut. Gloria's hand was caught in the door and injured. She needed eight double stitches to close her wound.

Defendant was charged with serious assault resulting in bodily injury and criminal mischief. The charge of criminal mischief was later dismissed.

Prior to trial, defendant filed a motion in limine seeking to exclude evidence of his past bad acts, including three convictions. The first was a voluntary manslaughter conviction in 1980. The two others, a July 1994 conviction for simple

assault and a December 1994 conviction for assault causing injury, concerned assaultive conduct directed at Janelle. Defendant also sought to exclude evidence that in April 1994 he threw a drill at Janelle. No criminal charges were filed following the April 1994 incident. Defendant objected in district court that the evidence he sought to exclude was highly prejudicial, irrelevant, immaterial, and remote.

The court granted the motion in limine in part. The court found that evidence of defendant's 1980 manslaughter conviction and evidence concerning his throwing the drill at Janelle in April 1994 should be excluded. The trial court overruled the balance of defendant's motion.

On the day of trial, defendant renewed his motion in limine. He argued the State should not be allowed to introduce evidence of his prior convictions in its case-in-chief. He advanced the evidence was only admissible as impeachment. Defendant contended the minutes of testimony did not show any witness was to testify about his prior convictions. He also argued the prior convictions involved a different victim, time, and place than was involved in the offense charged. The State resisted, contending the minutes of testimony showed witnesses would testify about defendant's past problems with Janelle and his relationship with her family.

The trial court ruled the State's witnesses could testify about the prior assaultive acts without referring to defendant's actual convictions. Defense counsel indicated he would not have a problem in the State's witnesses describing defendant's

relationship with Janelle as turbulent, but he would object to the State introducing evidence of defendant's convictions in its case-in-chief.

The court ruled the State's evidence could not go beyond merely describing the parties' relationship as turbulent, but if defendant on cross-examination suggested the prior acts had not occurred, the State would be allowed to introduce evidence of defendant's convictions to bolster its testimony the assaults occurred. Presented with this ruling, defense counsel appeared to agree and lodged no further objection.

At trial, Donald Fox answered "yes" when asked if he knew of a time defendant assaulted his daughter, Janelle. Defendant objected, renewing the objections he made prior to trial. The court, in response, indicated defendant would receive the same ruling he received prior to trial. Defendant did not object to later witnesses, John Hesseling and Gloria Fox, testifying about his previous assaultive behavior.

The jury found defendant guilty as charged and he was sentenced to one year in jail, a \$250 fine, a thirty percent surcharge, costs, and attorney fees. Defendant appeals.

Defendant contends evidence of his prior bad acts was improperly admitted because the crime charged was one of general, not specific, intent; and he claims evidence of prior bad acts cannot be admitted to prove a crime of general intent. He contends the evidence was highly prejudicial and its erroneous admission was not a harmless error.

It is conceded assault as charged under section 708.1 is a general intent crime. *See State v. Brown*, 376 N.W.2d 910, 915 (Iowa App. 1985). General intent exists when, under the circumstances, the prohibited result may reasonably be expected to follow from the offender's voluntary act, irrespective of any subjective desire to have accomplished such result. *State v. Redmon*, 244 N.W.2d 792, 797 (Iowa 1976). A specific intent exists from the circumstances where the offender must have subjectively desired the prohibited result. *Id.*

One crime cannot be proved by another. *State v. Christensen*, 414 N.W.2d 843, 844 (Iowa App. 1987). A defendant must be convicted because he or she committed the offense, not because he or she is a bad man or woman. *State v. Belive*, 288 N.W.2d 895, 901 (Iowa 1980); *State v. Wright*, 203 N.W.2d 247, 250 (Iowa 1972).

The State contends defendant has not preserved error and at trial defendant only advanced the evidence was irrelevant and prejudicial. The State contends this is a general objection and the specific objection he now makes that the evidence was not relevant as the offense charged was a general, not specific, intent crime has not been preserved. Defendant contends error was preserved in objecting the evidence was irrelevant.

An objection to evidence must be sufficient to direct the trial court to the specific reason for the objection. *See State v. Hepperle*, 530 N.W.2d 735, 738 (Iowa

1995). A general objection is not sufficient to preserve a specific issue for appellate review. *See id.* Defendant objected to the admission of the evidence but failed to alert the trial court to the question now raised on appeal, that being the evidence of prior bad acts was not admissible because defendant was charged with a general intent crime. We will not consider a different issue on appeal. *See State v. Chadwick*, 328 N.W.2d 913, 197 (Iowa 1983). We affirm.

AFFIRMED.