

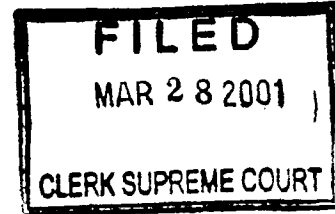
IN THE COURT OF APPEALS OF IOWA

No. 1-034 / 00-0763
Filed March 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALADDIN RODRIQUEZ,
Defendant-Appellant.



Appeal from the Iowa District Court for Muscatine County, Mark S. Smith,
Judge.

Aladdin Rodriguez appeals his convictions and sentences for willful injury, kidnapping in the third degree, aggravated domestic abuse and serious domestic abuse in violation of Iowa Code sections 708.4 (1999), 710.4 (1999), 708.2A(2)(c) (Supp. 1999), and 708.2A(2)(b) (Supp. 1999). **REVERSED AND REMANDED FOR NEW TRIAL.**

Douglas E. Johnston, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Richard R. Phillips, County Attorney, and Dana Christensen and Teresa Stoeckel, Assistant County Attorneys, for appellee.

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

MAHAN, J.

Aladdin Rodriguez appeals his convictions and sentences for willful injury, kidnapping in the third degree, aggravated domestic abuse and serious domestic abuse in violation of Iowa Code sections 708.4 (1999), 710.4 (1999), 708.2A(2)(c) (Supp. 1999), and 708.2A(2)(b) (Supp. 1999). Rodriguez contends the trial court (1) abused its discretion in admitting irrelevant evidence of prior and subsequent bad acts, (2) abused its discretion in allowing expert testimony on battered women's syndrome, (3) erred in submitting the charge of attempted murder to the jury, (4) failed in its duty of impartiality, and (5) erred in failing to merge the assault convictions with the willful injury conviction. We reverse and remand for new trial.

Background Facts and Proceedings. In the early morning hours of October 11, 1999, Rodriguez woke his girlfriend, Melinda, with whom he shared an apartment, wanting sex. When she declined, he began pushing her and accusing her of infidelity. When Melinda brought up the name of another woman with whom Rodriguez had slept, and told Rodriguez she was going to leave him, he became enraged and started hitting her. Rodriguez grabbed a belt and started hitting Melinda with its metal buckle. After Melinda lay motionless in the corner so Rodriguez would not hit her again, he told her he was sorry and he did not mean to do it. A short time later, however, Rodriguez "started getting mad all over again" and began hitting Melinda with the belt once again. He punched her in the face, shoved her to the wall, and stomped on her neck with his foot until she could not breathe. Melinda recalled thinking, "I was going to die that night."

Carmela, Melinda's mother, arrived at the apartment on the evening of October 11, 1999, to check on her daughter. Melinda was in the bathroom wiping blood off her mouth and nose when her mother arrived. Carmela vomited when she saw Melinda's injuries. She begged Rodriquez to let her take Melinda to the hospital. He refused, fearing arrest. Nearly an hour later, Carmela was able to sneak Melinda out when Rodriquez's friends arrived at the apartment.

Dr. Jeffrey Allgood examined Melinda at the hospital at approximately 7:30 p.m. on October 11. He noted bruising on her face and chest, as well as tenderness to her abdomen. He observed "sparing" on Melinda's skin, consistent with having been struck by a belt buckle with a significant amount of force. An x-ray revealed retropharyngeal soft tissue swelling in her neck.

Melinda told the doctor she had been beaten by her boyfriend, but would not provide the doctor with his name for fear Rodriquez would kill her. Similarly, she refused to give the officer investigating the incident Rodriquez's name. Melinda made her mother promise not to tell authorities Rodriquez was her attacker.

In late November or early December 1999, Rodriquez again assaulted Melinda, pulling her by her hair and chasing her with a knife. After that incident, Melinda decided to cooperate with the police investigation of the October 1999 incident, and gave the police Rodriquez's name.

On December 16, 1999, the State filed a trial information, charging Rodriquez with attempted murder, in violation of Iowa Code section 707.11 (count I); willful injury, in violation of Iowa Code section 708.4(2) (count II);

kidnapping in the third degree, in violation of Iowa Code sections 710.4, 710.1(3), and 710.1(4) (count III); aggravated domestic assault, in violation of Iowa Code sections 708.1, 708.2(1), 708.2(3), 708.2A(2)(c), and 236.2 (count IV); and serious domestic assault, in violation of Iowa Code sections 708.1, 708.2(2), 708.2A(2)(b), and 236.2 (count V). A jury trial was held on February 28, 2000. The jury returned a verdict of not guilty to count I, but found Rodriguez guilty of counts II, III, IV, and V. The district court sentenced Rodriguez for a period not to exceed five years on count II, not to exceed ten years on count III, not to exceed two years on count IV, and not to exceed one year on count V, all counts to be served consecutively. Rodriguez appeals.

Admission of Evidence. We review Rodriguez's challenge to the district court's evidentiary ruling for abuse of discretion. *State v. Edgerly*, 571 N.W.2d 25, 27 (Iowa Ct. App. 1997). In order to show an abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Most*, 578 N.W.2d 250, 253 (Iowa Ct. App. 1998).

Rodriguez contends the district court abused its discretion in allowing testimony from Melinda and her mother concerning prior and subsequent instances of abuse committed by Rodriguez. Specifically, he argues the evidence does not fit within the confines of "other crimes, wrongs, or acts" evidence, as permitted by Iowa Rule of Evidence 404(b). Even if it did, Rodriguez argues, the probative value of the evidence is outweighed by its prejudicial effect, thus requiring its exclusion under Iowa Rule of Evidence 403.

At trial, Melinda described for the jury several instances of abuse by Rodriquez during their relationship, over objections from Rodriquez. She told the jury Rodriquez beat her so many times, in private and in public, she "stopped counting." On one occasion, Rodriquez put a gun to her head. She described other incidents of abuse as follows:

Q. Have you suffered any other injuries that we haven't talked about here so far from him? A. Yes.

Q. What's the worse [sic]? ... A. Where he burned me with a curling iron in my mouth.

Q. What kind of injury did that give you that you had to go to the hospital? A. When he took the curling iron off, my whole skin melted and stuck to the curling iron.

Q. Do you remember any particular reason that led to that? A. I remember when I was happy that day because I was going to go see my mom. He was going to go take me to see my mom. He said something, I told him, well, that's going to happen, I'm going to stay there with my mom; I'm not coming back. He started getting mad. I had the curling iron out at the time and I guess he didn't know that it was on, but he went and tried to strangle me with it and that's where—I was screaming, and he took it off and that's where the whole, my whole skin was completely gone.

Q. Have you had any children by Aladdin Rodriquez? A. I was pregnant at one time.

Q. When was that? A. I miscarried in September.

Q. How did you know you were pregnant? A. I had a confirmed pregnancy. . . . I went to the doctor.

Q. What happened then? A. He—I told him I was pregnant. We got into a fight. He punched me in the stomach. He just kept on beating me some more to the point where I lost the baby.

In addition, Melinda described the incident in November 1999 which finally led her to tell police Rodriquez's name:

[I]t started when I wanted to go to work, he didn't want me to go to work. He started saying I have to come home, straight home after work, and I told him no because I go to school, and he told me, if you don't come home I'm going to come looking for you, and I told him well, I'm not coming home. And he went all, he went all

crazy again, and my mom came, and that's when he said you're not going. He took my money, he ripped up my chain, and when I was walking out the door he tried to pull me back in by the hair. My mom was yelling. He went running back in, he got a knife, he was chasing after me.

Melinda's mother, Carmela, testified over Rodriquez's objections that she observed Rodriquez's violent behavior toward her daughter during the relationship. She also observed black eyes, bruises, and other marks on her daughter during the relationship, including the injury to Melinda's mouth when Rodriquez burned her with the curling iron.

Iowa Rule of Evidence 404(b) provides:

Other Crimes, Wrongs or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he 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. 404(b). The purposes listed in the rule are not exclusive. *State v. Larsen*, 512 N.W.2d 803, 807 (Iowa Ct. App. 1993). The key is "whether the challenged evidence is relevant and material to some legitimate issue other than a general propensity to commit wrongful acts." *Id.* (quoting *State v. Barrett*, 401 N.W.2d 184, 187 (Iowa 1987)).

The district court must employ a two-step analysis to determine whether the challenged evidence is admissible. *State v. Castaneda*, 621 N.W.2d 435, 440 (Iowa 2001). First, the court must decide whether the evidence is relevant to establish a legitimate issue in the case and whether there is clear proof the individual against whom the evidence is offered committed the prior acts. *Id.*; *State v. Query*, 594 N.W.2d 438, 443 (Iowa Ct. App. 1999); *State v. Alderman*,

578 N.W.2d 255, 258 (Iowa Ct. App. 1998). The basic test of relevancy is whether the evidence offered would make the desired inference more probable than it would be without the evidence. *Query*, 594 N.W.2d at 443-44.

In the second step of the court's analysis, if it finds the challenged evidence relevant, it must then decide whether the evidence's probative value is substantially outweighed by the danger of unfair prejudice. Iowa R. Evid. 403; *Castaneda*, 621 N.W.2d at 440. "Unfair prejudice" is defined as "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) (quoting Fed. R. Evid. 403 advisory committee's note). Evidence that:

appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action may cause a jury to base its decision on something other than the established propositions in the case. The appellate court may conclude that "unfair prejudice" occurred because an insufficient effort was made below to avoid the dangers of prejudice, or because the theory on which the evidence was offered was designed to elicit a response from the jurors not justified by the evidence.

Id. at 231-32 (quoting 1 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Evidence*, ¶ 403 [03], at 403-33-40 (1986)).

In balancing probative value against the danger of unfair prejudice, we consider many factors, including: (1) the actual need for the evidence in view of the issues and the other available evidence, (2) the strength of the evidence showing the prior bad acts were committed by the accused, (3) the strength or weakness of the prior bad acts evidence in supporting the issue sought to be proven, and (4) the degree to which the jury will probably be roused by the

evidence to overmastering hostility and use the evidence improperly. *Query*, 594 N.W.2d at 444. “An affirmative finding in this balancing process precludes admissibility of even relevant evidence.” *Castaneda*, 621 N.W.2d at 440 (quoting *Plaster*, 424 N.W.2d at 231).

We assume without deciding the prior and subsequent bad acts testimony was relevant. However, we conclude the testimony was unfairly prejudicial, and the district court abused its discretion in admitting it into evidence.

The State presented overwhelming evidence of Rodriguez’s guilt for the crimes charged. Therefore, the actual need, if any, for the prior and subsequent acts evidence was slight. Even if such evidence were necessary, the prior and subsequent bad acts evidence introduced went beyond what would have been required. Melinda described in graphic detail the repeated abuse she suffered at the hands of Rodriguez. Her mother supported Melinda’s testimony with her own descriptions of Melinda’s previous injuries. Such evidence could only serve to arouse the jury’s sense of horror and provoke its instinct to punish.

Moreover, the record reveals an “insufficient effort was made below to avoid the danger of prejudice.” See *Plaster*, 424 N.W.2d at 232. The district court failed to engage in a rule 403 weighing process. Our supreme court recently held the district court committed an error of law by failing to engage in the weighing process at all. See *State v. Daly*, __ N.W.2d __ (Iowa 2001). The *Daly* court, however, was addressing the balancing process under Iowa Rule of Evidence 609 (impeachment by prior convictions), rather than rule 403. While rule 403 does not place the same balancing requirements on the court as rule

609,¹ we conclude the district court abused its discretion when it failed to consider the unfair prejudice of the prior and subsequent bad acts evidence. The record lacks any mention by the court of the possible prejudice to Rodriguez. In addition, the court did not give a limiting instruction to the jury. *See Plaster*, 424 N.W.2d at 232 (The district court “very carefully explained the purpose of the challenged evidence as it related to the issue of consent and admonished the jury that it must not convict Plaster because of this evidence.”). The lack of an actual need for the evidence, combined with the court’s failure to avoid the dangers of prejudice amount to an abuse of discretion by the district court. We reverse and remand for new trial. As this case must be retried, we address another issue that may arise on retrial.

Expert Testimony. Issues involving the admission of expert testimony are generally within the trial court’s discretion. *State v. Rains*, 574 N.W.2d 904, 916 (Iowa 1998). We review for errors of law and the trial court’s decision will not be overturned unless there has been an abuse of discretion. *Id.* We follow a general rule of liberality in the admission of opinion evidence. *State v. Schutz*, 579 N.W.2d 317, 319 (Iowa 1998); *Rains*, 574 N.W.2d at 916. Expert testimony

¹ Iowa Rule of Evidence 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.

Rule 609 provides, in pertinent part:

[E]vidence that an accused has been convicted of such a crime shall be admitted *if the court determines* that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. . . . (emphasis added).

consisting of scientific, technical, or other specialized knowledge is admissible at trial when it is helpful for the trier of fact to understand the evidence in the case or to determine a fact in issue. *State v. Dinkins*, 553 N.W.2d 339, 341 (Iowa Ct. App. 1996).

Rodriguez contends the district court abused its discretion when it allowed the State to present expert testimony on "battered women's syndrome" during its case in chief because the victim's credibility had not been put in issue and the victim had not recanted. We disagree.

Rachel Riley-Smock, a supervisor at the Muscatine Domestic Abuse Advocacy Program, described the "cycle of violence" associated with domestic violence. She explained the pattern begins with the "buildup," during which the victim is "walking around on eggshells," knowing ultimately there will be a physical altercation. The "explosion," or physical altercation, is followed by a "honeymoon" period where the abuser says he is sorry and will never do it again. Ms. Riley-Smock also outlined for the jury common aspects of "battered women's syndrome." She described it as a "learned helplessness," where victims are afraid to leave because they are afraid of what may occur when they do.

Ms. Riley-Smock did not give an opinion as to whether the alleged abuse of Melinda by Rodriguez actually occurred. She had no personal knowledge of the facts of this case. Rather, she explained to the jury why, generally, a victim of domestic abuse would not promptly report abuse to the authorities, or would move back in with her abuser after an incident of abuse. The information provided by Ms. Riley-Smock aided the jury in understanding the victim's

situation in this case. We conclude her expert testimony was appropriate, and the district court did not abuse its discretion by admitting it.²

Remaining Issues. We reverse the judgment of conviction and sentence, and remand for a new trial. Therefore, we need not address the remaining issues raised by Rodriguez in his appeal.

REVERSED AND REMANDED FOR NEW TRIAL.

² We recognize expert testimony may not be relevant or necessary at the retrial of this matter, given our reversal of the district court's evidentiary ruling. If the State chooses to present expert testimony, however, our resolution of this issue provides appropriate guidance to the district court. Because we resolve this issue in the State's favor on the merits, we need not address the State's contention Rodriguez failed to preserve error by "opening the door to the expert testimony during his cross-examination of the victim."