IN THE COURT OF APPEALS OF IOWA

No. 5-662 94-2067

STATE OF IOWA.

Appellee,

vs.

HARLAN RICKY ELLIOTT,

Appellant.

Appeal from the Iowa District Court for Marshall County, Timothy J. Finn, Judge.

Harlan Elliot challenges his conviction, following a jury trial, of possession of methamphetamine with intent to deliver and possession of marijuana. **REVERSED AND REMANDED FOR NEW TRIAL.**

Linda Del Gallo, State Appellate Defender, and Patricia Ann Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, James DeTaeye, County Attorney, and James Scheetz, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

HUTINK, J.

Harlan R. Elliot appeals his convictions of possession of methamphetamine with intent to deliver and possession of marijuana. We reverse and remand for a new trial.

Elliot was pulled over by a police officer because the automobile Elliot was driving had no license plates. While checking the validity of Elliot's driver's license, the police officer was informed that there were two warrants for Elliot's arrest on theft and forgery charges.

Elliot was arrested, and both he and his automobile were searched. The search of Elliot's person yielded five paper folds containing a white powder and a small plastic bag containing a white-yellow substance later identified as methamphetamine. Police also found a duffel bag containing syringes, two small scales, ten empty paper folds, a bag containing 19.6 grams of marijuana, marijuana pipes, spoons, utility knife blades, and other items consistent with illegal drug use. As a result, Elliot was charged with possession of methamphetamine with intent to deliver, possession of marijuana, and being an habitual offender.

Prior to trial Elliot filed a motion in limine seeking to prohibit the State from offering any evidence that he "was being sought for unrelated crimes." Elliot argued this evidence "carries with it a prejudicial effect as far as the jury possibly thinking that he was being searched--the car was being searched for the presence of drugs and that was the basis for the warrant." The State argued the admission of this evidence was

necessary to explain why Elliot was arrested and searched and to dispel any notion that Elliot would be subjected to such measures as the result of a routine traffic violation.

Elliot's motion in limine was denied following a hearing. The district court, however, limited the evidence to "the fact that there was a warrant and not what the warrant was for." At trial the State offered evidence of the circumstances surrounding Elliot's arrest including testimony that Elliot was named in two unspecified arrest warrants.

On appeal Elliot contends the admission of this evidence was unfairly prejudicial. He also argues that his conviction of possession of methamphetamine with intent to deliver lacks sufficient evidentiary support.

Our review is for errors of law. Iowa R. App. P. 4. On evidentiary issues, we review for an abuse of discretion. *State v. Halstead*, 362 N.W.2d 504, 506 (Iowa 1985). In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burner*, 326 A.2d 138, 190 (Vt. 1974)).

We first consider the State's contention that Elliot has failed to preserve any error resulting from the admission of evidence about the arrest warrants. The State argues that the grounds for excluding this evidence Elliot asserts on appeal are different than those he relied on at trial. We disagree.

Objections to the admission of evidence must be timely and state the specific ground for the objection unless the specific ground for the objection is apparent from the context. Iowa R. Evid 103(a)(1). A specific objection is required so the trial court is not left to speculate whether the evidence is subject to some infirmity the objection does not identify. *State v. Taylor*, 201 N.W.2d 2d 724, 727 (Iowa 1972).

In the absence of a timely and specific objection, any error in the admission of evidence is waived. Iowa R. Evid. 103(a)(1). Every objection that is not particularly specified is abandoned. *Id.* If an objection is based on unfair prejudice, the objection must be sufficiently specific to alert the court to the objector's theory of undue prejudice. *State v. Harmon*, 238 N.W.2d 139, 144 (Iowa 1976). A party cannot assert one reason for an objection at trial and rely on another on appeal. *State v. LeGear*, 346 N.W.2d 21, 24 (Iowa 1984) (citations omitted).

At trial, Elliott argued that revelation of the warrants' existence, combined with the fact that searches revealed the presence of drugs, would suggest that the officers were looking for drugs and that the warrants were for drug crimes. The underlying implication of this argument is that the warrant evidence prejudicialy suggested unrelated criminal activity. Accordingly, we find Elliott's motion in limine and trial argument sufficient to preserve the error asserted on appeal.

Evidence showing the commission of a crime other than the one at issue is generally inadmissible. *State v. Grosvenor*, 402 N.W.2d 402, 405 (Iowa 1987). Such

evidence is ordinarily irrelevant and may create an illegitimate inference of guilt in the minds of jurors. *State v. Mendolia*, 360 N.W.2d 780, 782 (Iowa 1985); *see also State v. Nelson*, 234 N.W.2d 368, 373 (Iowa 1975) (admission of evidence concerning presence of counsel at execution of search warrant may have created an inference of guilt in jurors' minds). Evidence of other crimes is always prejudicial; however, its prejudicial effect must outweigh its probative value. Iowa R. Evid. 403; *State v. McDaniel*, 512 N.W.2d 305, 308 (Iowa 1994).

We find the probative value of this evidence is outweighed by its prejudice. The police sergeant's testimony concerning the warrants provided jurors with an explanation for Elliott's initial arrest and the resulting searches. It, however, also allowed them to infer Elliott's guilt based on prior illegal activity. Although these warrants were issued for the unrelated offenses of forgery and theft, the jury may have erroneously concluded they were related to other drug offenses. Even if the jury did not assume these outstanding warrants were for drug offenses, the evidence may have implicated Elliott by suggesting a propensity toward illegal activity. We accordingly find the trial court abused its discretion in admitting testimony concerning the outstanding warrants.

To necessitate reversal, trial court error which is not of a constitutional magnitude must result in prejudice to the defendant. *State v. Trudo*, 253 N.W.2d 101, 107 (Iowa 1977) (erroneous admission of expert testimony was harmless based on

overwhelming evidence that defendant's drug possession was with intent to deliver. To establish prejudice, a defendant must show that his or her rights have been injuriously affected by the error or that there has been a miscarriage of justice. *Id.* Because we find the erroneously admitted evidence may have led the jury to infer Elliott's guilt based on prior unrelated criminal activity, we find Elliott was prejudiced by the trial court's error. Accordingly, we reverse the decision of the district court and remand for a new trial.

REVERSED AND REMANDED FOR NEW TRIAL.