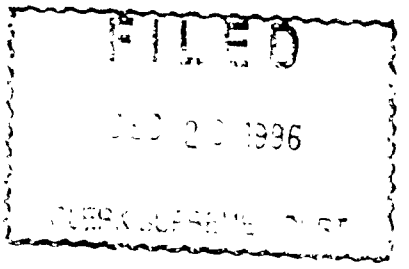
IN THE COURT OF APPEALS OF IOWA

No. 6-298 / 95-694



STATE OF IOWA,

Appellee,

vs.

JOSEPH ROEDER,

Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Joseph Roeder appeals the judgment and sentence, following a jury trial, for two counts of simple assault, and one count of assault causing bodily injury in violation of Iowa Code sections 708.2(4) and 708.2(2) (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Melodee Hanes and Jeff Noble, Assistant County Attorneys, for appellee.

Considered en banc.

VOGEL, J.

Joseph Roeder was convicted of two counts of simple assault and one count of assault causing bodily injury. The simple assault counts were merged into the third count for sentencing purposes. Roeder was sentenced to a one-year term with all but 270 days suspended and one year of probation.

Roeder appeals.

Roeder was accused of breaking into Lisa Ann Miller's apartment one night in April of 1994. Roeder pushed Miller around, forced her to have sexual intercourse, and later choked her until she became unconscious. Miller was left with bruises on her neck, arm, and back. At trial, Miller testified she and Roeder were divorced in October of 1993 and he had displayed similar, abusive behavior toward her on two prior occasions. The State introduced the expert testimony of Lorie Schipper, who testified regarding the dynamics of abusive relationships between batterers and their spouses.

Roeder testified the couple had consensual sex but later argued about an anticipated substantial tax refund. According to Roeder, Miller had become angry when she learned she would not be getting the refund and then indicated she would "get him."

I. ***Scope of Review.*** On appeal, Roeder contends the district court erred in allowing testimony regarding prior bad acts by Roeder and in allowing testimony given by Lorie Schipper concerning domestic abuse. The district court's rulings on

admissibility will not be disturbed on appeal unless an abuse of discretion is found. *State v. Spargo*, 364 N.W.2d 203, 209 (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. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

II. ***Prior Bad Acts Evidence.*** Roeder contends the district court erred in allowing evidence concerning prior bad acts of domestic assault. Evidence that has no purpose, except to show the defendant is more likely to have committed the crime charged because of prior bad acts, is not admissible. *State v. Cott*, 283 N.W.2d 324, 326 (Iowa 1979). However, evidence of prior bad acts is admissible under certain circumstances. Iowa Rule of Evidence 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 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.

If the prior bad acts evidence is relevant to show a material fact other than a general propensity to commit wrongdoing, "it is prima facie admissible [subject to Iowa Rule of Evidence 403 analysis], notwithstanding its tendency to demonstrate the accused's bad character." *State v. Barrett*, 410 N.W.2d 184, 187 (Iowa 1987). This prima facie admissibility may be defeated if the evidence is found to be irrelevant under rule 403

through a finding that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *Id.* at 187 n.2.

Evidence of prior sexual acts with the victim is admissible in order to show a passion or propensity for illicit sexual relations with the particular person concerned in the crime on trial. *State v. Spaulding*, 313 N.W.2d 878, 880 (Iowa 1981); *State v. Munz*, 355 N.W.2d 576, 581 (Iowa 1984). There is no requirement the prior bad acts must be identical to the abuse which is the subject of the trial; rather, "it is a similar act for these purposes if it is probative on the matter of the defendant's sexual desires." *Munz*, 355 N.W.2d at 583.

The district court allowed testimony concerning two domestic assaults which both occurred in February of 1993, prior to the assault at issue in this case. The first assault took place during an argument between Miller and Roeder. Roeder kicked Miller in the back and shoved her face into a pillow. After the assault, Miller called the Family Violence Center and left the home to visit her mother for ten days. Upon her return to the home, Miller rejected Roeder's sexual advances stating she and Roeder had unresolved problems. Roeder became enraged, grabbed Miller by the neck, shoved her down on the bed, and with his hand on her windpipe, forced her to submit to intercourse. Miller reported the incident to police and Roeder was later found guilty of misdemeanor assault.

The assault at issue in this case involved unwanted sexual advances by Roeder, Roeder forcing Miller to submit to intercourse, Roeder throwing Miller back on the

bed when she tried to escape following the assault, and Roeder squeezing Miller's neck until she lost consciousness. We find the prior bad acts testimony was sufficiently similar to the assault at issue to be admissible. Roeder's claim that Miller made up the current assault charges in order to "get him" for denying her an anticipated tax refund loses credibility when the similar past abuses are taken into consideration. We find the probative value of the prior abuse testimony outweighed any danger of unfair prejudice. Consequently, we conclude the district court did not abuse its discretion in allowing this testimony.

III. ***Domestic Abuse Testimony.*** Roeder contends the district court erred in allowing testimony given by Lorie Schipper, the executive director of the Iowa Coalition Against Domestic Violence. Schipper testified regarding the dynamics which are common to relationships between batterers and their spouses. Roeder does not argue, and we do not find, Schipper's testimony was a comment on either Miller's credibility or Roeder's guilt. Such testimony would be in violation of *State v. Myers*, 382 N.W.2d 91 (Iowa 1986). Rather, Roeder argues Schipper's testimony was irrelevant as neither party had any direct contact with her. In addition, Roeder argues the testimony was unfairly prejudicial, intended for the sole purpose of inciting the jurors.

Iowa Rule of Evidence 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier-of-fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge may testify thereto in the form of an opinion or otherwise.

Schipper's testimony was admitted to assist the jury in understanding why people remain in or resume abusive relationships after abuse has already occurred. She offered no opinion as to whether Miller showed any signs of Battered Woman's Syndrome. The trial court allowed this testimony to help explain to the jury "why individuals act as they do in certain kinds of relationships." Her expert testimony is consistent with allowable expert testimony in prior Iowa case law. *See State v. Gettier*, 438 N.W.2d 1, 4-6 (Iowa 1989) (expert opinion on "post-traumatic stress disorder" and the typical reaction of a rape victim is allowable as long as the prejudicial term "rape trauma syndrome" is not used and as long as the expert does not offer an opinion on whether the victim had been raped); *State v. Myers*, 382 N.W.2d 91, 97 (1986) (an expert could testify regarding "opinions on matters that explain relevant mental and psychological symptoms present in sexually abused children). Furthermore, Schipper's expert testimony was relevant in light of Roeder's defense that Miller consented to having sexual intercourse. Therefore, we find the danger of unfair prejudice of Schipper's testimony is outweighed by the probative value of Roeder's own defense theory. We find the district court did not abuse its discretion in allowing Schipper's testimony.

Upon consideration of all arguments raised by the parties on appeal, we affirm the judgment of the district court.

AFFIRMED.

All judges concur except Sackett, C.J., Habhab, J., and Huitink, J., who specially concur.

SACKETT, C.J. (specially concurring)

I concur specially. I agree with the majority that defendant's conviction should be affirmed. I write separately because I find the trial court abused its discretion in allowing testimony concerning why a person who was battered would remain in a relationship. What this testimony does is use normal behavior as a characteristic symptom of a person subject to allegedly abnormal behavior. To put it another way, a person who is not battered generally remains in a relationship.

There has been limited approval allowing testimony that explains normal behavior following abuse. *See State v. Seevanhsa*, 495 N.W.2d 354, 357 (Iowa App. 1992) (Sackett, J., specially concurring, and Schlegel, J., dissenting); *State v. Tonn*, 441 N.W.2d 403, 404-05 (Iowa App. 1989).

However, it is clear the Iowa supreme court has carefully limited the admission of similar testimony and has set guidelines for the credentials of the expert as well as limiting the testimony only to the reaction to the trauma. *See State v. Gettier*, 438 N.W.2d 1, 6 (Iowa 1989).

There is a temptation to seek the help of persons who hold themselves out as experts in an area and use their opinions in whole or in part to allegedly assist the fact finder in arriving at the truth. *See State v. Pansegrau*, 524 N.W.2d 207 (Iowa App. 1994). Before any expert's testimony is used to assist a fact finder in arriving at the truth, it should be shown not only that the expert's opinion provides reliable data, but

also that the testimony is necessary to explain a behavior the jury would not otherwise understand.

While I do not find the evidence should have been admitted, I find the other evidence of defendant's guilt so overwhelming that I find the conviction must be affirmed.

Habhab and Huitink, JJ., join in this special concurrence.