FILED
JAN 27 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed January 27, 1988
vs.	)	
CHARLES FRANK CHADWICK,	)	7-380 86-1254
Defendant-Appellant.	)	

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Appeal from the Iowa District Court for Scott County (No. 122140-01), L. D. Carstensen, Judge.

Defendant appeals from his conviction of delivery of a controlled substance, contending that evidence concerning two prior drug deals, including marked money found at defendant's apartment, was inadmissible under Iowa Rule of Evidence 404(b) since no charges against the defendant arose out of these deals. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Christie J. Scase, Assistant Attorney General; and Hugh J. Pries, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

PER CURIAM 223

On November 18, 1985, the appellant, Charles Frank Chadwick, was charged by trial information with delivery of a controlled substance. See Iowa Code § 204.401(1)(a) (1985). Trial commenced on June 23, 1986, and, three days later, the jury found Chadwick guilty as charged. On July 24, 1986, Chadwick was sentenced to an indeterminate term of incarceration not to exceed ten years. This appeal followed. Our review is limited to the correction of legal errors. Iowa R. App. P. 4.

Chadwick poses a single issue for our review. He contends the district court erred by allowing evidence of other acts to be admitted against him at trial. The charge against Chadwick arose out of an undercover operation which initially focused on a different suspect, Charles Wilson. After a number of drug purchases from Wilson, the investigating officers surmised that he was only a middleman and the investigation subsequently shifted focus in an attempt to identify Wilson's supplier. An October 17, 1985, purchase of heroin from Wilson by an undercover agent, Mike Huff, led to a "bust" of Chadwick's apartment that evening and his arrest. "Marked" money used in earlier buys of drugs from Wilson was found in Chadwick's apartment. This money, along with a quantity of heroin purchased at one of the earlier transactions, was introduced at Chadwick's trial. Chadwick contends these rulings violated Iowa Rule of Evidence 404(b).

The general rule is that "one crime cannot be proved by proof of another." State v. Cott, 283 N.W.2d 324, 326 (Iowa 1979) (quoting State v. Schlak, 253 Iowa 113, 115, 111 N.W.2d 289, 291 (1961)). The purpose of the rule is to exclude from the jury's consideration evidence which has no relevancy except to show that the defendant is a bad person and thus likely committed the crime in question. Id. This rule is codified as Iowa Rule of Evidence 404(b). See Iowa R.

Evid. 404(b), federal advisory committee's notes. That rule reads as follows:

> 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.

The exceptions to this rule are based upon the relevancy of certain evidence to the proof of some fact or element in issue other than the defendant's criminal disposition. Cott, 283 N.W.2d at 326. First, the challenged evidence must be relevant to one or more legitimate issues other than a general propensity to commit wrongful acts. State v. Barrett, 401 N.W.2d 184, 187 (Iowa 1987). In order to be "legitimate" within this rule, the issue must be a material one which has been raised concerning one of the exceptions to rule 404(b). United States v. Farber, 630 F.2d 569, 571 (8th Cir. 1980), cert. denied, 449 U.S. 1127, 101 S. Ct. 846, 67 L. Ed. 2d 114 (1981). Stated differently, the proffered evidence must tend to establish some material issue in the case. State v. Roth, 403 N.W.2d 762, 765 (Iowa 1987); Barrett, 401 N.W.2d at 187. Unless evidence of other crimes, wrongs, or acts has probative value under a recognized exception to the general prohibition of such evidence, a district court has no discretion to admit it. State v. Belieu, 288 N.W.2d 895, 901 (Iowa 1980). Second, even if the proffered evidence is relevant to a material issue, its probative value must not be substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. State v. Munz, 355 N.W.2d 576, 579 (Iowa 1984).

The cases recognize that rule 404(b) lists "some but not all situations in which evidence relevant to establish some legitimate issue in the case is not rendered inadmissible" simply because the evidence may also tend to establish the prohibited inference of propensity. Barrett, 401 N.W.2d at 187. In the present case, the State was obligated to prove that Chadwick had delivered

heroin on October 17, 1985. The State was proceeding on the theory that Wilson was Chadwick's middleman. Wilson denied both that he was Chadwick's middleman and that he, Wilson, had obtained the heroin from Chadwick. We think that in order to establish its "middleman" theory and contest Wilson's denial of same, the State was entitled to attempt to demonstrate that such was in fact the method by which Chadwick and Wilson worked. The challenged evidence was clearly relevant to this demonstration. The evidence consisted of heroin which Agent Huff had received from Wilson on previous occasions and the marked money which Huff had exchanged for the heroin. Huff had given the money to Wilson; it had been found in Chadwick's apartment. Although Chadwick proffered another explanation for his possession of the marked money, the jury was clearly within its authority in not accepting his story. See State v. Robinson, 288 N.W.2d 337, 341 (Iowa 1980). Whether Wilson was Chadwick's "middleman" was a legitimate issue at Chadwick's trial; the State was entitled to introduce evidence tending to show such was the case; the challenged evidence did so.

In addition, we do not find unreasonable the district court's conclusion that the evidence's probative value was not substantially outweighed by the potential for prejudice. See State v. Richardson, 400 N.W.2d 70, 72 (Iowa App. 1986).

The district court is affirmed.

AFFIRMED.