FILED
APR 02 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-584 / 90-257

STATE OF IOWA,

Appellee,

445

vs.

LELAND L. DEWITT,

Appellant.

Appeal from the Iowa District Court for Lee County, John C. Miller, Judge.

Defendant appeals his jury conviction of second-degree burglary. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Bruce Kempkes, Assistant Attorney General, and Michael P. Short, County Attorney, for appellee.

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

PER CURIAM

Defendant, Leland Dewitt, appeals his conviction by jury on one count of burglary in the second degree. Defendant complains that the trial court erred in admitting certain evidence of a prior crime. He argues that the evidence was inadmissible and that he is entitled to a new trial. We disagree and affirm the trial court.

On July 29, 1989, a woman's purse was stolen from her dining room in Fort Madison. The purse contained some cash and several checks. The woman and her husband had been sitting outside their home and had seen a blue pickup truck pass their home a couple of times ten to fifteen minutes before discovering the purse had been stolen. Two men, one black and one white, were in the truck.

Defendant, a white man, and Chauncy Harrison, a black man, were arrested in Council Bluffs when they attempted to cash the checks. Harrison testified for the prosecution. He stated that defendant was the white man who had been with him in the blue pickup. He testified that defendant had suggested they seek out a house whose owners were outside so that he could sneak in the back door and steal valuables. Harrison maintained that defendant and he stopped in a nearby alley and that defendant left for a few minutes and returned with the purse in question. Harrison admitted receiving $60 cash from defendant out of the purse and stated that defendant kept some checks.

Defendant testified on his own behalf. He admitted he had been convicted for stealing the blue pickup truck used in the burglary, and he admitted to having burglarized a home in 1985. He admitted he was an escapee from a halfway house when he was arrested. Defendant denied having been in Fort Madison on July 29. He stated that Harrison and a third individual had borrowed the truck from him in Burlington.

On direct examination defendant first testified that the method of burglary was something that Harrison would "dream up" and carry out. Defendant then gave his opinion that the method would not be a reasonable way to burglarize a home. On cross-examination the prosecution probed this opinion on the reasonability of the burglar's method. Defendant responded, "In my opinion, it would be something that I wouldn't do." At this point, the prosecution offered exhibit 5, a 1985 statement given by defendant to Fort Madison police. The statement indicated that defendant, in this 1985 incident, had searched for a house where the owner was outside in the yard. Defendant admitted in the 1985 statement that he had entered the rear of such a house and had taken a billfold from a purse. The trial court admitted the 1985 statement over defendant's objection.

A jury found defendant guilty of second-degree burglary. He now appeals the conviction. He contends he is entitled to a new trial because the trial court erred in

admitting evidence of a prior bad act in contravention of Iowa Rule of Evidence 404.

In reviewing a trial court's denial or admission of evidence, we ordinarily will not reverse unless the trial court abused its discretion. State v. Clarke, 343 N.W.2d 158, 162-63 (Iowa 1984). Consequently, we review for clear abuses of trial court discretion. State v. Halstead, 362 N.W.2d 504, 506 (Iowa 1985). Such abuses are generally characterized as being exercised "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 State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

Iowa Rule of Evidence 404 provides, in relevant part:

> (a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:
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> (1) Character of accused. Evidence of pertinent trait of his character offered by an accused, or by the prosecution to rebut the same
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> . . . .
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> * * *
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> (b) 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.

We find no abuse of discretion in admitting the 1985 statement concerning a prior crime. On direct examination, defendant sought to show the jury that he would not act in

such an unreasonable way if he were to burglarize a house. Thus, the defendant opened the door to the issue. Rule 404(a)(1) unambiguously allows the prosecution to rebut such evidence when it is offered by the accused.

Although this finding alone would be sufficient to uphold the trial court ruling, we note also that the 1985 statement also was admissible under rule 404(b). See State v. Cuevas, 282 N.W.2d 74, 79-80 (Iowa 1979), and citations therein. Rule 404(b) permits the prosecution to offer evidence of other crimes for proof of, among other things, intent, preparation, plan, and identity. See State v. Wade, No. 89-1765, slip op. at 3-4 (Iowa, filed Mar. 20, 1991). Given that there already was strong evidence placing the defendant at the crime, the statement could be offered to show each of these elements. The evidence plainly showed that defendant was capable of and had carried out a substantially similar plan. It also tends to make more probable, see Iowa R. Evid. 401, that the white individual seen with Harrison was defendant.

We hold that the trial court did not err in admitting the disputed evidence. We therefore affirm the judgment of the district court.

AFFIRMED.