

IN THE COURT OF APPEALS OF IOWA

No. 3-860 / 12-1639
Filed October 23, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TODD WILLIAM WIESE,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve,
Judge.

Todd Wiese appeals from conviction of conspiracy to manufacture
methamphetamine. **AFFRIMED.**

Jack E. Dusthimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Michael J. Walton, County Attorney, and Khara Coleman Washington,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Todd Wiese appeals from conviction of conspiracy to manufacture methamphetamine. Finding no abuse of discretion in the trial court's evidentiary ruling or in allowing a former co-defendant to testify, we affirm.

I. Background Facts and Proceedings.

At about 2:50 a.m. on April 1, 2012, an officer performed a traffic stop of a vehicle. Justin Weston was driving the car, the vehicle's owner, Emily Parker, was in the front passenger seat, Todd Wiese was sitting in the back seat behind Weston, and Bryce Pappas was sitting next to Wiese. The owner consented to a search of the vehicle, which revealed an Illinois store receipt for pseudoephedrine pills purchased a few hours earlier. Under the seat where Wiese was sitting was found a foil packet containing a substance later identified as heroin.

Weston is an admitted heroin addict. He told officers he first met Weise in late February or early March. Weston stated he had Pappas purchase the pseudoephedrine on March 31 to give to Wiese to have methamphetamine made. Weston said he had previously had others purchase pseudoephedrine, which he gave to Weise, and in return, Weston received methamphetamine.

On April 10, 2012, Wiese, Pappas, and Weston were charged with conspiracy to manufacture methamphetamine on or about March 31, 2012. Weston's trial was severed from Wiese and Pappas's trial, primarily due to his statements incriminating them. Weston thereafter pled guilty as charged. The State, however, did not amend its witness list to include Weston until just before

Wiese and Pappas's trial. Wiese moved to exclude Weston's testimony on grounds the amendment was untimely. The trial court agreed the witness should have been disclosed although everyone knew the witness, Weston, "could or would" testify. The trial court offered both Wiese and Pappas a continuance of the trial.¹ As an alternative, the court permitted either defendant to depose Weston prior to his testimony. Wiese declined a continuance, but exercised the opportunity to depose Weston prior to his testimony.

Wiese moved in limine to exclude statements he made to police in January 2012 concerning his efforts to purchase pseudoephedrine to supply to a methamphetamine manufacturer, arguing those statements were remote in time and were not part of the conspiracy charged. He also asserted any relevance was outweighed by its prejudicial effect. The motion was argued extensively. The trial court ruled the prior acts testimony was not stale or too remote in time. The court ruled further, "Wiese's statements to Detective Furlong in January of 2012 are relevant and could show motive and absence of mistake and lack of accident."

Weston testified at Pappas's and Wiese's trial that on March 31, he had plans to meet up with Wiese in order to give him pseudoephedrine pills. Weston (who was with Parker in her car) asked Pappas to buy the pills because Weston did not have identification. Pappas did purchase a box of pseudoephedrine in Moline, Illinois, and gave the box to Weston, who in turn removed the pills from their packaging and placed them in an empty cigarette box. Weston testified

¹ The offer to grant Pappas a continuance was subsequently withdrawn by the court because Pappas had not waived speedy trial.

they then drove to Davenport, Iowa, where they tried to purchase another box of pseudoephedrine. However, Pappas was turned away because of his prior purchase. They then drove to Rhythm City Casino, where they met Wiese and A.H., leaving the pills inside A.H.'s vehicle. Weston stated he, Parker, and Pappas left the casino, but Wiese called stating he needed a ride. Weston picked up Wiese minutes before the traffic stop.

Wiese was found guilty of conspiracy to manufacture methamphetamine and he now appeals.

II. Scope and Standards of Review.

We review rulings on the admissibility of bad acts or prior crimes evidence for an abuse of discretion. *State v. Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009). So, too, we review the trial court's decision not to exclude a witness for lack of a timely notice for an abuse of discretion. *See State v. LeGrand*, 501 N.W.2d 59, 62 (Iowa Ct. App. 1993) (“[T]he question is whether the trial court abused its discretion”). We will find an abuse of discretion “when the trial court exercises its discretion ‘on grounds or for reasons clearly untenable or to an extent clearly unreasonable.’” *Reynolds*, 765 N.W.2d at 288 (citation omitted).

III. Discussion.

A. Evidence of Prior Statements. Under Iowa Rule of Evidence 5.404(b) “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he [or she] acted in conformity therewith.” *State v. Henderson*, 696 N.W.2d 5,11 (Iowa 2005) (citing Iowa Rule of Evidence 5.404(b)). However, such evidence is “admissible as proof of

motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Iowa R. Evid. 5.404(b). The trial court allowed the defendant’s prior statements to police related to his ongoing pseudoephedrine pill collecting as evidence relevant to “motive, absence of mistake and lack of accident.” The court further concluded its probative value was not outweighed by its prejudicial effect.

The district court was not unreasonable in determining Wiese’s January interview statements were relevant to a legitimate issue other than propensity. As the jury was instructed, the State was required to prove Wiese “agreed with another person that one or both of them would manufacture or attempt to manufacture methamphetamine;” he “entered into such an agreement with the intent to facilitate or promote the manufacture of methamphetamine;” and he “or another person committed an overt act in accomplish the manufacturing of methamphetamine.” The jury was also instructed the State had to prove Wiese and Weston “came to a mutual understanding the crime of manufacture or delivery . . . would be attempted or committed” and provide corroboration for Weston’s testimony. Although the issue is close, we may only reverse if we conclude the trial court abused its discretion. We find no abuse of discretion in the trial court’s reasoning that Wiese’s admitted acts of collecting pseudoephedrine pills was relevant to show Wiese’s plan and intent to involve others in purchasing pseudoephedrine for the ultimate manufacture of methamphetamine. See *State v. Nelson*, 791 N.W.2d 414, 424-25 (Iowa 2010); *Reynolds*, 765 N.W.2d at 289. The evidence further served to corroborate

Weston's testimony. Moreover, when counsel made their arguments in the midst of the trial, the State articulated a basis for the admission—a continuing pattern of behavior and conduct and an absence of mistake or accident.

B. Late Amendment to Minutes of Testimony—Adding a Witness. “Noncompliance with the notice requirements of Iowa Rule of Criminal Procedure [2.19(2)] does not, in all instances, require exclusion of the testimony of the witnesses.” *LeGrand*, 501 N.W.2d at 602. Rule 2.19(3) provides:

If the prosecuting attorney does not give notice to the defendant of all prosecution witnesses . . . at least ten days before trial, the court may order the state to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. It may, if it finds that no less severe remedy is adequate to protect the defendant from undue prejudice, order the exclusion of the testimony of any such witness.

Here, the trial court offered a continuance of the trial, which Wiese declined. The court ordered the defense to be allowed to depose Weston prior to Weston's testimony and this opportunity was exercised by Wiese. We find no abuse of discretion in the court's rejection of the defendant's request to exclude the testimony of the witness as these less severe remedies were adequate.

Finding no abuse of discretion, we affirm.

AFFIRMED.