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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-147

Filed: 15 December 2015

Cleveland County, No. 12 CRS 50269

STATE OF NORTH CAROLINA

v.

JORDAN LEON MUSTARD, Defendant.

Appeal by defendant from judgment entered 11 April 2013 by Judge J. Thomas Davis in Cleveland County Superior Court. Heard in the Court of Appeals 25 August 2015.

Attorney General Roy Cooper, by Assistant Attorney General Yvonne B. Ricci, for the State.

Charlotte Gail Blake for defendant-appellant.

GEER, Judge.

Defendant Jordan Leon Mustard appeals from his conviction of robbery with a dangerous weapon. Defendant's sole argument on appeal is that the trial court erred in admitting evidence linking defendant to a robbery that occurred in a neighboring county on the same evening as the robbery for which he was tried. We hold that this evidence was admissible to show the chain of circumstances that led to the search of defendant's vehicle and the discovery of evidence implicated him in the Cleveland County robbery. Consequently, defendant received a trial free of prejudicial error.

STATE V. MUSTARD

Opinion of the Court

Facts

The State's evidence tended to show the following facts. On 17 January 2012 shortly after 4:00 a.m., a dark colored four-door sedan sped into the parking lot at the One Stop convenience store in Kings Mountain in Cleveland County, North Carolina. The car parked illegally in the middle of the lot facing the exit. Two white males with their faces covered exited the car and entered the store. The first one was approximately six feet, one inch tall, with a slim build, in his early 20s, and wore a red shirt, blue jeans, a bandana, and brown leather boots. The second individual was approximately five feet eleven inches tall, with a slim build, also in his early 20s, and wore a leather coat with yellow sleeves with writing on the back, blue jeans, and black shoes.

The first man pointed a silver, small caliber revolver at a customer and then at the store clerk, Jarred Spencer. The robber screamed twice at the clerk and customer to lie down on the ground. The man with the gun ripped out the drawer of the cash register while the second man walked over to the beer cooler and grabbed some bottles. The suspects took approximately \$110.00 in change from the cash register and two or three bottles of beer. Both suspects left in the black four-door sedan, traveled west on Shelby Road, and then got on the ramp of Highway 74 bypass eastbound

STATE V. MUSTARD

Opinion of the Court

After the suspects left, Mr. Spencer immediately got up and called 911. The 911 call went to Cleveland County and Cleveland County sent out a “be on the lookout” (“BOLO”) for a small, four door, black vehicle heading in the direction of travel indicated by Mr. Spencer. Patrol Sergeant Mark Butler of the Kings Mountain Police Department responded to the scene of the armed robbery. Mr. Spencer gave Sergeant Butler a description of the suspects and their car and told the police which way they went. After Sergeant Butler secured the scene, he turned it over to Detective Sergeant Lisa Proctor of the Kings Mountain Police Department, who took Mr. Spencer’s statement and later was able to view the surveillance video of the robbery.

Patrol Supervisor Jeff Clark of the Gastonia Police Department, heard the BOLO on the radio for a small black four door vehicle with two white males. A short while later, the Gastonia Police Department received a report of an armed robbery in their city limits. At 5:49 a.m., Officer David Lingafelt and Officer Johns of the Gastonia City Police pulled over a vehicle that matched the description of the vehicle used in the Gastonia robbery. The two occupants of the vehicle were arrested and taken into custody.

Because Officer Clark believed that the two men arrested in Gaston County matched the description of the suspects from the Kings Mountain robbery, he drove to the scene of the traffic stop and contacted Detective Sergeant Proctor with the

STATE V. MUSTARD

Opinion of the Court

Kings Mountain Police Department. Officer Clark described the suspects to Detective Sergeant Proctor: the suspect in the passenger seat of the car had on a black jacket with gold sleeves and Army written on the back, a red shirt, a bandana around his neck, jeans, and cowboy boots. The driver had on a dark shirt and jeans. Officer Clark observed a loaded revolver laying in the passenger front seat, and cash and change on the floorboard. At trial, Officer Clark identified the driver as Mr. Hook and the passenger as defendant.

Based on this description, the officers believed that the suspects were involved in the Kings Mountain robbery. After Detective Sergeant Proctor finished questioning Mr. Spencer and viewing the surveillance video of the robbery, she went to the Gastonia Police Department where the suspects were detained. When she arrived at the police station, she noted that defendant “had on a jacket that matched the second suspect in our robbery but I also noticed immediately the cowboy boots and the frayed around the ends of the cowboy boots he was wearing and he had on the red -- a red fleecy type thing underneath the jacket.”

Officers discovered that the owner of the vehicle that Mr. Hook and defendant were driving was Adam Morgan, who lived at 801 Raleigh Court. Gastonia Police Detective Mike Butts interviewed Mr. Hook, who claimed that he and defendant returned to 801 Raleigh Court after the robbery in Kings Mountain and took the cash drawer to that residence. Defendant was staying with Mr. Morgan at that residence.

STATE V. MUSTARD

Opinion of the Court

Based on this and other information, Detective Butts obtained a search warrant for Mr. Morgan's residence. Officers from both Gastonia and Kings Mountain executed the search warrant. They found a trail of change dispersed throughout the house and leading into defendant's bedroom. They also found a bullet, an open wrapper for pennies, and an empty Budweiser bottle.

Defendant was indicted for robbery with a dangerous weapon and conspiracy on 12 March 2012. Prior to trial, the State voluntarily dismissed the conspiracy charge. Defendant's case came on for trial at the 8 April 2013 criminal session of the Cleveland County Superior Court. On 11 April 2013, the jury found defendant guilty as charged. The trial court sentenced defendant to a presumptive-range term of 84 to 113 months imprisonment. On 25 July 2014, this Court granted defendant's petition for writ of certiorari to review the judgment.

Discussion

Defendant's sole argument on appeal is that the trial court erred in admitting evidence linking defendant to the Gaston County robbery that occurred on the same evening as the robbery for which defendant was on trial. Defendant argues that this evidence was irrelevant and unduly prejudicial to defendant because it caused the jury to convict defendant based on his character and propensity to commit the crime.

This issue is controlled by Rule 404(b) of the Rules of Evidence, which provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he

STATE V. MUSTARD

Opinion of the Court

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, entrapment or accident.

Rule 404(b) is “a clear general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but *one exception* requiring its exclusion if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.” *State v. Coffey*, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990).

The rule lists numerous purposes for which evidence of prior acts may be admitted, including motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident. This list is not exclusive, and such evidence is admissible as long as it is relevant to any fact or issue other than the defendant’s propensity to commit the crime.

State v. Beckelheimer, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012) (internal citations and quotation marks omitted). “We review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b). We then review the trial court’s Rule 403 determination for abuse of discretion.” *Id.*

This Court has recognized that evidence of a defendant’s prior bad acts may be received “to establish the circumstances of the crime on trial by describing its immediate context.” *State v. Agee*, 326 N.C. 542, 547, 391 S.E.2d 171, 174 (1990). “Such evidence is admissible if it ‘forms part of the history of the event or serves to enhance the natural development of the facts.’ ” *Id.* (quoting *Crozier v. State*, 723

P.2d 42, 49 (Wyo. 1986), *overruled on other grounds by Wilkerson v. State*, 336 P.3d 1188 (Wyo. 2014)).

Here, the evidence showed that two white males in their early 20s robbed a One Stop in Kings Mountain and fled in a small black four door sedan. The store clerk called 911 and Cleveland County dispatch issued a BOLO for the suspects' vehicle. Meanwhile, in Gaston County, police officers initiated a traffic stop of a vehicle matching the description of a recently reported armed robbery in that county and arrested two white males who were the occupants of the vehicle.

When the Gastonia patrol supervisor heard the BOLO from Cleveland County, he realized that the suspects in the Kings Mountain robbery matched the description of the suspects in custody in Gaston County and contacted Kings Mountain police. After finishing their investigation at the One Stop location, Kings Mountain police went to the Gaston County Police Department to question the suspects and to confirm that they matched the description given to them by the store clerk and from the surveillance video of the robbery. Gastonia officers then obtained a search warrant for the address of the owner of the vehicle, and both Gastonia and Kings Mountain police officers executed the warrant together. After searching the residence, they found evidence implicating defendant in the robberies, including change, a bullet, an empty bottle of beer, and a penny wrapper.

STATE V. MUSTARD

Opinion of the Court

The trial court denied defendant's motion to exclude evidence of the Gaston County robbery, ruling that the evidence was relevant to establish defendant's identity and was not offered to prove the character of defendant. The trial court further ruled that the probative value of the evidence was not outweighed by any unfair prejudice. We agree.

The evidence of the Gaston County robbery not only served to identify defendant as the perpetrator of the Kings Mountain robbery, but also to show the circumstances leading to defendant's arrest and indictment. The evidence was relevant to show how defendant was captured and how the police officers were able to obtain a search warrant for the residence that uncovered evidence tying defendant to the Kings Mountain robbery.

Accordingly, we hold that this evidence was admissible under Rule 404(b) and that defendant has failed to show that the trial court abused its discretion in determining, pursuant to Rule 403, that the probative value of the evidence was not outweighed by any unfair prejudice. *See State v. Howard*, 215 N.C. App. 318, 323, 715 S.E.2d 573, 577 (2011) (holding, in trial for robbery with a dangerous weapon, evidence of a gun store break-in properly admitted under "course of conduct" or "complete story" exception; evidence "necessary for the jury to be able to understand how defendant was identified as the perpetrator of the Pennington robbery, and how

STATE V. MUSTARD

Opinion of the Court

items stolen from Pennington and purchased with a credit card stolen from Pennington were recovered”).

NO ERROR.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).