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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-691

Filed: 7 March 2017

Wake County, No. 14CRS218611

STATE OF NORTH CAROLINA

v.

MANUEL ENRIQUE SANTANA, JR., Defendant.

Appeal by Defendant from order entered 2 July 2015 by Judge Thomas H. Lock in Wake County Superior Court. Heard in the Court of Appeals 24 January 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Stuart M. Saunders, for the State.*

*Glover & Petersen, P.A., by James R. Glover, for Defendant.*

HUNTER, JR., Robert N., Judge.

Manuel Enrique Santana, Jr. (“Defendant”) appeals his 2 July 2015 conviction for assault with a deadly weapon with the intent to kill inflicting serious injury (“AWDWIKISI”). Defendant contends the trial court erred when it denied his motion to dismiss for insufficient evidence, and when it allowed the State to introduce evidence of Defendant’s prior assaults against the victim. We disagree and affirm the trial court’s judgment.

**I. Facts and Background**

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On 7 October 2014, the Wake County Grand Jury indicted Defendant on one count of attempted first degree murder and one count of AWDWIKISI. Defendant was arraigned in open court on 22 April 2015 and pled not guilty to both counts. On 18 May 2015, Defendant filed a motion in limine, seeking to prevent the State from admitting or introducing evidence of prior instances of violence between Defendant and the victim. The trial court denied the motion after hearing the victim's offered testimony on *voir dire* during the trial.

The case came for trial on 30 June 2015, and the evidence presented tended to show the following. Guadalupe Garcia ("Garcia") testified first for the State. Garcia lives with her parents in Garner, North Carolina. Four security cameras, front and back, monitor her parents' home. Between 2012 and 2014, Garcia and Defendant had an "on and off" romantic relationship. They broke up in the summer of 2014. Notwithstanding their breakup, Defendant repeatedly contacted Garcia in an attempt to rekindle their relationship. Defendant was persistent in his attempts, "begging to try and make it work." Garcia "saw no point in" maintaining this relationship and stopped taking Defendant's calls or responding to his text messages. Although she blocked Defendant from directly viewing her social media accounts, "he would always find a way to pry into [her business]." Defendant monitored her activity through posts by mutual friends and was aware of when and where Garcia went on vacation.

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On 11 August 2014, “a few days” after ending all communications with Defendant, Garcia goes to dinner at a local restaurant with a male friend. She picks him up between 9:00 and 10:00 p.m. and returns him to his residence between 11:15 and 11:20 p.m. While at dinner, she takes a picture of her friend and sends it out on social media with a caption indicating they were having dinner together.

Upon returning home, Garcia remains in her car for a few minutes before exiting and walking toward the garage door. She then feels a “punch” to her head and falls to the ground. Garcia gets up, turns around, and sees someone running away. She follows her assailant down the driveway to get a better look, and sees “a guy dressed in black and a mask possibly and a white shirt hanging out from the hoody.” Garcia then notices “blood running down” her head, which “drenched” the left side of her body. Neither she nor her family could find where the blood was coming from. Garcia later discovered she suffered two stab wounds, one to her head and another to her upper back. The wound to her head required stitches, while the wound on her back required staples. Garcia suffered no internal injuries from her wounds.

After alerting her parents and receiving first aid, Garcia calls 911. Members of the Garner Police Department arrive on the scene, and ask if Garcia knew who could have assaulted her. She tells the investigator she thinks it could be Defendant,

“[b]ecause of our recent breakup and because I was -- at that point, he knew that I was scared of him.” She elaborated on re-direct examination there was “no other person I could think of that would harm me.” She also tells police Defendant was of a similar height and build as her attacker.

Garcia knew Defendant and his father worked for a taxi company, driving one cab on alternating shifts. She described the taxi as bright yellow and green, with the name of the taxi company written on it. She testified Defendant wore a uniform while working, consisting of “a white button-up shirt or collar, but it had to be white, with black pants.”

The trial court then excused the jury and heard Garcia describe several of Defendant’s past acts of violence against her on *voir dire*. The court then denied Defendant’s motion in limine and held the testimony was admissible “to show an intent by the defendant to control the behavior of [the victim]; that they tend to show a pattern of escalating violence during the course of the relationship; and that they tend to show a sense of mounting fear of the defendant on the part of [the victim].”

After the jury returned, Garcia continued testifying. Roughly a year after they began dating, Defendant pushed Garcia from behind during an argument, causing her to stumble but not fall. This was the first time any man was violent with Garcia. She testified “it was always in the back of [her] mind.” Sometime later, Defendant grabbed Garcia and briefly choked her after she tried to stop him from throwing his

money in the air at a concert. Garcia left the venue and sat on a bench outside to calm down. Defendant emerged and “he took [her] purse from [her] to grab [her] car keys, threw it on the ground, and walked towards the car and sat in the driver’s seat and turned [the car] on.” Garcia got into the rear seat of the car and reached forward to try to take the keys out of the ignition. Defendant then elbowed her in the nose. Finally, on the night they broke up, Garcia asked Defendant to leave her home. He took her car keys and drove off, only returning the car upon her request the next morning.

Officer Shane Pleasants (“Officer Pleasants”) of the Garner Police Department testified next. At 11:50 p.m. on the night of 11 August 2014, he responded to Garcia’s 911 call. He spoke with her about the assault before she was taken to the hospital. Officer Pleasants testified Garcia described her assailant as wearing dark clothing and possibly wearing a mask. She also gave Defendant’s name as a possible suspect. After obtaining Defendant’s address in Raleigh, Officer Pleasants notified the Raleigh Police Department and asked them to go to Defendant’s residence to see if he was there. He then spoke to another Garner police officer, who called Defendant’s employer and discovered Defendant was driving his taxi on the night of the assault.

Sergeant Scott Selvek (“Sgt. Selvek”) of the Garner Police Department testified next. Sgt. Selvek supervised the search of Defendant’s residence on the day after the assault. Prior to the search, Defendant was taken into custody and advised of his

*Miranda* rights, which he waived. A search warrant was drawn for Defendant's residence, which he shared with his parents. Sgt. Selvek asked Defendant for his help in finding the clothes Defendant wore the night before. Defendant cooperated with the search, directing officers to his bedroom and pointing out the requested clothes. These were a pair of pants, a white shirt, a gray hooded sweatshirt, and black shoes. Police also discovered a box under Defendant's bed containing a butter knife and a mask from the motion picture "Scream."

Officer Tyler Rose ("Officer Rose") of the Garner Police Department also testified for the State. Officer Rose transported Defendant from the police station to his home and kept Defendant in custody while he assisted police with their search. While Defendant was in the house, he asked to speak with his mother, who was crying hysterically. She asked him "[w]hy did you do that?" to which Defendant responded "I'm sorry," and hung his head.

Investigator Jason Jones ("Investigator Jones") of the Garner Police Department testified next. After interviewing Garcia, Investigator Jones discovered her house was protected by surveillance cameras. With the assistance of a family member, Investigator Jones accessed footage from the camera on the front of the house and burned it to a DVD. The footage bore a date and time stamp, although Investigator Jones noted the time was roughly twenty-one minutes slow. He described its contents, and the footage was subsequently published and played for the

jury. At approximately 11:19 p.m., the footage showed a two-tone vehicle, with lighter colors on top and darker colors on the bottom, driving past the house from west to east. At 11:23 p.m., a suspect appears and stands behind an SUV parked in Garcia's driveway, crouching down when cars pass. Garcia arrives at 11:35 p.m. and parks her car on the other side of the driveway. She remains in the car for several minutes, her face backlit from her phone. At approximately 11:41 p.m., Garcia gets out of her car, walks past the SUV, and towards the house. The suspect follows her toward the house. The assault takes place off camera, too close to the home for the camera to capture it. Roughly two seconds later, the suspect runs down the driveway with Garcia chasing after him, turns east, and runs down the street. For the majority of the footage, the suspect keeps his back to the camera. His face is not visible.

After obtaining the video, Investigator Jones called Defendant's employer and spoke with Defendant's father. Defendant's father informed Investigator Jones he drove the taxi during the day, and Defendant drove it at night. He agreed to bring the taxi to the police station and consented to a search of the vehicle. Investigator Jones conducted the search, and discovered a knife and rubber gloves in a pocket on the driver's side door. The knife was in a cardboard sheath stained with a red substance.

Amauris Rivas ("Rivas"), the manager of the taxi company Defendant works for, testified next. Rivas told the court each driver was required to equip his

smartphone with a GPS application allowing the company's dispatcher to track their location. However, on the night of the attack, the system was malfunctioning. Acting on a request by the Garner Police Department, Rivas obtained a call log showing when and where Defendant was dispatched to pick up and drop off fares. The log showed Defendant picked up a passenger at 10:24 p.m. on the night of the assault. He next picked up a passenger at 11:52 p.m. on Grissom Street in south Raleigh. Rivas also testified to his dispatch practices. Rather than calling a particular car, Rivas put out a call to all of his cars, and the driver willing to take the fare responded and accepted the assignment. On cross-examination, Rivas testified drivers were allowed to pick up fares that were not dispatched, and were encouraged but not required to record these fares. He also testified the drivers were unaware the GPS system was not functioning on the night of 11 August 2014.

Agent Lucas Cunningham ("Agent Cunningham") of the Raleigh-Wake County City-County Bureau of Identification ("CCBI") testified next. Agent Cunningham examined the knife recovered from Defendant's taxi. He found no fingerprints on the blade or the handle.

Agent Shannon Quick ("Agent Quick") of the CCBI testified next. She examined the SUV the assailant crouched behind in Garcia's driveway for fingerprints. She was unable to recover any fingerprints. She also tested the knife's cardboard sheath and determined the red stains were not blood.

After Agent Quick's testimony, the State rested. Defendant then moved to dismiss both charges for insufficiency of the evidence, arguing the evidence did not show Garcia was attacked with a particular weapon and the two potential weapons, the two knives, could not be tied to the crime via blood or fingerprints. Defendant also argued there was insufficient evidence to show Garcia was stabbed. The trial court denied the motion, finding the testimony and exhibits were sufficient to show Garcia was stabbed.

Defendant declined to put on evidence and rested after the trial court examined Defendant and ensured he was aware of his right to present a case. Prior to the charge conference, Defendant renewed his objection as to the insufficiency of the evidence. The trial court denied the motion. The court then proceeded with the charge conference and the jury instructions.

After closing arguments, the trial court instructed the jury. After several hours of deliberation, the jury returned with verdicts, finding Defendant not guilty of attempted first degree murder, and guilty of AWDWIKISI. The trial court sentenced Defendant in the presumptive range to a term of seventy-two to ninety-nine months in prison. After sentencing, Defendant gave notice of appeal in open court.

## **II. Jurisdiction**

Defendant appeals his criminal conviction after entering a plea of not guilty. Pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2015), Defendant is entitled to an appeal as a matter of right.

### **III. Standard of Review**

Defendant contends the trial court improperly denied his motion to dismiss for insufficient evidence. This is a question of law which this Court reviews *de novo*. *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007) (internal quotation marks and citations omitted).

Defendant also argues the trial court improperly admitted evidence of his prior assaults against Garcia under N.C.R. Evid. 404(b) and 403. The question of whether evidence is properly admitted under Rules of Evidence 404(b) and 403 is answered by a three part test:

First, is the evidence relevant for some purpose other than to show that defendant has the propensity to commit the type of offense for which he is being tried? Second, is that purpose relevant to an issue material to the pending case? Third, is the probative value of the evidence substantially outweighed by danger of unfair prejudice pursuant to N.C.R. Evid. 403?

*State v. Houseright*, 220 N.C. App. 495, 499, 725 S.E.2d 445, 448 (2012) (internal citations and quotation marks omitted). The first two questions are reviewed *de novo*. *Id.* at 499, 725 S.E.2d at 448. Although the trial court's rulings on these questions are not discretionary, appellate courts accord them with "great deference." *State v.*

*Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 213 (2011). The third question is reviewed for abuse of discretion. *Houseright*, 220 N.C. App. at 500, 725 S.E.2d at 448. The determination to admit evidence under Rule 403 is “within the sound discretion of the trial court, whose ruling will be reversed on appeal only when it is shown that the ruling was so arbitrary that it could not have resulted from a reasoned decision.” *State v. Stevenson*, 169 N.C. App. 797, 800-01, 611 S.E.2d 206, 209 (2005).

#### **IV. Analysis**

##### **A. Motion to Dismiss**

Under state law, a defendant may move to dismiss a criminal charge for insufficiency of the evidence at the close of the State’s evidence, at the close of all the evidence, before the entry of judgment following a guilty verdict, or after discharge of the jury without a verdict. N.C. Gen. Stat. § 15A-1227(a) (2015). There is sufficient evidence to sustain a conviction when “viewed in the light most favorable to the State and giving the State every reasonable inference therefrom, there is substantial evidence to support a [jury] finding of each essential element of the offense charged, and of defendant’s being the perpetrator of such offense.” *Bagley*, 183 N.C. App. at 525-26, 644 S.E.2d at 623. *See also State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002); *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 388 (1988).

Substantial evidence is “that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Cox*, 303 N.C. 75,

87, 277 S.E.2d 376, 384 (1981). If the trial court determines a reasonable inference of the defendant's guilt may be drawn from the evidence, it must deny the motion to dismiss and send the case to the jury, regardless of whether the evidence may also support a reasonable inference of the defendant's innocence. *State v. Grigsby*, 351 N.C. 454, 456-57, 526 S.E.2d 460, 462 (2000).

Under N.C. Gen. Stat. § 14-32(a), the elements of AWDWIKISI are: “(1) an assault, (2) with the use of a deadly weapon, (3) with an intent to kill, and (4) inflicting serious injury, not resulting in death.” *State v. Wilkes*, 225 N.C. App. 233, 237, 736 S.E.2d 582, 586 (2013). An intent to kill “is ordinarily shown by proof of facts from which an intent to kill may be reasonably inferred.” *State v. Thacker*, 281 N.C. 447, 455, 189 S.E.2d 145, 150 (1972). The inference may be drawn from facts such as the “nature of the assault, the manner in which it was made, the conduct of the parties, and other relevant circumstances.” *State v. Barlowe*, 337 N.C. 371, 379, 446 S.E.2d 352, 357 (1994). While an assault with a deadly weapon on its own may not establish a presumption of an intent to kill, “an assailant must be held to intend the natural consequences of his deliberate act.” *Grigsby*, 351 N.C. at 457, 526 S.E.2d at 462 (internal quotation marks and citations omitted).

Defendant contends the State did not introduce any direct evidence of his guilt, but merely presented a “weak circumstantial” case to the jury. “It is immaterial whether the substantial evidence is circumstantial or direct, or both.” *State v. Jones*,

303 N.C. 500, 504, 279 S.E.2d 835, 838 (1981) (internal citations omitted). Viewing the evidence in the light most favorable to the State and giving the State every reasonable inference, there was substantial evidence of each element of AWDWIKISI. That Garcia was assaulted with a deadly weapon and suffered a serious injury is indisputable and uncontradicted by any evidence in the record. Her testimony, corroborated by exhibits displaying her wounds, conclusively established she was stabbed and suffered serious wounds to her head and back. Further, an intent to kill can be inferred from the circumstances of the assault; Defendant stabbed Garcia from behind in the head and back, areas of the body containing vital organs, nerves, and blood vessels. While Garcia was fortunate enough to have avoided internal injuries, it is a reasonable inference that the “natural consequences” of stabbing a person in the head and back is not merely to maim, but to inflict mortal wounds.

Similarly, under the same standard of review, there was substantial evidence Defendant was the perpetrator of the crime. Viewed in the light most favorable to the State, the evidence supports a reasonable inference Defendant was present at the scene of the assault. Surveillance video showed a vehicle matching the description of Defendant’s distinctive-looking taxi driving from west to east past the house. After the assault, the video shows the assailant running east away from the house, in the direction of the car. The dispatch log shows Defendant was not working at the time of the assault, but volunteered to pick up a fare in the vicinity of the crime scene only

minutes after Garcia was stabbed. Moreover, Garcia's description of her assailant's clothing matches Defendant's uniform and was consistent with what Defendant was actually wearing on the night of the assault. Police discovered a knife hidden in the driver's side door pocket of Defendant's vehicle.

Finally, when viewed in the light most favorable to the State, there was substantial evidence Defendant possessed a motive for the crime. Garcia testified Defendant previously engaged in an escalating pattern of controlling and violent behavior during their relationship, progressing from a push, to choking, to elbowing in the face. Defendant repeatedly seized control of Garcia's car, stranding her or threatening to strand her on more than one occasion. For months following their breakup, Defendant repeatedly contacted Garcia trying to reestablish their relationship, even "begging" at one point to "try and make it work." The assault took place only days after Garcia cut off all contact with Defendant, and only hours after she posted pictures of herself out with another man on social media.

We hold there was substantial evidence in support of each of the elements of AWDWIKISI, and substantial evidence Defendant perpetrated the crime. Consequently, we hold the trial court did not err in denying Defendant's motion to dismiss.

#### **B. Evidence of Prior Violent Acts**

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As stated above, we review the admission of evidence under Rules 404(b) and 403 pursuant to a three prong test. *Houseright*, 220 N.C. App. at 499-500, 725 S.E.2d at 448. In doing so, we note the North Carolina Supreme Court has previously characterized Rule 404 as “a clear general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant, that is 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).

Under the first prong, we review *de novo* whether testimony regarding Defendant’s past violent behavior with Garcia is relevant for some other purpose than to show Defendant had a propensity for the type of behavior for which he was being tried. Such purposes include “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment, or accident.” N.C. Gen. Stat. § 8C-1, Rule 404(b) (2015). We have repeatedly held “prior acts of domestic violence, namely assaults by [a] defendant against [a] victim . . . [are] . . . both relevant and admissible.” *State v. Latham*, 157 N.C. App. 480, 484, 579 S.E.2d 443, 447 (2003). Such evidence is “admissible as bearing on intent . . . [and] motive. . . .” *Id.* at 484, 579 S.E.2d at 447 (quoting *State v. Scott*, 343 N.C. 313, 331, 471 S.E.2d 605, 616 (1996)).

Over the course of roughly a year, Defendant engaged in a pattern of violent, controlling behavior when challenged or upset by Garcia. Beyond directing physical violence at Garcia, Defendant attempted to control her by threatening to strand her at a concert and then actually stranding her at home. Because Defendant's conduct showed both an intent to use violence to control Garcia's behavior and a potential motive to do so in this case, we hold Garcia's testimony was relevant for a purpose other than showing Defendant's propensity for violence.

Under the second question, we consider *de novo* whether the purpose of the testimony was relevant to an issue material to the case at bar. As previously mentioned, to secure a conviction the State must prove intent to kill and may do so by proving facts from which such an inference may reasonably be drawn. *Wilkes*, 225 N.C. App. at 237, 736 S.E.2d at 586; *Barlowe*, 337 N.C. at 379, 446 S.E.2d at 357. Garcia's testimony was not only relevant to show intent, but also showed Defendant engaged in an escalating pattern of violence, moving from a mere shove to choking and then elbowing in the face. Because such evidence could form the basis of a reasonable inference of intent to kill, a necessary element of the crime, we hold the testimony was relevant to an issue material to the case.

Under the third question, we consider whether the trial court abused its discretion in weighing the probative value of the evidence against the danger of unfair prejudice. Relevant evidence "may be excluded if its probative value is substantially

outweighed by the danger of unfair prejudice . . . .” N.C. Gen. Stat. § 8C-1, Rule 403 (2015). “‘Unfair prejudice’ within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, as an emotional one.” N.C. Gen. Stat. § 8C-1 (cmt). As any evidence probative of the State’s case will have a prejudicial effect on a defendant, the question is always one of degree. *State v. Mercer*, 317 N.C. 87, 93-94, 343 S.E.2d 885, 889 (1986). As previously mentioned, the trial court concluded the evidence of Defendant’s past acts were probative of Defendant’s identity, intent, and motive, and instructed the jury to consider the evidence only for those propositions. With no specific evidence in the record pointing to an “undue tendency to suggest decision on an improper basis,” we find no error in the trial court’s discretionary ruling the evidence was admissible under Rule 403.

Finally, Defendant contends Garcia’s testimony concerning his past violent behavior should be excluded under Rule 404(b) for failing the requirement that such evidence be similar and of temporal proximity to the charged crime. *State v. al-Bayyinah*, 356 N.C. 150, 154, 567 S.E.2d 120, 123 (2002). “The determination of similarity and remoteness is made on a case-by-case basis, and the required degree of similarity is that which results in the jury’s reasonable inference that the defendant committed both the prior and present acts. The similarities need not be unique and bizarre.” *State v. Paddock*, 204 N.C. App. 280, 286, 696 S.E.2d 529, 534 (2010) (quoting *Stevenson*, 169 N.C. App. at 800, 611 S.E.2d at 209). *See also State*

*v. Stager*, 329 N.C. 278, 304, 406 S.E.2d 876, 891 (1991). Depending on the similarity between the acts, the North Carolina Supreme Court has held a period of up to eight years between crimes is no bar to admissibility under Rule 404(b). *See State v. Carter*, 338 N.C. 569, 588-89, 451 S.E.2d 157, 167-68 (1994).

The record establishes there was sufficient temporal proximity between the charged crime and the prior incidents of violence. While Garcia did not give distinct dates for each act of violence, the first instance—the shove in the back—occurred roughly a year into their two-year-long relationship, with the next two instances occurring sometime thereafter. Thus, each of the prior acts occurred within a year of the assault.

As to similarity, Garcia’s testimony showed Defendant’s past conduct was similar in motive. Each of the past acts occurred after Garcia in some way upset or challenged Defendant. Defendant shoved Garcia in the back during an argument. He choked her after Garcia began to annoy him at a concert. Later, Defendant stole Garcia’s car keys, threatened to leave her stranded at the concert, and elbowed her in the face when she tried to take her car keys back. Months later, when Garcia told him she wanted to end their relationship, Defendant took her keys and drove off in her car. Here, the proximity of the assault to Garcia’s decision to stop all communication with Defendant and publicly go to dinner with another man could lead to a “reasonable inference” that Defendant committed both acts.

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*Opinion of the Court*

For the foregoing reasons, we affirm the trial court's denial of Defendant's motion to dismiss, and hold the trial court did not err in admitting evidence of Defendant's past acts of violence against Garcia.

AFFIRMED.

Judges BRYANT and DIETZ concur.

Report per Rule 30(e).