

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1194

Filed: 5 November 2019

Robeson County, Nos. 13 CRS 54359, 3511

STATE OF NORTH CAROLINA

v.

CLARENCE WENDELL ROBERTS, Defendant.

Appeal by Defendant from judgment entered 5 May 2017 by Judge James Webb in Robeson County Superior Court. Heard in the Court of Appeals 6 August 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General L. Michael Dodd, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for Defendant-Appellant.

COLLINS, Judge.

Defendant Clarence Wendell Roberts appeals from judgment entered upon jury verdicts of guilty of second-degree murder and assault with a deadly weapon. Defendant argues that the trial court committed certain evidentiary and sentencing errors. We find no prejudicial error.

I. Procedural History

On 9 September 2013, Defendant was indicted for first-degree murder, three counts of attempted first-degree murder, and three counts of assault with a deadly

weapon with intent to kill. A trial commenced on 10 April 2017. At the close of the State's evidence, the trial court granted Defendant's motion to dismiss some of the charges. On 5 May 2017, the jury found Defendant guilty of second-degree murder and assault with a deadly weapon. The trial court consolidated the offenses and entered judgment upon the jury's verdicts, sentencing Defendant to 300 to 372 months' imprisonment. Defendant gave oral notice of appeal in open court.

II. Factual Background

On the evening of 14 June 2013, approximately twelve people, including John Allen, Michael Burgess, and Joshua Council, were playing basketball at a park in the Hayeswood Hut area of Lumberton. During their breaks, they talked and had drinks beside their cars parked in the grassy area between the basketball court and Peachtree Street. Allen and Burgess were affiliated with the E-Ricket Hunter Bloods street gang. Allen's sister, her three-year-old daughter, and one of the sister's friends were hanging out by the cars, watching them play basketball. At about 9:00 or 9:30 p.m., a shooting occurred, and Council was killed.

Allen testified that while he, his sister, and Council were standing beside Council's Chevrolet Blazer, a white Ford Taurus with its windows rolled down came "kinda fast" down Peachtree Street. The driver, who was the only person in the car, yelled "all y'all mother***ers want to kill me." The car drove past them, slowed down, and spun backward before stopping beside the Blazer. Allen thought the driver was

drunk. A black male with a “bald head or either a real close haircut” got out of the car. Then, Allen saw the driver shooting and heard a total of five gunshots coming from “where the car was[,]” but he did not see the gun that was being fired. Allen and others ran away from the basketball area. The white Taurus then drove away.

Burgess testified that when he and his friends were taking a break in the grassy area beside the court, a white car partially covered in black primer drove by, backed up, and “whipped” in front of them. Burgess could see that the driver was a black male with tattoos on his face and gold teeth, and he was the only person in the car. After the driver yelled “y’all gonna kill me,” someone shot at the car. Burgess heard more shots coming from the white car and started running.

Sheena Britt lived right around the corner from Hayeswood Hut. On the night of the shooting, Britt was walking with a friend through an intersection near the park. She saw a white four-door car drive past her toward the basketball court. The driver, a black male with gold teeth, was hanging out of the window and yelling “ain’t nobody going to mess with me.” Britt thought he had been drinking. Just after the car turned down Peachtree Street, Britt heard gunshots. She later identified Defendant in a photo lineup at the police station, but she could not identify him in court.

Whitney Carter lived at the corner of Peachtree Street and Eleventh Street. Carter was sitting in her car in her driveway between 9:00 and 10:00 p.m. on the

night of the shooting when she saw a white car drive by, intermittently “throwing on its brakes.” Carter observed that the driver was the only person in the car. She saw the car stop briefly at the intersection while the driver talked to two pedestrians. The car then “sped down the dirt road.” While still sitting in her car in her driveway about five minutes later, Carter heard gunshots. She waited a few minutes, then got out of her car and walked to the edge of Peachtree Street. When Carter looked down Peachtree Street, she saw the white car parked beside the basketball court. Then the car drove away toward Elizabethtown Road, and people were running.

Ronnie Roberson’s house faced the Hayeswood Hut basketball court. On the night of the shooting, Roberson watched black-and-white surveillance video of the basketball court, captured by an infrared camera mounted on the side of his house. He observed people talking around the basketball court. He also watched as a dark car came down the road, backed up near the court slowly, and sat with its engine running. Then shots were fired. Roberson did not see any other cars in the area. He called 911 twice—first to report the loud noise coming from the basketball court, and then to report the gunshots.

Kimberly Lowery, the mother of Defendant’s son, testified that Defendant showed up sometime after 9:30 p.m. at her home on Elizabethtown Road, visibly drunk and driving a white Ford Taurus. Two other witnesses who knew Defendant

testified that Defendant visited them in Lumberton that night on or after 10:00 p.m., driving a white car.

Chris McGirt, who lived near Hayeswood Hut, was on his way home from work around 11:20 p.m. when he noticed a white Ford Taurus “driving strangely” down his street. When McGirt parked in his driveway, the white car pulled up beside him in the driveway. A black male, about 5’9” to 6’ tall and 160 to 170 pounds with gold teeth, got out of the white car. After asking McGirt a few questions, the man got back in the car, started the engine, and backed out of the driveway while yelling that he was a “gangster.” McGirt thought the driver was impaired. After the man drove away, McGirt called the police to report the suspicious activity. Two days later, when McGirt visited the police station to make a statement, he identified Defendant in a photo lineup.

After midnight, Trooper Steven Hunt of the North Carolina Highway Patrol found a white Ford Taurus in a ditch beside the highway. The engine was running, the taillights were on, and Defendant was asleep inside, leaning against the steering wheel. When Defendant woke up and tried to put the car in drive, the officer pulled him out of the car, noticing that he was impaired. Hunt arrested Defendant for driving while impaired.

III. Issues

On appeal, Defendant argues that (1) the trial court erred and violated his right to confrontation by admitting recordings of his phone calls from jail, (2) the trial court plainly erred by admitting videos of his interviews with investigators, (3) the sentence imposed was not authorized by the jury's verdict, and (4) the trial court erred in calculating Defendant's prior record level.

IV. Discussion

A. Recorded Phone Calls

Defendant argues that the trial court erred by admitting recordings of three phone calls Defendant made from the Robeson County Jail. Defendant specifically contends that (1) the recordings of the phone calls contained inadmissible hearsay, and (2) by allowing the jury to hear the phone calls, the trial court violated Defendant's right to confront witnesses against him.

Defendant first argues that the recorded phone calls were erroneously admitted because they contained inadmissible hearsay.

This Court conducts de novo review of the admission of evidence over a hearsay objection. *State v. Johnson*, 209 N.C. App. 682, 692, 706 S.E.2d 790, 797 (2011). An erroneous admission of hearsay necessitates a new trial only if the defendant shows that there is a reasonable possibility that without the error the jury would have reached a different result. N.C. Gen. Stat. § 15A-1443(a) (2018); *State v. Wilkerson*,

363 N.C. 382, 415, 683 S.E.2d 174, 194 (2009) (internal quotation marks and citation omitted).

“Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” N.C. Gen. Stat. § 8C-1, Rule 801(c) (2018). “Hearsay is not admissible except as provided by statute or by these rules.” N.C. Gen. Stat. § 8C-1, Rule 802 (2018). However, a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence for a purpose other than to prove the truth of the matter asserted is admissible. *Livermon v. Bridgett*, 77 N.C. App. 533, 540, 335 S.E.2d 753, 757 (1985).

During one of the calls, Roberts repeatedly expressed bewilderment about being accused of murder. In another call, a woman urged Defendant to request a “lie detector test,” to which Defendant replied, “They ain’t do none of that.” One of the women also told Roberts he should have “come back home.” Referring to another person, the woman said, “She say, her baby daddy say, whenever you got around, he and them other dudes were trying to tell you to go home, but you wouldn’t leave.”

The State argues that these statements were admissible because (1) they were not hearsay, as they were introduced only to prove the existence of the statements and to show Defendant’s state of mind under evidentiary Rule 803(3), rather than to

prove the truth of the matters asserted, and (2) they were excepted from hearsay under evidentiary Rule 801(d), as an admission of a party opponent.

We need not determine whether the trial court erred because, even assuming *arguendo* that the evidence was erroneously admitted, Defendant fails to show that the error was prejudicial. *See* N.C. Gen. Stat. § 15A-1443(a). The State presented the following evidence:

Britt saw a white four-door car drive past her toward the Hayeswood Hut area basketball court. The driver, a black male with gold teeth, was hanging out of the window and yelling “ain’t nobody going to mess with me.” Britt thought he had been drinking. Just after the car turned down Peachtree Street, Britt heard gunshots. She later identified Defendant as the driver in a photo lineup.

Allen was standing beside Council’s Chevrolet Blazer next to the basketball court when a white Ford Taurus came down Peachtree Street. The driver, a black male who appeared drunk and was the only person in the car, yelled “all y’all mother***ers want to kill me.” The car drove past Allen, slowed down, and spun backward before stopping beside the Blazer. Allen then saw the driver shooting and heard a total of five gunshots coming from where the car was.

Burgess was standing next to the basketball court when a white car whipped in front of him. The driver, a black male with tattoos on his face and gold teeth, was

the only person in the car. After the driver yelled “y’all gonna kill me,” someone shot at the car. Burgess heard more shots coming from the white car.

Carter was sitting in her car in her driveway at the corner of Peachtree Street between 9:00 and 10:00 p.m. when she saw a white car drive by. The driver was the only person in the car. The car stopped briefly at the intersection and then sped down Peachtree Street. Carter heard gunshots and she walked to the edge of Peachtree Street. She saw the white car parked beside the basketball court. Then the car drove away toward Elizabethtown Road, and people were running.

Defendant showed up visibly drunk at Lowery’s house on Elizabethtown Road in a white Ford Taurus sometime after 9:30 p.m.

McGirt saw a white Ford Taurus driving strangely down his street near Hayeswood Hut around 11:20 p.m. The car pulled into McGirt’s driveway and the driver, a black male with gold teeth, got out. McGirt thought the driver was impaired. After asking McGirt a few questions, the driver got back in the car and drove away while yelling that he was a “gangster.” Two days later, McGirt identified Defendant as the driver in a photo lineup.

After midnight, Trooper Hunt found Defendant asleep in the driver’s seat of a white Ford Taurus in a ditch beside the highway. Defendant was intoxicated and was arrested for driving while impaired.

Given this overwhelming evidence of guilt, we conclude that there is no reasonable possibility that had the jury not heard the phone calls, it would have reached a different result. *See State v. Clevinger*, 249 N.C. App. 383, 391, 791 S.E.2d 248, 254 (2016) (holding error harmless in light of other evidence against defendant, including witness identification in photo lineup). We therefore find no prejudicial error.

Defendant also argues that by admitting the recordings, the trial court violated his right to confront witnesses against him. Defendant specifically argues that the women's statements in the recorded phone calls were testimonial because the Robeson County Jail telephone system provided automated warnings at the beginning of and during each phone call, indicating that the calls would be recorded and were subject to monitoring.

This Court conducts de novo review of an alleged violation of a constitutional right. *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009).

A criminal defendant has a right to confront witnesses against him. U.S. Const. amend. VI; *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 309 (2009) (applied the Sixth Amendment to states through Fourteenth Amendment); N.C. Const. art. I, Section 23. This right is violated when a "testimonial" statement from an unavailable witness is admitted against a defendant who did not have a prior opportunity to cross-

examine the declarant.” *State v. Garner*, 252 N.C. App. 393, 400, 798 S.E.2d 755, 760 (2017) (citing *Crawford v. Washington*, 541 U.S. 36, 68 (2004)).

While the United States Supreme Court has deferred “any effort to spell out a comprehensive definition of ‘testimonial,’” *Crawford*, 541 U.S. at 68, it has specifically limited the reach of the Confrontation Clause to those statements “made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *Id.* at 52. “As a result of the fact that ‘[t]estimony . . . is typically [a] solemn declaration or affirmation made for the purpose of establishing or proving some fact[,]’ testimonial statements typically include: (1) statements made to police officers during custodial interrogation; (2) ex parte in-court testimony or its functional equivalent, such as affidavits, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; and (3) extrajudicial statements contained in formalized testimonial materials such as affidavits, depositions, prior testimony, or confessions. *State v. Miller*, 371 N.C. 273, 281-82, 814 S.E.2d 93, 98-99 (2018) (quoting *Crawford*, 541 U.S. at 51) (other citations omitted).

In conducting this inquiry into the circumstances surrounding a statement, a declarant’s knowledge that he is being recorded is not dispositive. Even if parties to a jailhouse phone call with a defendant were aware that the jail was recording their

conversation, their understanding that a statement could potentially serve as evidence in a criminal trial does not necessarily denote “testimonial” intent. *See Davis v. Washington*, 547 U.S. 813, 822 (2006) (holding that statements made during 911 emergency phone call were nontestimonial when uttered only “to enable police assistance to meet an ongoing emergency”); *United States v. Jones*, 716 F.3d 851, 856 (4th Cir. 2013) (holding that statements made during recorded jailhouse phone calls were nontestimonial because declarants did not demonstrate anywhere in the conversations an intent to “bear witness” against defendant).

We agree with the Fourth Circuit’s reasoning in *Jones* that a prison, similar to 911 emergency services, “has a significant institutional reason for recording phone calls outside of procuring forensic evidence—i.e., policing its own facility by monitoring prisoners’ contact with individuals outside the prison.” *Jones*, 716 F.3d at 856. “To adopt the rule Defendant proposes would require us to conclude that all parties to a jailhouse phone call categorically intend to bear witness against the person their statements may ultimately incriminate.” *Id.* Moreover, nowhere in the conversations between Defendant and the women do the women demonstrate an intent to “bear witness” against Defendant. There is no evidence that their conversation consisted of anything but “casual remark[s] to an acquaintance.” *Crawford*, 541 U.S. at 51. Because we are satisfied that the statements made by the

women in the jailhouse telephone calls were not testimonial, their admission did not violate the Confrontation Clause.

B. Interviews with Police

Defendant next argues that the trial court erred by admitting into evidence video interviews in which Defendant and investigators discussed prior assault and rape charges against Defendant that had been dismissed. Defendant specifically contends that this evidence was irrelevant and was inadmissible character evidence.

Defendant acknowledges his failure to object to the admission of this evidence, but specifically argues plain error on appeal. *See* N.C. R. App. P. 10(a)(4). The plain error rule should be “applied cautiously and only in the exceptional cases where, after reviewing the entire record, it can be said the claimed error . . . resulted in a miscarriage of justice or in the denial . . . of a fair trial.” *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (internal quotation marks and citation omitted). An appellate court should only find plain error if the court is convinced that absent the error the jury probably would have reached a different result. *State v. Walker*, 316 N.C. 33, 39, 340 S.E.2d 80, 83 (1986).

A trial court’s rulings on relevancy are given great deference on appeal. *Dunn v. Custer*, 162 N.C. App. 259, 266, 591 S.E.2d 11, 17 (2004). We review de novo a trial court’s legal conclusion that evidence is or is not within the Rule 404(b) exception to

the exclusion of character evidence. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 158-59 (2012).

“Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C. Gen. Stat. 8C-1, Rule 401 (2018). Irrelevant evidence is inadmissible. N.C. Gen. Stat. 8C-1, Rule 402 (2018).

“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.” N.C. Gen. Stat. 8C-1, Rule 404(a) (2018). Evidence of prior bad acts “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.” N.C. Gen. Stat. 8C-1, Rule 404(b) (2018). “Rule 404(b) evidence is admissible to prove identity when the defendant is not definitely identified as the perpetrator of the alleged crime.” *State v. Gray*, 210 N.C. App. 493, 508, 709 S.E.2d 477, 488 (2011) (citation omitted).

Defendant stated in one of the interviews that being a suspect of the Hayeswood Hut murder was similar to his previous situation, when he was charged with rape in 2002. Defendant described to investigators that, at that time, other people said he was “running around drinking”—just as some were doing in this case. The State argues that this evidence was admissible to “show opportunity, intent,

preparation, plan, knowledge, absence of mistake, entrapment or accident, and most importantly in this case, identity.”

However, we need not determine whether the evidence was admissible because, even assuming error *arguendo*, Defendant has failed to show that the admission of the evidence resulted in a miscarriage of justice or denied Defendant a fair trial. *See Odom*, 307 N.C. at 660, 300 S.E.2d at 378. In light of the overwhelming evidence of Defendant’s guilt, including his identity as the shooter, as recited above in section IV.A., we do not conclude that absent admission of the evidence, the jury probably would have reached a different result. *Walker*, 316 N.C. at 39, 340 S.E.2d at 83. Accordingly, we discern no plain error.

C. Sentencing

Defendant next argues that the sentence imposed by the trial court was not supported by the jury’s verdict. Defendant specifically contends that the general verdict of guilty of second-degree murder was ambiguous for sentencing purposes, and because there was evidence in this case of depraved-heart malice, the trial court erred by imposing a sentence for a class B1 offense. Defendant urges this Court to remand the case for resentencing as a B2 offense.

“We review *de novo* whether a sentence imposed was authorized by a jury’s verdict.” *State v. Mosley*, 806 S.E.2d 365, 367 (N.C. Ct. App. 2017) (internal quotation marks and citations omitted).

Second-degree murder is the unlawful killing of another human being with malice but without premeditation or deliberation. *State v. Coble*, 351 N.C. 448, 449, 527 S.E.2d 45, 47 (2000) (internal citation omitted).

Malice is an essential element of second-degree murder. North Carolina recognizes at least three malice theories: (1) express hatred, ill-will or spite; (2) commission of inherently dangerous acts in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief; or (3) a condition of mind which prompts a person to take the life of another intentionally without just cause, excuse, or justification.

Mosley, 806 S.E.2d at 367 (internal quotation marks and citations omitted). The second enumerated malice theory is known as depraved-heart malice. *Id.* While second-degree murder is generally punished as Class B1 felony, when the malice necessary to prove second degree murder is depraved-heart malice,¹ a second-degree murder is punished as a Class B2 felony. N.C. Gen. Stat. § 14-17(b)(1) (2017).

In *State v. Lail*, this Court held that the trial court did not err by sentencing defendant as a B1 felon upon a general verdict of guilty of second-degree murder where there was no evidence presented that would support a finding of depraved-heart malice or an instruction on that theory. 251 N.C. App. 463, 476, 795 S.E.2d, 401, 411 (2017). Moreover, the defendant did not rebut the State's malice theory, advance a depraved-heart malice theory argument, or request a jury instruction on

¹ N.C. Gen. Stat. § 14-17(b)(2) describes a second circumstance wherein a second-degree murder is punished as a B2 felony; that provision is inapplicable to this case.

depraved-heart malice. *Id.* at 475, 795 S.E.2d at 410. “Although the jury was not instructed to answer under what malice theory it convicted defendant of second-degree murder, it [wa]s readily apparent from the evidence presented and instructions given that the jury, by their verdict, found defendant guilty of B1 second-degree murder.” *Id.* See also *Mosley*, 806 S.E.2d at 368-69 (holding that a general verdict of guilty of second-degree murder *was* ambiguous and thus should be construed in favor of defendant as consistent with § 14-17(b)(1) because there was *not only* evidence supporting Class B1 malice *but also* evidence from which the jury could have found Class B2 depraved-heart malice).

The present case is analogous to *Lail*. The State’s theory was that Defendant intended to kill people at the basketball court, and the State’s evidence supported only malice theories punishable as B1 felonies. The jury was only instructed on malice theories punishable as B1 felonies; Defendant did not object to the jury instructions and did not request an instruction on depraved-heart malice. Moreover, Defendant did not advance a depraved-heart malice theory argument or present evidence that would be consistent with a depraved-heart malice theory. See *Lail*, 251 N.C. App. at 475, 795 S.E.2d at 410. “Although the jury was not instructed to answer under what malice theory it convicted defendant of second-degree murder, it [wa]s readily apparent from the evidence presented and instructions given that the jury, by

their verdict, found defendant guilty of B1 second-degree murder.” *Id.* Accordingly, the sentence imposed for a B1 offense was properly supported by the jury’s verdict.

D. Prior Record Level

Defendant argues that his stipulation on the prior record level worksheet was insufficient to support the trial court’s legal conclusion that Defendant was a prior record level IV offender with ten felony sentencing points. Defendant urges this Court to remand the case to the trial court for sentencing as a Level III offender.

We review a trial court’s determination of an offender’s prior record level, which is a conclusion of law, de novo on appeal—even when the parties have stipulated to prior convictions on a record level worksheet. *State v. Massey*, 195 N.C. App. 423, 429, 672 S.E.2d 696, 699 (2009).

Stipulation by the parties is sufficient to prove the existence of a prior conviction for sentencing purposes. N.C. Gen. Stat. § 15A-1340.14(f)(1) (2018). When a defendant stipulates to a conviction on a prior record level worksheet, “he is stipulating that the facts underlying his conviction justify that classification.” *State v. Arrington*, 371 N.C. 518, 522, 819 S.E.2d 329, 332 (2018) (holding that, while “second-degree murder has two potential classifications, B1 and B2, depending on the facts,” when defendant stipulated to the conviction as a B1 offense, he “properly stipulated that the facts giving rise to the conviction fell within the statutory definition of a B1 classification”).

Moreover, the trial court has “no duty to pursue further inquiry or make [the] defendant recount the facts during the hearing.” *State v. Salter*, 826 S.E.2d 803, 809 (N.C. Ct. App. 2019) (internal quotation marks and citation omitted). However, if there is clear record evidence “conclusively showing a defendant’s stipulation is to an incorrect classification” due to error or mistake, then “a reviewing court should defer to the record evidence rather than a defendant’s stipulation.” *State v. Green*, 831 S.E.2d 611, 617 (N.C. Ct. App. 2019) (holding that the trial court erred by assigning points according to defendant’s stipulation to *felony* classification, when a certified copy of the judgment showing conviction of *misdemeanor* had been presented to the trial court).

In this case, Defendant stipulated on the prior record level worksheet to the following prior conviction: “M-PUBLIC DISTURBANCE . . . Class 1.” Defendant argues that because “public disturbance” is a statutorily defined term under N.C. Gen. Stat. § 14-288.1(8) that applies to more than one misdemeanor classification under the “disorderly conduct” statute, N.C. Gen. Stat. § 14-288.4, the stipulation was too general to support the trial court’s conclusion that the prior offense was a Class 1 misdemeanor.² While there are multiple potential misdemeanor classifications of disorderly conduct, *see* N.C. Gen. Stat. § 14-288.4(c) (2017), Defendant stipulated to

² Defendant also argues that the stipulation to public disturbance was identified with a 2005 file number, even though it listed a conviction date of 1996, and thus the stipulation was “incoherent,” rendering it “impossible for the information on the prior record level worksheet . . . to be accurate.” We find no merit in this argument.

a Class 1 misdemeanor on his prior record level worksheet. In so doing, Defendant stipulated that the facts underlying his conviction justified that classification. *See Arrington*, 371 N.C. at 522, 819 S.E.2d at 332. The trial court had “no duty to pursue further inquiry or make defendant recount the facts during the hearing[.]” *Salter*, 826 S.E.2d at 803, and there is no record evidence suggesting that Defendant stipulated to an incorrect classification due to error or mistake, *see Green*, 831 S.E.2d at 617.

Accordingly, Defendant’s stipulation on the prior record level worksheet was sufficient to support the trial court’s calculation of sentencing points based on this prior conviction.

V. Conclusion

For the reasons explained above, we conclude that the trial court did not commit prejudicial error by admitting recordings of Defendant’s phone calls with others from jail and did not commit plain error by admitting videos of his interviews with investigators. We also conclude that the trial court imposed a sentence that was authorized by the jury’s verdict and properly calculated Defendant’s prior record level.

NO PREJUDICIAL ERROR.

Chief Judge MCGEE and Judge BERGER concur.