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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-488

Filed: 18 February 2020

Cumberland County, No. 14CRS062033-34

STATE OF NORTH CAROLINA

v.

CARLOS J. ENGLE, Defendant.

Appeal by Defendant from judgment entered 28 August 2018 by Judge James Floyd Ammons, Jr., in Cumberland County Superior Court. Heard in the Court of Appeals 21 January 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Michael E. Bulleri, for the State.

Kimberly P. Hoppin for the Defendant.

BROOK, Judge.

Carlos J. Engle (“Defendant”) appeals from judgments entered upon jury verdicts finding him guilty of first-degree felony murder, first-degree kidnapping, and conspiracy to commit robbery with a dangerous weapon. Defendant contends that the trial court erred in admitting (1) certain testimony of Defendant’s prior bad acts committed with his co-conspirator, Deshavonte Kemp (“Kemp”); (2) text messages

sent from Defendant's cellphone; and (3) evidence of the victim's character. We disagree and find no prejudicial error.

I. Background

A. Factual Background

i. 25 to 26 September 2014

The evidence presented at trial tended to show the following facts about 25 and 26 September 2014.

At 5:00 a.m. on 25 September 2014, Mark Boyd, Jr., ("Boyd") boarded a bus from Grand Central Station in New York City bound for Saint Augustine, Florida. Boyd intended to ride his bicycle from Jacksonville, Florida to San Diego, California. When the bus arrived at a stop around 10:00 p.m. in Fayetteville, North Carolina, security guard Kevin Holmes ("Holmes") testified that Boyd was sleeping on the bus after the other passengers disembarked. When Holmes woke Boyd up, Boyd became "belligerent" and appeared to Holmes to be "very intoxicated." Holmes removed Boyd from the bus and eventually called the police when Boyd "swung on" him. Holmes stood at the front of the terminal "[t]o keep an eye on" Boyd while he waited for the police to come.

Defendant and Kemp went to the Greyhound station that evening to sell crack cocaine together.¹ Kemp drove his car, a “gold-ish” sedan with no hubcaps, to the station. When they arrived, Defendant got out of the car to walk around the station, but Kemp stayed in the car to talk on the phone, arguing with his child’s mother. He used Defendant’s phone because Kemp’s phone did not have cellular service.

David McGee (“McGee”), a local man familiar with Defendant and Kemp, was at the station the night of 25 September 2014. He saw Boyd and “felt sorry for him” after he saw Holmes drag Boyd off the bus, so he spoke to him and helped him walk across the street with his belongings, to get off of Greyhound property. While Boyd and McGee were speaking across the street from the station, Defendant approached them and started speaking to Boyd. Defendant told Boyd he had a hotel room that he was not going to stay in for the night and that he would rent it to Boyd for \$20; Boyd agreed.

After speaking with Boyd, Defendant returned to Kemp and told him to leave the bus station and pull into the parking lot of a motel across the street from the station. Defendant told Kemp that they were going to help Boyd find a hotel room for the night. Kemp believed Boyd looked “pretty drunk.” Defendant, Boyd, and

¹ At trial, Kemp testified for the State that he had known Defendant for about two years before 25 September 2014, and that he had met Defendant because Kemp’s godmother was Defendant’s girlfriend. Over the course of those two years, the two men saw each other three to four times a week and sold drugs together, often at the Greyhound bus station in Fayetteville. The two shared an apartment with several other people.

McGee started loading Boyd's belongings—bags, a box, and bicycle equipment—into Kemp's car. McGee then left, and Defendant and Boyd got into Kemp's car. Defendant directed Kemp to drive a few minutes to a house where Defendant purchased marijuana. Defendant then directed Kemp to a store to buy cigarettes and cigars in which to smoke the marijuana. When Defendant came back to the car, "[h]e leaned over . . . and told [Kemp they] were going to smoke this weed and we were going to rob him." Kemp "needed the money[,] so [he] was all for it." Boyd was dozing off in the backseat and occasionally asked where he was. Boyd complained that they were taking too long to take him to a hotel, and Defendant told him they were on their way.

Kemp then drove with Defendant and Boyd to the house of Kemp's grandmother. He parked outside, and he and Defendant smoked the marijuana. After about 15 or 20 minutes, Kemp drove down a dirt road and stopped the car. Defendant turned on the light inside the car, turned around, and hit Boyd—asleep at the time—in the forehead with a gun. Defendant and Kemp got out of the car, and Kemp opened the door and tried to pull Boyd out of the car. Kemp could not get Boyd out of the car because Boyd was holding onto the seat and fighting back. Defendant told Kemp to move and pointed the gun at Boyd. Defendant pulled Boyd out of the car by the neck of his shirt, and Boyd fell to the ground. The three men struggled as Defendant and Kemp tried to pull Boyd's bookbag off of him, and Defendant fired

three shots at Boyd, striking him in the abdomen and leg. Boyd tried to get back into the car, and Defendant shot him again. Defendant and Kemp got back into the car, and Kemp drove away; some of Boyd's belongings were still in the car.

Defendant and Kemp drove back to their apartment and began looking through Boyd's belongings in the kitchen, including a bicycle in a box, clothes, a camping stove, tools, and bicycling maps. Defendant went through the pockets of Boyd's clothing and found \$200 in cash; he gave Kemp half.

Kemp learned by watching the news the next day, 26 September 2014, that Boyd had died. Defendant suggested that they should go back to the Greyhound station to "show [their] face[s]" so they would not "look guilty." Kemp drove them in his car to the convenience store across the street from the station. When they arrived, they saw McGee, who asked them for a cigarette. After Kemp handed McGee a cigarette, McGee walked behind Kemp's car and stood there for a few seconds; Kemp was worried "[h]e was trying to memorize my license plate."

ii. The Investigation

Fayetteville Police Officer Daniel Edmonds ("Officer Edmonds") responded to a call reporting shots fired in the late evening of 25 September or early morning of 26 September 2014. Officer Edmonds found Boyd lying in the road. Boyd was transported to the hospital for his injuries but died in the operating room. The autopsy revealed that Boyd's blood alcohol concentration ("BAC") was 0.31 percent

when he died. The medical examiner testified that Boyd died between several minutes and several hours after being shot.

Police interviewed McGee on 26 September 2014. McGee described Kemp's vehicle and told police he saw Boyd with two men, although he did not know the names of Boyd, Kemp, or Defendant at the time of the interview. McGee spoke with police again the following day, 27 September 2014. During that interview, he provided police with a partial plate number for Kemp's car, which he had recorded after observing Kemp's car. Using the description of the car and the partial plate number, police eventually located Kemp's car at the apartment complex where Kemp and Defendant lived.

Police used video surveillance footage to identify Kemp's car, and they located it at the apartment that Kemp and Defendant shared. Defendant and Kemp realized the police were outside their apartment and decided to "get [thei]r stories in check" before they spoke to the police; they decided they would say "[t]hat [they] were going to help [Boyd] find a room . . . [and that] he had got [sic] upset or whatnot and [they] kicked him out and drove off." Defendant took Kemp's clothes from the night before out of the laundry basket and set them on fire in the bathtub, setting off the fire alarm.

Pursuant to a search warrant, police searched Defendant and Kemp's apartment. Inside Defendant's apartment, police found bicycle route maps, a

camping stove and fuel, and bicycle saddlebags containing chain lubricant, a rain poncho, a tire patch kit, and a multitool. Members of Boyd's family identified the items as those that Boyd packed for his trip. Police also found the charred remains of a shirt in the bathtub.

Police also interviewed Defendant. Defendant told police that he came into contact with Boyd at the Greyhound station because "Boyd was drunk and could not get back on the bus[.]" Defendant told police he offered to take Boyd to a hotel room that would be cheaper than the ones close to the station and that he helped Boyd carry his belongings to Kemp's car. Defendant told police that he and Kemp dropped Boyd off behind a store with his belongings and left him.

iii. Trial

Defendant was tried in Cumberland County Superior Court before the Honorable Gale M. Adams, but the jury could not reach a unanimous verdict, and a mistrial was declared on 28 February 2018. Defendant was retried at the 20 August 2018 session of Cumberland County Superior Court before Judge Ammons.

At trial, Boyd's stepmother, Susanne Boyd, testified over Defendant's objection to Boyd's experiences over the last several years of his life. She testified that he "volunteered to teach inner city school kids to read" in Boston, taught English as a second language in South Korea, and "enjoyed going around and seeing the cultures." She testified "he was a free spirit[.]" and that this desire to travel the world led to

Boyd's interest in biking across the country from Florida to California. The prosecutor asked her questions about the items police found in Defendant and Kemp's apartment and at the scene of the murder. The prosecutor also asked her the following question:

[PROSECUTOR]: And did Mark wear any kind of bracelet about the time that he left for this trip?

[MRS. BOYD]: He actually had a string around his wrist and . . . he got that in South America from a woman that tied it onto him and said[, "I don't take it off. It will keep you safe.["]

Before Kemp testified and outside the presence of the jury, the trial court held a hearing to determine the admissibility of certain evidence of Defendant's and Kemp's prior relationship. The State argued that testimony that Kemp and Defendant had known each other for a period of time and sold drugs together was relevant to establishing the conspiracy, to proving they aided and abetted each other and acted in concert, and that the testimony would help the jury understand the events of 25 to 27 September 2014. Defendant objected as follows:

[DEFENSE COUNSEL]: The testimony of the prior drug dealing doesn't have anything to do with the homicide that occurred on this night. The motive for the homicide, Mr. Kemp will testify – . . . Kemp's previously testified that [Defendant] shot and killed Mark Boyd, because [Defendant] was mad about something and it had nothing—the motive for the homicide and the three of them being together at that time was not for the purpose of buying or selling drugs.

He testified that they were meant to smoke

marijuana while Boyd was with them. I believe he'll testify that they went down to the bus station to buy or sell marijuana. So, an extensive prior history of drug dealing and drug activity between the Defendant and [] Kemp, which has nothing to do with homicide is nothing but inflammatory, and in violation of Rule 403, which is . . . evidence that's otherwise relevant must be excluded if it violates Rule 403.

The trial court then heard testimony outside the presence of the jury from Kemp in order to rule on the admissibility of this testimony. Defendant objected to the proffered testimony based on Rules 401 and 403 of the North Carolina Rules of Evidence, arguing that the testimony was irrelevant and, even if it were relevant, the prejudicial effect of the testimony substantially outweighed its probative value.

After hearing the proffered testimony, the trial court ruled that the testimony regarding Defendant and Kemp's history of selling drugs together was relevant and that the prejudicial effect did not substantially outweigh its probative value. It ruled that the testimony was "relevant to show the [identity] of the perpetrators of these crimes, motive, modus operandi, knowledge, and a working relationship between the two, which goes to the conspiracy as well as the other theories of acting in concert and aiding and abetting." The trial court placed several restrictions on the testimony, however. The State was permitted to elicit testimony from Kemp that (1) he had known Defendant for about two years; (2) he sold drugs with Defendant; (3) they sold drugs together at the Greyhound bus station on several occasions; (4) they used Kemp's car or Kemp's mother's car; (5) sometimes Defendant used Kemp's car

without Kemp; (6) Kemp and Defendant were together on the night of the murder; and (7) Defendant procured the drugs for sale on the night of the murder. The trial court prohibited the State from eliciting testimony regarding (1) what type of drugs they sold prior to 25 September 2014, or (2) who procured the drugs for sale on any occasion prior to 25 September 2014. Defendant renewed his objections during Kemp's testimony.

The State entered, over objection, text messages from Defendant's phone from the days surrounding Boyd's murder. Defendant objected that the State had not laid sufficient foundation that Defendant sent the messages from his phone. One outgoing message at 3:17 p.m. on 24 September 2014 to someone listed in Defendant's phone as Bill Jaccson ("Jaccson") read, "I'm trying to get back straight. I got 30 of what I owe you." Then a text message was sent from Defendant's phone to Jaccson at 1:14 a.m. on 26 September 2014 that read, "What up, big homie. I need to see you today. I need to get that from you. I got my piece."

B. Procedural History

The jury returned verdicts of guilty on all counts. The trial court entered judgments on the verdicts and then arrested judgment on the charge of robbery with a dangerous weapon because it was an element of the felony murder charge. The trial court sentenced Defendant to life imprisonment without the possibility of parole on the first-degree felony murder charge, a term of 110 to 144 months' imprisonment

on the first-degree kidnapping charge, and a term of 38 to 58 months' imprisonment on the conspiracy to commit robbery with a dangerous weapon charge, the sentences to run consecutively.

Defendant gave oral notice of appeal in open court on 28 August 2018.

II. Analysis

Defendant alleges that the trial court prejudicially erred in (1) admitting evidence of Defendant's prior bad acts in violation of North Carolina Rule of Evidence 404; (2) admitting certain text messages without proper authentication in violation of Rule 901; and (3) admitting testimony of the victim's good character. For the reasons explained below, we disagree.

A. Evidence of Defendant's Prior Crimes

Defendant contends that "the trial court erred in admitting, over objection, irrelevant and prejudicial evidence of [Defendant's] drug-dealing." We disagree.

i. Standard of Review

In reviewing the admission of evidence of other crimes, wrongs, or acts of a criminal defendant, we engage in a three-prong analysis. *State v. Adams*, 220 N.C. App. 319, 323, 727 S.E.2d 577, 580-81 (2012). First, we review de novo "whether the evidence was offered for a proper purpose under Rule 404(b), then determine whether the evidence is relevant under Rule 401, and finally determine whether the trial court abused its discretion in balancing the probative value of the evidence under Rule

403.” *Id.* “A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision.” *State v. Ward*, 354 N.C. 231, 264, 555 S.E.2d 251, 272 (2001) (citation omitted). “Defendant bears the burden of showing that the evidence was erroneously admitted and that he was prejudiced by the error.” *State v. Kirby*, 206 N.C. App. 446, 456, 697 S.E.2d 496, 503 (2010).

ii. Merits

North Carolina Rule of Evidence 404(b) provides as follows:

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, entrapment or accident.

N.C. Gen. Stat. § 8C-1, Rule 404(b) (2019). “Evidence of a defendant’s past and distinctly separate, criminal activities or misconduct is generally excluded when its only logical relevancy is to suggest defendant’s predisposition to commit the type of offenses he is presently charged with.” *State v. Johnson*, 317 N.C. 417, 425, 347 S.E.2d 7, 12 (1986), *superseded by statute*, N.C. Gen. Stat. § 8C-1, Rule 404(b), *on other grounds as recognized in State v. Moore*, 335 N.C. 567, 594, 440 S.E.2d 797, 812 (1994). The list of “other purposes” in the statute “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). “Rule 404(b) is a rule of inclusion, subject to the single exception that such evidence must be excluded if its *only* probative value is to show that defendant has the propensity or disposition to commit an offense of the nature of the crime charged.” *State v. Berry*, 356 N.C. 490, 505, 573 S.E.2d 132, 143 (2002).

The testimony at issue is both relevant to a permissible purpose and to these proceedings. Here, the State did not submit evidence that Defendant and Kemp regularly sold drugs together at the Greyhound station “to prove the character of [Defendant] in order to show that he acted in conformity therewith[,]” that is, that he had sold drugs before and therefore was selling drugs on 25 September 2014. *See* N.C. Gen. Stat. § 8C-1, Rule 404(b) (2019). Indeed, the trial court ruled that Kemp’s testimony regarding his history of dealing drugs with Defendant at the Greyhound station was “relevant to show the [identity] of the perpetrators of these crimes, motive, modus operandi, knowledge, and a working relationship between the two, which goes to the conspiracy as well as the other theories of acting in concert and aiding and abetting.” That Defendant and Kemp knew each other, worked together, and acted in concert from 25 to 27 September 2014 were material facts the State sought to establish in order to prove Defendant was guilty of the crimes charged. The evidence carried probative value beyond solely showing “that [D]efendant ha[d] the propensity or disposition to commit an offense of the nature of the crime charged.” *Berry*, 356 N.C. at 505, 573 S.E.2d at 143. Therefore, we disagree with Defendant

that the trial court erred in ruling that the above testimony was admissible under Rules 404(b) and 401.

We now consider whether the trial court abused its discretion in ruling that the above evidence's prejudicial effect did not substantially outweigh its probative value under Rule 403. Evidence of prior bad acts by a criminal defendant has an "overwhelming potential for prejudice[.]" *State v. Scott*, 331 N.C. 39, 44, 413 S.E.2d 787, 789 (1992). The danger associated with such "extrinsic offense evidence is that the jury may convict the defendant not for the offense charged but for the extrinsic offense." *Id.*, 413 S.E.2d at 790 (citation omitted).

The trial court here limited Kemp's testimony to its permissible purposes in order to minimize the potential prejudicial effect. The trial court permitted the State to elicit testimony from Kemp that (1) he had known Defendant for about two years; (2) he sold drugs with Defendant; (3) they sold drugs together at the Greyhound bus station on several occasions; (4) they used Kemp's car or Kemp's mother's car; (5) sometimes Defendant used Kemp's car without Kemp; (6) Kemp and Defendant were together on the night of the murder; and (7) Defendant procured the drugs for sale on the night of the murder. The trial court prohibited the State from eliciting testimony regarding (1) what type of drugs they sold prior to 25 September 2014, or (2) who procured the drugs for sale on any occasion prior to 25 September 2014. These limitations make clear that the trial court was exercising its discretion in weighing

the prejudicial effect and probative value of the testimony at issue, and we cannot say its “ruling was so arbitrary that it could not have been the result of a reasoned decision.” *Ward*, 354 N.C. at 264, 555 S.E.2d at 272 (citation omitted).

B. Text Messages

Defendant contends that the trial court erred in admitting unauthenticated text messages sent from Defendant’s phone. We hold the trial court did not abuse its discretion in determining the messages were sufficiently authenticated.

i. Standard of Review

In reviewing the denial of a motion in limine challenging the admission of evidence under Rule 901, this Court will reverse only for an abuse of discretion. *State v. Wilkerson*, 223 N.C. App. 195, 198, 733 S.E.2d 181, 183 (2012).

ii. Merits

Under Rule 901, “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” N.C. Gen. Stat. § 8C-1, Rule 901(a) (2019). The rule also provides a nonexclusive list of methods of acceptable authentication, including testimony from a knowledgeable witness “that a matter is what it is claimed to be[, including:] appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with

circumstances[.]” *Wilkerson*, 223 N.C. App. at 198, 733 S.E.2d at 183 (internal marks and citation omitted).

Here, Defendant objected to the introduction of a text message sent to Jaccson before Boyd’s death that read, “I’m trying to get back straight. I got 30 of what I owe you[,]” and one sent after his death reading, “What up, big homie. I need to see you today. I need to get that from you. I got my piece.” Defendant argued that the State had not presented “evidence sufficient to support a finding that” the text messages were messages sent by Defendant. N.C. Gen. Stat. § 8C-1, Rule 901(a) (2019). After hearing argument from both parties, the trial court overruled Defendant’s objection. The State presented the following evidence that the phone in question belonged to Defendant: (1) Defendant gave police two phone numbers that he indicated were his, the number of the phone in question and another number that appeared in that phone as “my wife”; and (2) Kemp told police the phone belonged to Defendant. The State also presented evidence that Defendant was using his phone around the time of the events at issue: for example, an outgoing call to someone listed in Defendant’s phone as “Van” occurred at 10:43 p.m. on 25 September 2014. Two minutes later, an outgoing text message to Van that read “outside” was sent from the same phone. Police traced the phone number to a Van Cooper on Cool Spring Street; Kemp testified they went to Cool Spring Street where Defendant purchased marijuana. We cannot say that the trial court’s determination that the text messages were what the State

claimed they were—that is, text messages sent by Defendant before and after the murder and robbery—“was so arbitrary that it could not have been the result of a reasoned decision.” *Ward*, 354 N.C. at 264, 555 S.E.2d at 272 (citation omitted).

C. Character Evidence

In his third argument on appeal, Defendant contends that the “the trial court committed reversible error by admitting, over objection, irrelevant evidence of the decedent’s good character.” Defendant contends that the trial court erred in determining that certain evidence regarding Boyd’s past was relevant under Rule 401, and then that the trial court erred in determining that the evidence was not substantially more prejudicial than it was probative under Rule 403. We find no prejudicial error.

i. Standard of Review

We review a trial court’s determination regarding whether evidence is relevant de novo because that determination is a conclusion of law. *Kirby*, 206 N.C. App. at 456, 697 S.E.2d at 503. However, “we accord [a trial court’s rulings on relevancy] great deference on appeal.” *State v. Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 223 (2011).

“We review a trial court’s decision to exclude evidence under Rule 403 for abuse of discretion.” *State v. Whaley*, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008). Once a defendant establishes error, the defendant bears the burden of proving that “there is a reasonable possibility that, had the error in question not been committed, a

different result would have been reached at [] trial[.]” N.C. Gen. Stat. § 15A-1443(a) (2019).

ii. Merits

“Relevant evidence is defined as 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.” *Kirby*, 206 N.C. App. at 456, 697 S.E.2d at 503 (internal marks and citation omitted). Evidence “is relevant if it can assist the jury in ‘understanding the evidence.’” *State v. Huang*, 99 N.C. App. 658, 663, 394 S.E.2d 279, 283 (1990) (quoting *State v. Kennedy*, 320 N.C. 20, 32, 357 S.E.2d 359, 366 (1987)).

Defendant contends that evidence submitted by the State that Boyd (1) “volunteered to teach inner city school kids to read”; (2) “taught English as a second language” in South Korea; (3) “enjoyed going around and seeing cultures”; and (4) “was a free spirit” was irrelevant evidence of his character that “suggest[ed] to the jury an improper and emotional basis on which to make its decision.”

Assuming without deciding that this testimony was admitted in error, we conclude that Defendant has not established prejudice, that is, that “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached[.]” N.C. Gen. Stat. § 15A-1443(a) (2019). The State presented testimony from Kemp, an eyewitness and co-conspirator, that Defendant

and Kemp convinced Boyd to get in Kemp's car with them because they told him they would find him a hotel room. The testimony of McGee corroborated this evidence. Kemp testified that Defendant hit Boyd in the head with his gun, shot Boyd multiple times, left him in the road while Defendant and Kemp drove away with Boyd's belongings in Kemp's car, and divided the proceeds from the robbery. The State submitted further evidence that police found Boyd's belongings in Defendant's apartment, and that Defendant attempted to burn Kemp's shirt from the night of the murder and robbery. We therefore conclude that Defendant has not met his burden of establishing a reasonable possibility of a different result absent the admission of the testimony about Boyd.

III. Conclusion

We conclude that the trial court did not err in admitting testimony about Defendant and Kemp's history of working together and that it did not abuse its discretion in determining that the prejudicial effect of such testimony did not substantially outweigh its probative value. We further conclude that the trial court did not abuse its discretion in admitting the text messages sent from Defendant's phone. Finally, assuming *arguendo* that the admission of certain testimony about the murder victim was error, we conclude that Defendant did not establish he was prejudiced by its admission. We therefore hold that Defendant received a trial free from prejudicial error.

STATE V. ENGLE

Opinion of the Court

NO ERROR.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).