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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-1

Filed 20 August 2024

Mecklenburg County, Nos. 18 CRS 213903, 18 CRS 213905

STATE OF NORTH CAROLINA

v.

RICHARD HENRY JORDAN, JR.

Appeal by defendant from judgment entered 4 April 2023 by Judge George C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 12 June 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Robert C. Montgomery, for the State.

Marilyn G. Ozer for defendant-appellant.

DILLON, Chief Judge.

Defendant Richard Henry Jordan, Jr., appeals his conviction for first-degree murder. We conclude Defendant received a fair trial, free of reversible error.

I. Factual Background

Alexus Fraley went missing on 13 April 2018. Two weeks later, on 27 April 2018, Ms. Fraley's body was found in an abandoned barn. She had died of

undetermined trauma, and her body was badly burned by chemicals.

Evidence at trial tended to show as follows: Prior to going missing, Ms. Fraley was last seen at the home where Defendant sometimes resided. On the morning she went missing, Ms. Fraley was seen arguing and physically fighting with Defendant in the home because Defendant accused Ms. Fraley of stealing his safe which contained cocaine and large amounts of cash.

Cell phone location data placed Defendant in the area of the abandoned barn on the day Ms. Fraley was reported missing and again in the early morning hours two days later. Law enforcement found Ms. Fraley's body at the abandoned barn when Ashley Helm's boyfriend led them there. Further, a jailhouse informant testified that Defendant (his cellmate) told him that he killed a girl for stealing his money and drugs and hid her body in an old house behind the Charlotte airport with the help of a white girl named Ashley.

Following a jury trial, Defendant was found guilty of first-degree murder and sentenced to life without parole. Defendant appeals.

II. Analysis

Defendant presents multiple arguments on appeal, which we address in turn.

A. Juror Challenge

Defendant first argues that the trial court erred in failing to remove a juror for cause during jury selection. We disagree.

Because the juror was not removed for cause, Defendant used one of his

peremptory challenges to strike the juror. Defendant complied with the relevant procedure to preserve this issue for appellate review: Defendant exhausted his available peremptory challenges, he renewed his challenge, and the trial court denied his renewal motion. *See* N.C. Gen. Stat. § 15A-1214(h) (2023).

“We review a trial court’s ruling on a challenge for cause for abuse of discretion.” *State v. Lasiter*, 361 N.C. 299, 301–02, 643 S.E.2d 909, 911 (2007) (internal marks omitted).

Defendant provided two reasons to strike the juror for cause: (1) the juror’s upcoming wedding and (2) the juror’s feelings regarding drug dealers.

Many prospective jurors are concerned by the length of time required to participate in a trial. *See State v. Reed*, 355 N.C. 150, 160, 558 S.E.2d 167, 174 (2002). When a prospective juror is concerned by the possible impact of the trial’s estimated length, the trial court must consider what it has observed and heard during *voir dire* to determine whether the prospective juror could render a fair verdict despite those concerns. *See id.* *See also State v. Sherman*, 231 N.C. App. 670, 675–76, 752 S.E.2d 782, 785 (2014) (concluding that the trial court did not err in denying the defendant’s for-cause challenge of a prospective juror who had orders to report for military service before the projected end of trial).

Here, during *voir dire*, the prospective juror told the trial court that she would need to leave town in a few weeks for her upcoming wedding in another state. The trial court assured the prospective juror that the court would substitute an alternate

for her juror spot if the trial was not completed by the date she needed to leave, thus alleviating her concerns about the trial's length.

[E]ven after a prospective juror initially voices sentiments that would normally make him or her vulnerable to a challenge for cause, the prospective juror may nevertheless serve if the prospective juror later confirms that he or she will put aside prior knowledge and impressions, consider the evidence with an open mind, and follow the law applicable to the case. . . . A judge who observes the prospective juror's demeanor as he or she responds to questions and efforts at rehabilitation is best able to determine whether the juror should be excused for cause.

State v. Rogers, 355 N.C. 420, 430, 562 S.E.2d 859, 867 (2002).

Here, the prospective juror expressed negative associations with drug dealers based on her family history. However, she later expressed that she could be fair to Defendant, she would follow the law, and she would listen to the testimony as it was presented and fulfill her role as a juror. The trial court was able to consider her responses and appropriately determine that she effectively rehabilitated herself and did not need to be excused for cause.

Accordingly, the trial court did not abuse its discretion in denying Defendant's challenge for cause.

B. Evidentiary Challenges

Defendant argues that the trial court erred in admitting the following evidence. We disagree.

1. Text Messages Between Defendant and Co-Defendant

The trial court admitted into evidence text messages that Defendant sent his co-defendant Ashley Helms in the time period after Ms. Fraley's disappearance but before her body was discovered.

The admitted text messages are reproduced below:

DEFENDANT: This Rich with my new number.. delete the old one.

ASHLEY: Baby I need you help

DEFENDANT: What's wrong

ASHLEY: Go to his apt

ASHLEY: Take iron

DEFENDANT: Who's

ASHLEY: 5832 reddman rd

ASHLEY: He not home

ASHLEY: Apt 12

ASHLEY: Take iron

ASHLEY: Anything u find

ASHLEY: I'm doing it today

ASHLEY: Need your help

DEFENDANT: I with you baby but I have to pick my iron [firearm] up I took it out my crib because of the s**t that's going on

ASHLEY: When we get back n he c it gone he gone flip so I'm gone need u

DEFENDANT: Ok

DEFENDANT: Delete your messages

ASHLEY: Ok

ASHLEY: Lmk when u do it

These text messages were admitted under the hearsay exception for party admissions. *See* N.C. Gen. Stat. § 8C-1, Rule 801(d) (2023). Moreover, Ashley’s messages were not hearsay: Her messages were admitted to show the context of Defendant’s messages, not for the truth of the matter asserted. *See State v. Castaneda*, 215 N.C. App. 144, 147, 715 S.E.2d 290, 293 (2011) (admitting statements for the purpose of providing context). The trial court provided a limiting instruction to the jury which instructed them not to consider Ashley’s messages for the truth of the matter asserted.

Defendant contends the text messages were irrelevant and unduly prejudicial.

First, we consider whether the text messages were relevant under Rule 401 of our Rules of Evidence, which defines relevant evidence 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.” N.C. Gen. Stat. § 8C-1, Rule 401 (2023). Our Supreme Court has instructed that this relevancy threshold is “relatively lax.” *State v. McElrath*, 322 N.C. 1, 13, 366 S.E.2d 442, 449 (1988).

Our Supreme Court has explained that we are to review a trial court’s Rule 401 relevancy determination *de novo*. *State v. Triplett*, 368 N.C. 172, 175, 775 S.E.2d

805, 807 (2015). But, in the same paragraph of *Triplett*, our Supreme Court reiterates language from one of its prior opinions that the trial court’s “rulings on relevancy are technically not discretionary, though we accord them great deference on appeal.” *Id.* (quoting *State v. Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 223 (2011)).

Here, even without giving any deference to the trial court’s ruling, we conclude that the text messages were relevant. Without Ashley’s messages, Defendant’s text messages would not make sense. The full text conversation was necessary to understand the context of Defendant’s statements, making them relevant.

Even though evidence may be relevant under Rule 401, that evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]” N.C. Gen. Stat. § 8C-1, Rule 403 (2023). We review the trial court’s Rule 403 determination for abuse of discretion. *Triplett*, 368 N.C. at 175, 775 S.E.2d at 807.

Here, we have reviewed the record and cannot say that the trial court abused its discretion in admitting the text messages into evidence. The probative value (*i.e.*, giving context to Defendant’s messages) was not substantially outweighed by any prejudice. Moreover, the trial court provided a limiting instruction, and “[j]urors are presumed to follow the instructions given to them by the court.” *State v. Parker*, 377 N.C. 466, 474, 858 S.E.2d 595, 600 (2021).

Defendant also argues that admission of the text messages violated his constitutional rights under the Confrontation Clause. *See* U.S. Const. Amend. VI;

N.C. Const. Art. I, Sec. 23. However, the Confrontation Clause “does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.” *Crawford v. Washington*, 541 U.S. 36, 59 n. 9 (2004). Because Ashley’s text messages were not admitted for establishing the truth of the matter (*i.e.*, they were not hearsay), the Confrontation Clause does not apply here.

2. “Round Trip Time” Cell Phone Location Data

Defendant argues that the trial court erred by admitting expert testimony regarding the location of Defendant’s cell phone based on Round Trip Time (“RTT”) data. We disagree.

An FBI special agent (and member of the FBI’s Cellular Analysis Survey Team) testified he utilized RTT and other cell phone data provided to him by Verizon and T-Mobile to determine where Defendant’s and others’ cell phones were located.

The admission of expert testimony under Rule 702(a) is governed by the U.S. Supreme Court’s decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which was adopted by our Supreme Court in *State v. McGrady*, 368 N.C. 880, 888, 787 S.E.2d 1, 7–8 (2016).

We review a trial court’s ruling on Rule 702(a) for abuse of discretion. *Id.* at 893, 787 S.E.2d at 11. A reviewing court will find an abuse of discretion “only upon a showing that [the] ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision.” *Id.* Our Court does not mandate any precise procedural requirements for how the trial court exercises its gatekeeping function.

Id.

Rule 702(a) of our North Carolina Rules of Evidence requires a trial court to perform a “three-pronged” analysis to determine the reliability of an expert’s testimony.

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:

- (1) The testimony is based upon sufficient facts or data.
- (2) The testimony is the product of reliable principles and methods.
- (3) The witness has applied the principles and methods reliably to the facts of the case.

N.C. Gen. Stat. § 8C-1, Rule 702(a) (2023).

A trial court can—but is not required—to consider several nonexclusive factors in determining the reliability of an expert's opinion:

- (1) whether a theory or technique . . . can be (and has been) tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the theory or technique's known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; and (5) whether the theory or technique has achieved general acceptance in its field.

McGrady, 368 N.C. at 890–91, 787 S.E.2d at 9 (quoting *Daubert*, 509 U.S. at 593–94).

Accordingly, this Court

has discretion to consider any of the particular factors articulated in previous cases, or other factors it may identify, that are reasonable measures of whether the expert's testimony is based on sufficient facts or data, whether the testimony is the product of reliable principles and methods, and whether the expert has reliably applied those principles and methods in that case.

Id. at 892, 787 S.E.2d at 10.

Defendant argues only that the FBI agent's testimony concerning RTT violated subsection (a)(2) of Rule 702 because it was not "the product of reliable principles and methods." He provides two reasons to contest admission of the evidence: (1) the FBI agent did not know whether RTT had been subject to peer review and (2) the FBI agent did not know RTT's potential rate of error.

Here, there is no evidence that the testimony was not reliable. The FBI agent's testimony that he was unaware of any peer review for the use of RTT for location determination is not dispositive to the reliability of RTT data. *See Daubert*, 509 U.S. at 594 ("The fact of publication (or lack thereof) in a peer reviewed journal thus will be a relevant, though not dispositive, consideration in assessing the scientific validity of a particular technique or methodology on which an opinion is premised."). The FBI agent testified that he had utilized RTT hundreds of times since 2009. During that time, he successfully used it to find "missing persons, fugitives, bodies, evidence," as well as pieces of a handgun and a phone tossed on the side of a highway. Further, the FBI agent testified that the measurements made by using RTT were accurate to within one-tenth of a mile. The FBI agent noted this constituted a potential error

rate that was not fatal to the use of RTT because his expert testimony was only related to a general location rather than pinpointing an exact location. The FBI agent used RTT data to plot the general location of Defendant's cell phone at times relevant to the murder and disposal of the victim's body. Based on the record before us, there is no evidence that the data used in the FBI agent's testimony was not reliable.

The record shows the testimony by the FBI agent was based upon sufficient facts or data. Our Court has allowed the admission of cell site location information ("CSLI") in the past. *See, e.g., State v. Crawley*, 217 N.C. App. 509, 514–25, 719 S.E.2d 632, 636–37 (2011) (officer testified as to how he mapped out locations based on cell phone data); *State v. Perry*, 243 N.C. App. 156, 158–59, 776 S.E.2d 528, 531 (2015) (cell phone tower "pings" used to determine general area of phone's last "pinged" location). RTT data is simply an extension of CSLI.

Here, the FBI agent explained to the jury the techniques used to make location determinations using RTT. These techniques were based upon the following concepts: the way cell phones operate through cell towers in a certain sector, the use of the time interval for a signal sent to a cell phone to return to the tower to generate a distance calculation, and the plotting of points on a map to show locations of the phone. Based on the record before us, there is no evidence that the data used in the FBI agent's testimony was not sufficient.

The FBI agent's testimony clearly fits the facts of the case. The State sought to introduce evidence of Defendant's location at times relevant to the murder and

disposal of the body through the testimony of the FBI agent. His testimony tended to show Defendant's phone was near the location where the victim's body was found on the day she was reported missing and in the early morning hours two days later.

The FBI agent's expert testimony used reliable RTT data to explain to the jury information regarding the location of Defendant's phone that was relevant to the case. Therefore, the testimony was admissible under Rule 702(a). Consequently, we hold the trial court did not abuse its discretion by admitting the testimony.

NO ERROR.

Judges GORE and THOMPSON concur.

Report per Rule 30(e).