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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-610

Filed 17 September 2024

Buncombe County, No. 22 CRS 1610

STATE OF NORTH CAROLINA

v.

RICKY FRANCIS RAWSON, JR., Defendant.

Appeal by Defendant from judgment entered 15 December 2022 by Judge R. Gregory Horne in Buncombe County Superior Court. Heard in the Court of Appeals 14 August 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sharon Patrick-Wilson, for the State.

Anne Bleyman for defendant-appellant.

MURPHY, Judge.

To prevail on a motion to dismiss criminal charges under N.C.G.S. § 15A-954(a)(4), a defendant must show both that his constitutional rights were flagrantly violated and that the constitutional violation irreparably prejudiced the preparation of his case. Where no such prejudice occurred, dismissal of charges is not an appropriate remedy; and, here, where Defendant made no such showing of prejudice,

we cannot say the trial court erred in denying his motion to dismiss under N.C.G.S. § 15A-954(a)(4).

Furthermore, under Rule 403 of our Rules of Evidence, otherwise relevant evidence is only properly excluded if its probative value is substantially outweighed by the danger of, *inter alia*, confusion of the issues or unfair prejudice. Here, where testimony of Defendant's prior behavior carried a high propensity to confuse the jury or unfairly prejudice Defendant but was critical to contextualize the requisite intent for the offense with Defendant was charged, we cannot say the failure to exclude the evidence constituted an abuse of discretion by the trial court.

BACKGROUND

Defendant appeals from his 15 December 2022 conviction on a single charge of violating a domestic violence protective order ("DVPO") under N.C.G.S. § 50B-4.1(a) in Buncombe County Superior Court. The trial in Superior Court was held pursuant to an appeal from a conviction on the same charge in Buncombe County District Court on 19 October 2022. At issue in the case was the allegedly threatening content of an email sent from Defendant to the mother of his child and beneficiary of the DVPO ("Mother"). The email chain between Defendant and Mother containing the alleged threat concerned a visitation irregularity involving their child and read as follows:

[MOTHER:] It's 9 am on Sunday. Jacob will reach out to you to reschedule for the time you missed on Thursday evening because of our delayed flight.

Thank you.

I think he may have left his new Adidas shoes and his red hoody there. Please send them back with him if he did.

[DEFENDANT:] He has a lot more here than that. Not from you but all of his stuff from my side and his memories are here. I hope you know this. I have way too much here to lose. I have a feeling I know what you did [Mother]. If you did I want you to know what you are destroying and making both him and I lose. [Your custody attorney] is not the visitation master. And you can't just make up time lost and expect that is okay. You can't do things and expect it is okay. If you think this makes you any kind of a decent person you are mistaken deeply. And I will be back. This time to fulfill [sic] promises made a long time ago. And he will never forgive you. So just know this. I will look around and see if I can find them.

The DVPO at issue provided, in relevant part, that "Defendant shall not commit any further acts of domestic violence or make any threats of domestic violence[.]"

Before his Superior Court trial, Defendant moved to dismiss the charge on the basis of due process and double jeopardy violations that allegedly occurred when he was taken to jail for six hours when he appeared in the courthouse for his first appearance in Superior Court. At the hearing on the motion, Defendant testified as to an exchange that occurred surrounding his District Court trial in late October 2022:

[Q.] Ricky, do you recall trying a case on October 19th of 2022?

A. Yes, ma'am.

Q. And were you representing yourself in that matter?

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A. I was.

Q. Was that in a District Court 2A in Buncombe County?

A. That's correct.

Q. And were you in front of the Honorable Julie Kepple?

A. Yes, I was.

Q. And on that day when you were representing yourself, you were acquitted of communicating threats, correct?

A. Yes.

Q. And you were convicted of what's here before the Court today, which is one count of a domestic violence restraining order violation?

A. Yes.

....

Q. How did you end up entering your appeal?

A. While I was in jail through help from you.

....

Q. Now, when you gave notice of appeal, you were still in custody?

A. Yes.

Q. At any point in time, were you released by the Buncombe County Jail after you gave notice of appeal?

A. Yes. Sometime very late that night, I was released.

Q. And it was your wish to come before this Court to have a jury trial at that point in time?

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A. Yes.

Q. Now, it's a little strange seeing that this is my affidavit, but were you told to be here on 10/24?

A. Yes.

Q. And were you, in fact, in Superior Court on 10/24 of 2022?

A. I was.

....

Q. Did you notice -- it's always hindsight that is foresight, but did you notice anything strange when you entered the courthouse?

A. That three of the sheriffs got on their cell phones and was trying to talk to somebody -- I'm not sure -- as I was going through the metal detectors. And then they asked me if I knew where I was headed, and I said, "Yeah." I was headed to the fifth floor for Superior Court for the appeal.

....

Q. Now, what happened once you arrived at the fifth-floor courtroom?

A. As soon as I came in, I sat in one of the back rows there in the left-hand side close to the door. And then the -- one of the sheriff gentlemen opened the door and motioned to me to come with him.

....

Q. And did you comply?

A. Yes.

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Q. And was anyone else in the hallway with this gentleman, or was he alone?

A. He was escorted by four more sheriffs.

Q. So how many sheriff's deputies came and were waiting in this hallway for you?

A. Five of them.

Q. And --

A. Four, plus him.

Q. Four, plus him?

A. Yes.

Q. And what was conveyed to you as to why you were being summoned to the hallway?

A. That there was just some issue that we needed to get clarified and that I was to go over to 2B with them to go in front of Judge Kepple.

Q. And did you comply?

A. Yes.

Q. And were you in handcuffs, or how did this go?

A. Not at that time.

. . . .

Q. And how long were you in the hallway waiting?

A. Five minutes maybe.

Q. And what happened next?

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A. The four sheriffs came out of the courtroom, and one gentleman asked me to place my hands behind my back, and that's when they put me in handcuffs.

Q. For what?

A. I'm not really sure. And they wouldn't really -- they couldn't really tell me the reason why.

Q. At any point in time, did you go into District Court 2B?

A. No. Not at that time, not on that day.

Q. At any point in time, were you able to address the Court on 10/24?

A. No.

Q. And on 10/24, Mr. Rawson, you were still representing yourself as of that moment?

A. Yes.

Q. So you ended up in the jail. Would that be accurate?

A. Yes.

Q. And what was your bond on 10/24?

A. I didn't have one.

Q. Didn't have one in that there was a no-bond?

A. I didn't have one as in, it was saying that I was sentenced. That I was sentenced. I believe that's what it said on the paperwork.

Q. Now, at some point on 10/24, were you released?

A. Yes. About -- it was about right towards the end of the court day. It was about 4:30, 5:00 in the afternoon is when

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I was released.

A police sergeant who was present at the courthouse testified that Defendant was taken into custody on 24 October 2022 at the instruction of the District Court judge who sentenced Defendant:

Q. And you heard the testimony of Mr. Rawson. It's been about two months ago, but do you recall October 24th?

A. I do.

Q. And were you at work that day?

A. I was.

Q. And how did you become involved on October 24th? Did anyone summon you to the courtroom?

A. No, I do not believe so. I -- the way that I recall it is that there was questions over the appeal process for Mr. Rawson, and they was wondering why he was released.

Q. And when you say "they," who is "they"?

A. The sergeants that was working in the courthouse.

Q. And at any point in time, did you speak with Judge Kepple in 2B that day?

A. I did.

Q. And did you see Mr. Rawson in the hallway that day?

A. I did.

Q. And can you recall speaking to Judge Kepple that day in District Court 2B and what was indicated to you?

A. I do remember talking to her, and it was that she wanted

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him taken back into custody, and she would address his bond later that day, as she believed that he had to go in front of her since he appealed it.

Q. Now, when folks are placed in custody, ordinarily, there's some type of paperwork that accompanies them, like a warrant, for example. Was there ever a warrant for Mr. Rawson?

A. No.

Q. And what -- other than Judge Kepple asking that he be placed in custody, was there anything in writing?

A. No.

Q. And is that what ended up happening after the conversation with Judge Kepple?

A. That he be placed in custody?

Q. Yes.

A. It was.

Finally, the bailiff who was present during Defendant's District Court trial testified that the District Court judge had left the courtroom during an outburst by Defendant on the day of his trial:

Q. [] [W]ere you working as a bailiff in district court on [19 October] 2022?

A. I was.

Q. Which courtroom were you in?

A. 2A.

Q. Which judge was on the bench?

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A. Julie Kepple.

Q. Did you have opportunity to observe the trial of the State versus Ricky Francis Rawson, Jr., that afternoon?

A. I did.

Q. Did you see the judge's determination of facts and sentencing?

A. I did.

Q. And did it comport with what Mr. Rawson testified to earlier about receiving 150 days active?

A. Yes.

Q. Did you personally take Mr. Rawson into custody that afternoon?

A. I did.

Q. Did he go willingly?

A. No.

....

[Q.] Did Mr. Rawson engage in a discussion or argument with the judge during the sentencing hearing?

A. Yes.

Q. And did you hear Mr. Rawson make any threats, direct or indirect, to the judge?

A. Yes.

Q. Did you hear Mr. Rawson make any threats, direct or indirect, to . . . the State's witness?

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A. Yes.

Q. Did you see or hear him make any threats to a male that accompanied Ms. Harrison to that court date?

A. Yes.

Q. What was Mr. Rawson more or less talking or yelling at the Court while he was being booked into custody by yourself?

A. He was yelling.

Q. And did Judge Kepple stay in the room the entire time?

A. Not for the entire time.

Q. Would it be fair to say that she abruptly got up and left during one of Mr. Rawson's statements to her?

A. She did.

However, the bailiff further testified that Defendant had not been charged with resisting arrest or communicating threats, nor had he been held in contempt. The trial court denied the motion to dismiss, reasoning that the period Defendant was in jail on 24 October 2022 did not constitute an additional punishment for purposes of double jeopardy and that, although the deprivation of Defendant's liberty on that day was predicated on legal error, the error was not sufficiently flagrant to warrant dismissal of the charges against Defendant:

[T]he Court does find that the defendant was unlawfully taken into custody on [24 October 2022] and held in custody for a period of six hours under the direction of the district court judge, but the Court would not find that it falls short

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-- there is insufficient evidence to show irreparable prejudice to the defendant's presentation of his case and that dismissing the action would not be an appropriate remedy at this point.

So the Court would respectfully make that the ruling of the Court and respectfully . . . deny the motion to dismiss the action.

During his Superior Court trial, the State presented evidence that Defendant had, prior to the entry of the DVPO, made threats to, and committed acts of domestic violence against, Mother. Although Defendant moved to exclude any such testimony prior to trial and renewed the objection at trial, the trial court ruled that the admission of such evidence was necessary to contextualize Defendant's email as a threat to Mother, permitting it as appropriate under both Rule 403 and Rule 404(b) of our Rules of Evidence:

All right. The Court is going to find that this matter -- we went on motion outside the presence and hearing of the jury. The charge is violation of a domestic protective order. The terms of the charging document indicate it was this email and what is identified as a threat contained within that email. It is, in essence, kind of a combination of 404(b).

Obviously with any 404(b) issue, there's a 403 issue as well as the very elements of the offense themselves. Obviously with a domestic violence protective order violation, it has to be shown that there was a willful violation of those terms. In this case, the email indicates -- and Ms. Harrison has testified to the specific portion. So I'm not going to repeat the whole email, but it, in essence, comes down to two sentences:

"And I will be back," period. "This time to fulfill promises

made a long time ago,” period.

It is therefore necessary that the witness be allowed to testify as to a context with regard to the statement and how she interpreted it. Likewise, it’s appropriate, just as Ms. Booth has done, to have thorough cross examination with regard to the meanings that she attributed to it, etc.

So the Court would find that it is necessary and appropriate and allowable under our rules of evidence for the State to elicit evidence, to provide context as to the statement. Without that, the statement itself is not, on its face -- in other words, if the statement said, “I’m going to kill you,” that, in and of itself – there’s no context needed with regard to that. That’s apparent.

In this case, it is not, in and of itself, apparent. Although, it does indicate, “This to fulfill promises made,” quote, “a long time ago,” which provides further relevance to the statements or the threats made during the course of the marriage -- I mean, relationship.

So the Court is going to rule as follows: The Court is going to find that the State is seeking to offer evidence under 404(b), that being the threats made and the prior conduct during the relationship. The Court will find that the evidence is admissible, but limited, not to prove the character of the person or to show that he acted in conformity therewith, but it is admissible as proof of motive, intent, plan, and for those limited purposes.

Now, the Court then has to do a 403 balancing. The evidence is relevant because it relates to the charges before the Court and the interpretation of the alleged threat. The standard on 403, of course, as counsel are both well aware, is that if it’s probative, it is to be excluded if its value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Those, I believe, are the issues that would be at issue.

Again, it is probative. It is obviously prejudicial to the

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defendant as evidence, as often in a criminal case, but, again, the standard is whether or not its probative value is substantially outweighed by the dangers of unfair prejudice, confusion of the issues, or misleading the jury.

The Court will find that in this case, Ms. Booth should be allowed thorough and complete cross examination, as she did similar on the motion with regard to these issues, but the Court will find that it is probative and that its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

So the State will be allowed to present the evidence. The Court will give an appropriate 404(b) limiting instruction to the jury, in essence, what I've already recited in the record, and we'll go from there.

The evidence in question took the form of testimony by Mother of Defendant's violent and threatening behavior during the relationship when asked how she interpreted Defendant's email:

When I was with Mr. Rawson, he would threaten me a lot. He would threaten multiple horrible things, including that he would assault me with a machete and a sledgehammer, that he would hang me, that he would stab me, throw me out the window, that he would stick a rusty object up me, that he would cut off my breasts and clitoris so I wouldn't feel sexual pleasure ever again.

So that's what that meant to me.

....

He assaulted me multiple times. He raped me. He, at one point, threw me on the floor, smashed my head against the floor while holding my forehead multiple times. He beat me on both sides of my head while pinning me down. He strangled and choked me.

I ended up going to the hospital because my eardrum was ruptured, and I could only partially hear out of that side of my ear, and I had facial bruises and -- bruises from being choked as well.

However, the testimony was prefaced by a limiting instruction from the trial court:

Members of the jury, evidence may be received tending to show that at some earlier time, if the witness alleges that threats or certain acts were made alleging that they were committed by Mr. Rawson, this evidence is received solely for the purpose of showing that the defendant may have had a motive in the commission of the crime charged in this case; that the defendant had the intent, which is a necessary element of the crime charged in this case; that the defendant had the knowledge, which is a necessary element of the crime charged in this case or that there existed, in the mind of the defendant, a plan involving the crime charged in this case or showing the absence of a mistake.

With regard to this evidence, if you believe that this -- if you believe this evidence, you may consider it but only for the limited purpose for which it was received, that being the factors that I have just indicated. You may not consider it for any other purpose.

Defendant timely appealed.

ANALYSIS

On appeal, Defendant argues the Superior Court erred in denying his motion to dismiss and for allowing Mother to testify as to how Defendant's email could be considered a threat. However, for the reasons discussed below, neither argument shows reversible error.

A. Motion to Dismiss

Defendant first argues the Superior Court erred in denying his motion to dismiss for alleged violations of double jeopardy and due process. The statute governing motions to dismiss criminal charges for violations of a defendant's constitutional rights is N.C.G.S. § 15A-954(a)(4), which provides, in relevant part, that a trial court

on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that[] . . . [t]he defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.

N.C.G.S. § 15A-954(a)(4) (2023).¹ “As the movant, defendant bears the burden of showing the flagrant constitutional violation and of showing irreparable prejudice to the preparation of his case. This statutory provision ‘contemplates drastic relief,’ such that ‘a motion to dismiss under its terms should be granted sparingly.’” *State v. Williams*, 362 N.C. 628, 634 (2008) (quoting *State v. Joyner*, 295 N.C. 55, 59 (1978)). We review a motion to dismiss charges de novo. *State v. Cole*, 199 N.C. App. 151, 156, *disc. rev. denied*, 363 N.C. 658 (2009).

Here, assuming *arguendo* the District Court violated Defendant's constitutional rights, we are not persuaded that Defendant's allegations demonstrate

¹ Although N.C.G.S. § 15A-954(a)(5) contemplates separate dismissal for an action brought against a defendant in violation of his right against double jeopardy which, notably, does not require a showing of prejudice, *see* N.C.G.S. § 15A-954(a)(5) (2023), Defendant's brief and the trial transcript clarify that Defendant's arguments pertain solely to N.C.G.S. § 15A-954(a)(4).

prejudice. Defendant’s arguments for prejudice are that “placing an individual into custody without jurisdiction, notice, or a hearing should shock the conscience”; that Defendant “was denied his freedom prior to his trial *de novo* in Superior Court”;² that “the District Court’s actions were legally wrong”; and that the District Court’s actions violated his procedural and substantive rights. While we are not unperturbed by the due process ramifications of the District Court judge’s order, without jurisdiction, to take Defendant into custody on 24 October 2022, none of these arguments themselves demonstrate the more concrete component—prejudice to the preparation of Defendant’s case—necessary to justify dismissal under N.C.G.S. § 15A-954(a)(4) of the DVPO violation charge. We cannot, therefore, say the Superior Court erred in this respect.

B. Admission of Evidence

Defendant next argues the trial court erred in admitting Mother’s testimony contextualizing Defendant’s email under Rules 403 and 404(b) of our Rules of Evidence. Rule 403 provides that, “[a]lthough relevant, 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C.G.S. § 8C-1, Rule 403 (2023). When reviewing a trial court’s Rule 403 ruling, we are cognizant

² A trial which, we note, would not take place until 50 days later.

that, in order for evidence to be excluded, the “probative value must not merely be outweighed by the prejudicial effect, but *substantially outweighed*.” *State v. Bush*, 164 N.C. App. 254, 264 (2004) (emphasis added) (citing *State v. Lyons*, 340 N.C. 646, 669 (1995)). Furthermore, “[w]e review Rule 403 rulings [only] for abuse of discretion, which ‘results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.’” *State v. Lail*, 903 S.E.2d 204, 208 (N.C. Ct. App. 2024) (citing *State v. Hennis*, 323 N.C. 279, 285 (1988)).

Meanwhile, under Rule 404(b),

[e]vidence 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.G.S. § 8C-1, Rule 404(b) (2023). Unlike Rule 403, “[w]e review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b).” *State v. Beckelheimer*, 366 N.C. 127, 130 (2012). “We then review the trial court’s Rule 403 determination for abuse of discretion.” *Id.*

Applying the above framework in this case, we cannot say the trial court either erred in admitting the evidence of Defendant’s prior acts under Rule 404(b) or abused its discretion in declining to exclude the evidence under Rule 403. With respect to Rule 404(b), the admission of evidence of prior acts to contextualize the threatening

nature of a comment is, quintessentially, an inquiry into intent; the jury is being presented with prior acts and comments in order to understand what, if anything, the remark at issue in this case alludes to. Thus, we cannot say that the trial court admitted the evidence improperly under Rule 404(b).³

Rule 403 is, admittedly, a closer call, but still ultimately fails in light of the deferential standard we owe to the trial court. Rule 403, ultimately, is not a rule that asks us to weigh how prejudicial evidence is to a defendant in isolation or in relation to a fixed goalpost, but rather asks us to weigh the prejudice to a defendant in relation to the probative value of that particular evidence. To be sure, the testimony in this case carried a high risk of confusing the jury, inviting it to pass judgment on Defendant based not on the specific threats at issue, but on the past actions attributed to him through Mother's testimony. Nonetheless, the probative value of Mother's contextualizing testimony was so high as to be essential to the threatening nature of Defendant's email—his remarks only registered as threatening *because* the jury was permitted to hear about the existing relationship dynamic between Defendant and Mother. In light of this, we cannot say the trial court abused its discretion in ruling that the probative value of the evidence was not substantially outweighed by the

³ We note that, within Defendant's brief, it is unclear whether he challenges the admission of the statements under Rule 404(b), as his explicit qualms with the trial court's ruling relate more squarely to the propensity of the evidence to confuse the jury or prejudice his case than to the propriety of their function. That said, we have included the foregoing section for the sake of analytical completeness.

potential for confusion or unfair prejudice.

CONCLUSION

The Superior Court did not err in denying Defendant's motion to dismiss, nor did it err in admitting Mother's contextualizing testimony.

NO ERROR.

Judges COLLINS and FLOOD concur.

Report per Rule 30(e).