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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-101

Filed 1 October 2024

Union County, No. 19 CRS 054457

STATE OF NORTH CAROLINA

v.

KHRYSTINA RICE

Appeal by defendant from judgment entered 15 February 2023 by Judge Patrick Thomas Nadolski in Superior Court, Union County. Heard in the Court of Appeals 10 September 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Michael T. Henry, for the State.

New Hanover County Public Defender's Office, by Assistant Public Defender Max E. Ashworth, III, for defendant-appellant.

ARROWOOD, Judge.

Khrystina Rice (“defendant”) appeals from judgment entered on 15 February 2023 upon her conviction for first-degree murder. On appeal, defendant argues the trial court erred by admitting a report containing Facebook records in violation of the Confrontation Clause. For the following reasons, we find no error.

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I. Background

Defendant lived at 5906 Carolina Manor Court with her husband, Alex Rice (“Husband”), two children, and defendant’s brother. On 13 October 2019, defendant asked Husband to sleep on the couch in the family home at around 2:00 a.m. A few hours later, Husband was awakened by several banging sounds coming from the second story of the house. When Husband went to investigate the source of the noise, he noticed that the master bedroom had clothes all over the floor and the door leading to the master bathroom was covered in blood. When Husband entered the master bathroom, he noticed defendant laying on the floor and saw blood covering the sinks and the toilet. Defendant was unresponsive when Husband tried to wake her up. Husband subsequently called 911.

Husband did not know that defendant was pregnant at the time. In fact, leading up to the night in question, defendant had repeatedly told Husband that she was not pregnant when he inquired about her lactating. Additionally, there were no items in the house to show that defendant was preparing to have a baby.

When the EMTs arrived, they found defendant on the floor of the master bathroom wrapped in a towel. Upon seeing what looked like a partial umbilical cord in the shower, Paramedic Heather Owens (“Paramedic Owens”) was able to determine that a miscarriage, delivery, or stillbirth had occurred. However, defendant told the paramedics that she had not given birth and did not have a baby. Paramedic Owens followed a trail of blood going towards the closet attached to the

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master bathroom and found what appeared to be a full-term placenta in the closet. Upon further searching the closet, Paramedic Owens found a trash bag with Baby Rice (“Baby”) wrapped up in a blanket in the trash bag. Husband observed that the baby’s face was smashed up and “swollen beyond [recognition]” The baby did not have a pulse, so Paramedic Owens started CPR and was able to revive the baby.

Defendant and Baby were taken to Novant Health Matthews Medical Center and Baby was pronounced dead the following afternoon. Baby’s autopsy revealed that he suffered blunt force trauma injuries to his chest, right adrenal gland hemorrhage, facial contusions over the nose and left periorbital, fractures in his skull, and multiple abrasions on his neck. The cause of death was ruled as suffocation. Furthermore, Dr. J. Michael Sullivan, the doctor who conducted the autopsy on Baby, opined that the manner of death was homicide.

Following Baby’s death, Husband discovered that defendant was having an extramarital affair with a man named Zach Blum (“Mr. Blum”). Husband also noted that defendant had done no preparation in the house for a baby, was drinking more alcohol, and was losing weight. Facebook messages between defendant and Mr. Blum revealed not only that defendant was having an affair with Mr. Blum, but also that she was aware of the pregnancy by describing fictitious prenatal appointments she never went to and sending sonogram images she found online.

Following an investigation, on 2 December 2019, defendant was arrested and indicted for First Degree Murder and Intentional Child Abuse Inflicting Serious

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Bodily Injury.

In a pretrial motion, defendant sought to prevent the introduction of the Facebook records detailing conversations between defendant and Mr. Blum. She argued that the certificate of authenticity certifying the Facebook Records as business records was not sufficient to be considered an affidavit and there was no evidence to show that the messages came from defendant. There were pre-trial arguments regarding whether these were properly admitted but the trial court did not rule on this and specially reserved this matter for trial. However, during trial, when the Facebook records were offered into evidence, the defense counsel did not object to the admission.

During trial, the State presented evidence through testimony from 11 witnesses, including Husband, Detective Elizabeth Williams (“Detective Williams”), and Dr. Patricia Morgan (“Dr. Morgan”). Defendant testified in her own defense.

Detective Williams testified that defendant was engaged in an extramarital affair with Mr. Blum. Further testimony from Detective Williams revealed that defendant had visited her primary care provider several times during her pregnancy, but never revealed that she was pregnant to them and never received any prenatal care. Dr. Morgan testified her opinion that Baby was alive when he was put in the trash bag and the cause of death was suffocation as a result of being put in the trash bag. Defendant repeatedly told medical professionals and law enforcement that she believed Baby was dead upon birth and placed him in a bag because she panicked.

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Furthermore, when asked about the nature of the incident and an explanation for her son's injuries, defendant gave multiple different causes, including that she fell down some stairs that induced her labor, went into labor while sleeping in bed, and that she felt her water break while she was on the toilet. She also stated that she dropped the baby on his head where he hit the tile floor first, but then later stated that she dropped him in the toilet first.

During trial, defendant testified that she did not seek out prenatal care because it is very costly. She also testified that she did take other women's ultrasound photos from Instagram and sent them to Mr. Blum as her own ultrasound photos. Finally, defendant testified that she told detectives that she put the baby in a blanket, and then in a bag, to hide the baby from Husband.

Following a trial, a jury found defendant guilty of first-degree murder under the felony murder rule and intentional child abuse inflicting serious bodily injury. The trial court arrested judgment on the child abuse charge. On the charge of first-degree murder, the court sentenced defendant to life in prison without parole. Defendant gave oral notice of appeal in open court.

II. Discussion

Defendant's sole issue on appeal is whether the trial court committed plain error by admitting the Facebook Records in violation of her Sixth Amendment right to confront her witnesses.

1. Standard of Review

Because defendant did not preserve the appeal by objecting to the admission of the Facebook Records during the trial, we review the trial court's action for plain error. "Under this standard of review, defendant 'has the burden of showing: (i) that a different result probably would have been reached but for the error or (ii) that the error was so fundamental as to result in a miscarriage of justice or denial of a fair trial.'" *State v. Dodson*, 291 N.C. App. 134, 137 (2023) (quoting *State v. Jones*, 358 N.C. 330, 346 (2004)).

2. Facebook Records

Defendant contends the trial court erred in admitting Facebook Records detailing a conversation between defendant and Mr. Blum, arguing that these records constitute impermissible hearsay and violate the Confrontation Clause of the United States Constitution. We disagree.

An out-of-court statement used to prove the truth of the matter asserted may be admitted as evidence during a trial "if it is offered against a party and it is [] his own statement, in either his individual or a representative capacity . . ." N.C.G.S. § 8C-1, Rule 801(d). Furthermore, the business records exception under the general hearsay rule states that a report of regularly conducted activity is not hearsay if the activity is contained in a report that was

- (i) kept in the course of a regularly conducted business activity and (ii) it was the regular practice of that business activity to make the report, as shown by the testimony of the custodian or other qualified witness, or by an affidavit or by a document under seal under Rule 902 of the Rules of

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Evidence.

N.C.G.S. § 8C-1, Rule 803(6).

Any writing sought to be admitted under the business exception rule to the court must be authenticated. *See* N.C.G.S. § 8C-1, Rule 901(a). When determining if a business record was properly authenticated, “[t]he form of the administration of the oath is immaterial, provided that it involves the mind of the witness, the bringing to bear [of the] apprehension of punishment [for untruthful testimony].” *State v. Wilson*, No. COA22-39, 2022 N.C. App. WL 16557419, at *3 (N.C. App. Nov. 1, 2022)(unpublished)(quoting *Gyger v. Clement*, 375 N.C. 80, 85 (2020)). Furthermore, “the authentication of such records may . . . be established by circumstantial evidence.” *State v. Allen*, 258 N.C. App. 285, 288 (2018) (quoting *State v. Wilson*, N.C. 516, 533 (1985)).

Defendant argues that admission of the Facebook Records and the Certificate of Authenticity violated the Confrontation Clause of the US Constitution because the records were testimonial in nature and because she was not able to cross-examine Ms. Gotzh, an employee of Facebook who signed the certificate. The Confrontation Clause of the U.S. Constitution requires that in all criminal prosecutions, the accused has the right “to be confronted with the witnesses against him.” U.S. Const. amend. VI. The Supreme Court has previously ruled that business records “are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity’s

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affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial.” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324 (2009). Furthermore, this Court has held that authenticating documents attesting to the nature of business records are not testimonial in nature. *See State v. Clark*, 242 N.C. App. 141, 145 (2015).

Here, the Facebook Records at issue are a compilation of messages exchanged between defendant and Mr. Blum, including photographs and attachments, that were produced because of a warrant issued by Detective Williams. Ms. Gotzh signed a certificate of authenticity when producing the records for the warrant, attesting under penalty of perjury that she is: (1) an authorized custodian of records for Facebook; (2) the records produced were kept in the course of regularly conducted activity as a regular practice of Facebook; and (3) that the records were made at or near the time the information was transmitted to Facebook by both defendant and Mr. Blum. While Ms. Gotzh’s Certificate of Authenticity was created for the purposes of defendant’s criminal trial, the document was not testimonial in nature. The certificate was not created to prove a fact that was material for the trial, but rather to authenticate the Facebook records. Therefore, the trial court did not violate the Confrontation Clause by admitting the Certificate of Authenticity for the Facebook Records.

Even assuming *arguendo* that the trial court erred in admitting the Facebook Records in violation of the Confrontation Clause, this error did not prejudice

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defendant. Defendant argues that the jury would not have been exposed to certain information about the defendant's knowledge of her pregnancy and the nature of her affair with Mr. Blum. Furthermore, defendant argues that the jury would not have been exposed to fake sonogram photos sent by defendant to Mr. Blum. However, throughout the trial, several parties, including defendant herself, testified about the affair, the fact that she knew she was pregnant, and defendant's fabrications about the health of her pregnancy. Due to the overwhelming evidence given from the testimony of Husband, defendant and the medical professionals, the evidence overwhelmingly supports a conclusion that defendant murdered her child. Thus, the admission of the Facebook Records did not constitute plain error.

III. Conclusion

For the foregoing reasons, we find defendant received a fair trial free from error.

NO ERROR.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).