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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-585

Filed 19 February 2025

McDowell County, Nos. 22CRS000306, 22CRS000307, 22CRS050792, 22CRS050793

STATE OF NORTH CAROLINA

v.

JOSEPH CORDIE MOORE, JR.

Appeal by defendant from judgment entered 15 June 2022 by Judge J. Thomas Davis in McDowell County Superior Court. Heard in the Court of Appeals 28 January 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Jodi Privette Carpenter, for the State.*

*Willingham Law, by Jackie Willingham, for the defendant-appellant.*

TYSON, Judge.

Joseph Cordie Moore, Jr. (“Defendant”) appeals from judgments entered upon a jury’s verdict for felony fleeing to elude, resisting a public officer, driving with a revoked license, reckless driving, and having obtained the status of a habitual felon. Our review discerns no error.

**I. Background**

McDowell County Sheriff's Lieutenant Jesse Hicks ("Lt. Hicks") observed Defendant riding a motorcycle on 15 June 2022. Lt. Hicks recognized Defendant because of his open-face skull cap helmet and mustache. Lt. Hicks knew Defendant was driving the motorcycle with a suspended license and began to follow him.

Defendant sped up above the posted speed limit and Lt. Hicks activated his blue lights. Defendant increased his speed, rode left of center, and drove across the yards of houses while Lt. Hicks was attempting to stop him. Defendant crashed the motorcycle behind a residence and fled on foot into a wooded area. Lt. Hicks searched for Defendant. Rain began to fall and the sun was setting, which led Lt. Hicks to end his search for Defendant.

Lt. Hicks spotted Defendant at 10:30 p.m. in the passenger seat of a vehicle leaving the neighborhood surrounding the woods where Defendant had fled earlier in the day. Lt. Hicks stopped the vehicle and arrested Defendant.

Defendant was charged with: Possession of a Stolen Motor Vehicle and Flee to Elude Arrest with Motor Vehicle (22 CRS 50792), Resisting Public Officer and Driving with Revoked License – Not Impaired Revocation (22 CRS 50793), Having Obtained Habitual Felon Status (22 CRS 306), and Reckless Driving to Endanger (22 CRS 307).

At trial, the State submitted evidence of Defendant's three prior convictions for flee to elude during a Rule 404(b) hearing, because Defendant had challenged Lt.

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Hicks' identification of him. The trial court found the prior convictions were relevant for purposes of identity, intent, plan, scheme, system, or design and allowed the evidence over Defendant's objection.

The trial court later changed its reasoning of "intent" to "knowledge". In doing so, the trial court stated Rule 404(b) was a rule of inclusion and the jury would be instructed and limited in how to consider the evidence presented. The trial court then determined the evidence of Defendant's prior convictions was permissible under a Rule 403 analysis, striking one proposed incident as being unfairly prejudicial against Defendant.

At trial, McDowell County Sheriff's Lieutenant Kirk Hensley ("Lt. Hensley"), , testified about Defendant fleeing to elude on two prior occasions while Lt. Hensley was employed as a State Trooper by the North Carolian State Highway Patrol. Lt. Hensley testified he was able to see Defendant's face and mustache while Defendant was riding a motorcycle at an excessive speed while traveling off the lanes of travel to evade him.

McDowell County Sheriff's Lieutenant Aaron Vallini ("Lt. Vallini") testified to Defendant riding away from him at a high rate of speed, crashing, and then running away on foot before being arrested. During direct examination, Lt. Vallini was asked by the State, "Now on June 28, 2019, once you able to get them in the custody, what did you arrest him for?" Lt. Vallini responded, "I arrested him for felony flee and elude, possession of methamphetamine, possession of drug paraphernalia."

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Defendant took the stand and testified in his own defense. Defendant was questioned about the prior fleeing to elude convictions. On cross-examination, the State had asked Defendant about the drug possession Lt. Vallini has previously testified about.

The trial court dismissed the possession of a stolen motor vehicle charge at the close of the State's evidence. At the conclusion of the trial, the trial court issued the following limiting instructions to the jury regarding prior convictions:

Evidence has been received tending to show that the defendant was involved in driving incidents on other dates. The evidence was received solely for the purpose of showing:

- (1) the identity of the person who committed the crime charged in this case, if it was committed;
- (2) that the defendant had the knowledge which is a necessary element of the crime charged in this case; and
- (3) that there existed in the mind of the defendant a plan, scheme, system or design involving the crime charged in this case.

If you believe this evidence, you may consider it, but only for the limited purpose for which it was received. You may not consider it for any other purpose.

The jury found Defendant guilty of felony flee to elude, resisting a public officer, reckless driving, driving with revoked license, and having attained habitual felon status. Defendant was sentenced to a 60-day active sentence for resisting a public officer. Defendant was sentenced to an active sentence of 89 to 119 months for the felony flee to elude and attaining the status of a habitual felon. The trial court

arrested judgment on the driving with a revoked license and reckless driving convictions. Defendant gave oral notice of appeal.

## **II. Jurisdiction**

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1), 15A-1444 (2023).

## **III. Issues**

Defendant argues the trial court erred in allowing law enforcement officers to testify about prior flee to elude convictions and about his previous convictions for drug possession.

## **IV. Admission of Prior Fleeing to Elude Convictions**

Defendant argues error and prejudice after the trial court admitted his three prior fleeing to elude convictions.

### **A. Standard of Review**

Our Supreme Court has held:

When the trial court has made findings of fact and conclusions of law to support its 404(b) ruling . . . we look to whether the evidence supports the findings and whether the findings support the conclusions. We review de novo the legal conclusions that the evidence is, or is not, within the coverage of Rule 404(b).

*State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012).

### **B. Analysis**

Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible

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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 a 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) (2023).

As noted by the trial court, the Supreme Court of North Carolina has repeatedly interpreted Rule 404(b) to be a rule of inclusion, and not exclusion. *Beckelheimer*, 366 N.C. at 131, 726 S.E.2d at 159. This inclusion of Rule 404(b) testimony or evidence is constrained by the requirements of similarity and temporal proximity of the evidence to the alleged acts. *State v. Al-Bayyinah*, 356 N.C. 150, 154, 567 S.E.2d 120, 123 (2002).

Admission of evidence under Rule 404(b) is “subject to but *one exception* requiring the exclusion of evidence if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.” *State v. Lyons*, 340 N.C. 646, 668, 459 S.E.2d 770, 782 (1995) (citation omitted).

The trial court ruled the evidence tended to show Defendant’s consistent actions in three instances: “to show the perpetrator, and also to show a plan, scheme, system, or design . . . in that he’s repeated this process . . . at least three times.” The following day the trial court amended its finding of “intent” to “knowledge”. The trial court found the “identity of the defendant in those matters have all resulted in convictions[.]”

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The trial court admitted evidence of three prior convictions of flee to elude over Defendant's objections, but excluded evidence pertaining to a fourth traffic stop. The State contends the evidence of the prior convictions of flee to elude are properly admitted under Rule 404(b) to show 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).

Defendant argues the three prior convictions were admitted improperly and were prejudicial because no unusual facts or particularly similar acts tend to show the same person committed each crime. *State v. Stager*, 329 N.C. 278, 304, 406 S.E. 2d 876, 890-91 (1991).

The State carries and holds the burden to prove the challenged evidence is close in similarity and in temporal proximity. *Carpenter*, 361 N.C. at 388, 646 S.E.2d at 110. Temporal proximity is less significant when the evidence is offered to prove intent, motive, knowledge, or lack of accident. *Id.* Time is primarily a factor in giving the evidence its weight. *Id.* (noting an elapse of eight years between the cases analyzed). Defendant's earliest conviction occurred in 2018 and the latest in 2019. Defendant was arrested in the instant case in 2022 and convicted in 2023, a maximum timespan of six years.

Defendant asserts the State has failed to show the details of the prior convictions are unique, citing *Al-Bayyinah*, 356 N.C. at 154, 567 S.E.2d at 123. Defendant argued the skull cap helmet and use of a motorcycle are too common to

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determine identity. Our Supreme Court held the common features of the alleged crime do not contribute to identifying an individual, and such evidence does not satisfy admission under Rule 404(b). *Id.* (holding that dark, non-descript clothing; use of a weapon; demand for money; and immediate flight are too common in robberies to be used as identification for Rule 404(b) purposes).

Defendant asserted that kind of “skull cap” helmet is commonly used by other motorcycle riders, and the kind of motorcycle used varied between cases. In one instance, Defendant was riding a Victory motorcycle, and not a Harley Davidson motorcycle.

The State asserted the open-faced helmet, with Defendant’s face and mustache visible, helped to establish Defendant’s identity, since Defendant had offered an alibi for the present charges. Furthermore, the State asserts Defendant has a similar pattern in his history of flee to elude. In Defendant’s previous cases, he would ride at fast speeds, go off road, go into parking lots, and ride recklessly once law enforcement had attempted to initiate a traffic stop.

Defendant’s reliance on *Al-Bayyinah* is misplaced. This ease, with which officers could identify Defendant because of his visible face with distinctive mustache, as well as his similar pattern of behavior, tends to establish his identity and common scheme. Unlike in *Al-Bayyinah*, the defendant had a covered face, wore dark nondescript clothing, and carried a weapon. The State in that case merely showed these were sufficient similarities beyond those which were characteristics inherent

to most armed robberies. *Al-Bayyinah*, 356 N.C. at 157, 567 S.E. 2d at 124.

The trial court correctly provided a limiting instruction to the jury to consider the evidence solely to questions of identity, Defendant's knowledge of what constitutes fleeing to elude, and Defendant's plan, scheme, system, or design. Defendant has failed to show the trial court erred in admitting the evidence of the three prior fleeing to elude convictions. Defendant's argument is overruled.

## **V. Relevancy of Prior Drug Possession**

Defendant argues the trial court erred by allowing Lt. Vallini to testify Defendant had been convicted for possession of methamphetamine and possession of drug paraphernalia. Defendant asserts the testimony unfairly prejudiced the jury and led to his convictions.

### **A. Standard of Review**

"Although a trial court's rulings on relevancy are not discretionary and we do not review them for an abuse of discretion, we give them great deference on appeal." *State v. Grant*, 178 N.C. App. 565, 573, 632 S.E.2d 258, 265 (2006) (citation omitted), *disc. review denied*, 361 N.C. 223, 642 S.E.2d 712 (2007).

### **B. Analysis**

Defendant argues the admission of testimony by Lt. Vallini about Defendant being charged and convicted of possession of methamphetamine and possession of drug paraphernalia was error and prejudicial. Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of

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consequence to the determination of the action more or less probable than it would be without the evidence.” N.C. Gen. Stat. § 8C-1, Rule 401 (2023). Irrelevant evidence is evidence “having no tendency to prove a fact at issue in the case.” *State v. Hart*, 105 N.C. App. 542, 548, 414 S.E.2d 364, 368, *disc. review denied*, 332 N.C. 348, 421 S.E.2d 157 (1992). Under Rule 402, relevant evidence is generally admissible at trial, while irrelevant evidence is inadmissible. N.C. Gen. Stat. § 8C-1, Rule 402 (2023).

The challenged testimony was clearly relevant under Rules 401 and 402. It was probative for Defendant’s motive for fleeing from law enforcement. The testimony regarding the drug convictions is relevant because, deferring to the trial court, it tends to establish knowledge for the purposes of Rule 404(b). *See State v. Godley*, 140 N.C. App. 15, 25, 535 S.E.2d 566, 574 (2000). Presuming, without deciding, the testimony was improper, Defendant cannot show prejudicial error. *See* N.C. Gen. Stat. § 15A-1443(a) (2023).

The State presented evidence of three prior flee to elude convictions, dash camera footage of the prior incidents, and the testimony of the arresting officer, who was familiar with and had identified Defendant prior to initiating the traffic stop Defendant had fled from. Due to the other evidence presented at trial, Defendant has failed to meet his burden of demonstrating a reasonable possibility the jury would have reached a different result absent the alleged error. The trial court did not err in admitting this evidence. Defendant’s argument is overruled.

**VI. Conclusion**

The trial court did not err by allowing into evidence testimony concerning Defendant's previous convictions of flee to elude arrest into evidence for limited purposes stated under Rule 404(b). The evidence presented tended to show Defendant's knowledge as well as his plan, scheme, or design. *Id.* The trial court provided proper limiting instructions to the jury.

The trial court did not prejudicially err in determining Defendant's convictions for possession of methamphetamine and possession of drug paraphernalia as relevant. The evidence furthered the jury's understanding of Defendant's knowledge, motive, or intent to flee to elude arrest. Presuming, *arguendo*, the evidence was irrelevant, due to the evidence presented at trial, Defendant has failed to meet his burden of demonstrating a reasonable possibility the jury would have been reached a different result absent the alleged error.

Defendant received a fair trial, free from prejudicial errors he preserved and argued on appeal. We find no error in the jury's convictions or in the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges CARPENTER and FREEMAN concur.

Report per Rule 30(e).