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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-147

Filed 16 April 2025

Mecklenburg County, No. 17CRS202088-590

STATE OF NORTH CAROLINA

v.

MARTIN ALEXANDER ROBINSON

Appeal by defendant from judgment entered 18 November 2022 by Judge Nathaniel J. Poovey in Superior Court, Mecklenburg County. Heard in the Court of Appeals 29 January 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Zachary K. Dunn, for the State.*

*Caryn Strickland, for defendant.*

ARROWOOD, Judge.

Martin Robinson (“defendant”) appeals from a verdict finding him guilty of first-degree murder, and his subsequent sentence of life imprisonment without the possibility of parole, entered on 18 November 2022. For the following reasons, we find the defendant received a fair trial free of prejudicial error.

I. Factual Background

On 17 January 2017, a warrant was issued for defendant's arrest for the murder of Thomas Randall McDonald ("McDonald"), and defendant was subsequently indicted on a charge of first-degree murder on 13 February 2017. Defendant also faced a charge of first-degree robbery, which was joined to the murder charge 7 November 2022.

During trial, the testimony and evidence presented tended to show the following. On 7 December 2016, Zachary Ferguson ("Ferguson"), a "very close friend" of McDonald, returned home to his apartment at Cross Point Circle Apartments in Charlotte after getting off work between 2:30 and 3:00 p.m. McDonald was in the apartment, having arrived the day before to watch Ferguson's dog.<sup>1</sup> Their mutual friends Jeremy Page, Tryin Edwards, Darius Potts, and Daniel Mayo came over that night. McDonald requested to use Ferguson's car, and Ferguson gave him the keys. McDonald called about twenty to thirty minutes after leaving, asking Ferguson if he wanted any food, but never made it back inside the apartment.

Later that evening, Ferguson heard three gunshots, very close to the apartment; he and his friends waited a minute to ensure the scene was safe, then ran outside and found McDonald lying on his back at the top of the stairs. Ferguson had heard no sounds of an argument or scuffle outside before the shots, nor did he see anyone besides McDonald after opening the door. McDonald was still alive when they

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<sup>1</sup> Throughout Ferguson's testimony, McDonald is referred to as "Randall," his middle name.

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found him, but his breathing was shallow; paramedics eventually arrived and took over his care. He had been shot twice, in his left shoulder and arm, with one of the bullets exiting through his abdomen. Soot and abrasions indicated the gun was extremely close to or touching the skin when it was fired. The bullets damaged his lung, liver, and heart, causing severe, fatal bleeding.

Officer Jonathan Brito (“Officer Brito”) was, at the time of the murder, a crime reduction unit officer with the Charlotte-Mecklenburg Police Department (“CMPD”); this unit was in charge of responding to all violent crimes. Officer Brito received a call for service at 6:34 p.m. and responded to the scene of McDonald’s shooting. He walked past the stairwell to the back of the building, where he found a KFC bag and a shoe; he was also directed to a cigarette. This cigarette was later found to have defendant’s DNA on it.

Officer Brito began to canvass the scene and speak to individuals in the area, including Maria Camino, who gave him a description of someone she saw, which he passed on to another officer. A week later he went to the scene and spoke with Danielle Herrera, who told him she saw a heavysset black male the day of the shooting. Officer Brito testified that he could not remember whether anyone else in the department saw an individual matching this description.

Detective Matthew Hefner (“Detective Hefner”) was a homicide detective with CMPD at the time of the murder and was assigned as the lead detective in the investigation. Detective Hefner testified that during his investigation, he was unable

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to locate any video of the shooting or any eyewitnesses, had been unable to develop any leads, and that DNA testing of the shoe and cigarette did not provide any additional suspects. Working with McDonald's family and Crime Stoppers, a \$6,000.00 reward was offered for information about the case. On 10 January 2017, Crime Stoppers sent Detective Hefner a tip via email, which he described as a break in the case, as it provided the name of a suspect, defendant Martin Robinson, and Facebook account with the name "Rob Marley." Detective Hefner requested that Crime Stoppers put him in touch with the tipster, which led to them meeting and the tipster providing more information, prompting Detective Hefner to seek a warrant for defendant's arrest.

Defendant was arrested in Memphis, Tennessee on 23 January 2017. Following the arrest, Detective Hefner obtained a DNA sample from defendant and submitted it for testing, received an analysis of defendant's phone contents, and received records of defendant's Facebook account. These Facebook messages and posts were entered into evidence at trial as State's Exhibits 99A–99DD, and defendant's web searches, accessed via extraction, were entered as State's Exhibits 100 and 100A.

That evidence reflected that on 7 December 2016, in the hours following the shooting, defendant accessed several webpages, including an article from WSOC-TV entitled, "Police identify man shot to death at SE Charlotte apartment complex," and Greyhound bus pages, then continued viewing the news article covering the shooting

into the morning hours of 8 December. He continued to view these pages later that day and continued to search for news about the shooting throughout the month. Facebook messages between defendant and various individuals, on 8 and 9 December, indicate what appear to be defendant's attempts to get enough money to purchase a bus ticket. One message suggested that defendant sell plasma, to which defendant responded, "U gotta give your finger print."<sup>2</sup> In another exchange, defendant wrote, "Fuck it bru just throw me the 40 cuz I gotta get gone."

Messages sent in the ensuing weeks and internet searches indicate defendant was aware of the shooting and his own potential implication in it. On 1 January 2017, defendant sent a Facebook message to Tamara Coleman, reading in pertinent part: "I'm leaving clt this week 12 offered a 6k reward for some one to tell on me and they put posters up at the store talking about the shoe that was left bae I'm sorry I kept leaving u on seen like this but I fucked up my life and gotta deal with this . . . ." On 2–3 January 2017, defendant messaged a Facebook user named Flyy Kidd ("Flyy"):

Flyy: Wya  
Defendant: Atl  
Flyy: Why u go to atl  
Defendant: N[\*\*\*\*]s tellin  
Flyy: Wtf r u serious about u killing bra  
Flyy: ??  
Defendant: Hb  
Flyy: Hb?  
Defendant: Hot boy

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<sup>2</sup> Due to the amount of slang and misspellings, the term "*sic*" is omitted from defendant's online conversations for ease of reading. Racially derogatory terms in later excerpts have been starred out.

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Also on 3 January, responding to a question as to why he was in Atlanta, defendant wrote, “Cuz bru we them young n[\*\*\*\*]s with bodies.”

Defendant’s web searches concerning the shooting showed a marked increase beginning on 18 January and continuing until the day he was arrested, 23 January. He searched for lawyers and bondsmen in the Charlotte area, viewed the Mecklenburg County Sheriff’s Office page looking for a warrant for his arrest, viewed an article from WSOC-TV about the identification of the shooting victim, searched for his own name and McDonald’s name, and viewed a page from criminaldefenselawyer.com entitled, “Dealing With an Out of State Criminal Charge.” Following a review of defendant’s web searches and Facebook messages, Detective Hefner concluded his search for suspects in the shooting.

Following a trial lasting nine days, between 7 November and 18 November 2022, the jury found defendant guilty of first-degree murder but acquitted him of robbery. The trial court subsequently sentenced defendant to life in prison without the possibility of parole. At sentencing, defendant’s trial counsel stated that “at the appropriate time after judgment we will enter notice of appeal.” After entering judgment upon the jury’s verdict, the trial court stated that it would enter defendant’s notice of appeal and appoint the Appellate Defender to represent him.

II. Discussion

Defendant raises three issues on appeal. First, he argues that the trial court

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erred by permitting the State to comment on his failure to produce any evidence or testimony refuting the definition of certain slang terms used in the Facebook messages, contending that this was a violation of due process and his right to a fair trial. Second, defendant argues that trial court erred by granting the State's motion *in limine* and motion to strike testimony concerning alternate perpetrators, and that he was prejudiced by this error. Finally, defendant argues that the trial court erred by admitting Facebook messages that were irrelevant and failed to meet the requirements of Rules of Evidence 403 and 404(b).

A. Petition for Writ

Defendant has filed a petition for writ of certiorari requesting appellate review in light of a defective notice of appeal. It is unclear from the record whether defendant followed up on his stated intent to enter formal notice of appeal "at the appropriate time after judgment[.]" Although it appears that no formal notice of appeal was entered, the trial court apparently accepted defendant's statement of intent as the notice of appeal and entered notice accordingly. The State acknowledges this and notes our discretion under Rules 4 and 21 in determining whether to allow the petition. In light of defendant's stated intent before the trial court to enter notice of appeal and the trial court's corresponding action, we exercise our discretion to allow the petition for writ and address the merits of defendant's appeal.

B. State's Commentary on Defendant's Failure to Refute Evidence

1. Standard of Review

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Defendant and the State disagree as to the appropriate standard of review for this issue; defendant argues that the appropriate standard is *de novo*, while the State contends that the proper standard is “grossly improper.”

When a party fails to make a timely objection to the closing argument, we review “whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*.” *State v. Jones*, 355 N.C. 117, 133 (2002) (citation omitted). However, when a party makes a timely objection, we apply a different standard of review depending on what type of statement from the closing argument is challenged. When the comment made implicates the constitutional rights of the defendant, we review the court’s failure to sustain the objection *de novo*. See *State v. Tate*, 187 N.C. App. 593, 599 (2007).

In the case *sub judice*, it is apparent that defense counsel made a timely objection to the statements the State was about to make in its closing argument when they engaged in the following exchange:

[THE STATE]: Your Honor, Pursuant to State versus Ward and other cases, the State does plan to comment on the Defendant’s failure to produce witnesses or evidence or to contradict evidence presented by the State . . . .

THE COURT: Anything about that?

[DEFENSE COUNSEL]: Objection. We contend impermissible burden shifting, objection based on due process, right to a fair trial. Don’t wish to be heard further on it.

THE COURT: So long as you arguing in accordance with



the case law I think you're safe.

Although defense counsel did not object during the closing arguments, they did not need to as this exchange preserved their objection under the Rules of Appellate Procedure. A party must present a “timely . . . objection . . . stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling . . . .” N.C. R. App. P. 10(a)(1). Here, the trial court invited defense counsel to object, defense counsel did so and provided grounds for the objection, and the court denied their objection. Thus, defense counsel properly preserved their objection, and since they objected on the constitutional grounds of due process, we review this issue *de novo*.

## 2. Statements on Defendant's Silence

The State is permitted to comment on a defendant's failure to produce witnesses or evidence that refute evidence from the State; however, it is not permitted to suggest that the defendant has failed to testify. *State v. Reid*, 334 N.C. 551, 555–56 (1993). A statement to this effect, if uncured by the court, requires a new trial. *Id.* at 556 The statement need not be explicit, as a comment that is “tantamount” to commenting on defendant's failure to testify will also be error. *State v. McLamb*, 235 N.C. 251, 257 (1952).

At closing arguments, the State made the following statements:

If “lick” meant something other than robbery, you would

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have heard it. If when the Defendant says “lick,” he really means playing with puppies. Or when the Defendant says “jug,” he really means volunteering at a senior citizen center, someone would have got up on this witness stand and told you that Martin doesn’t mean robbery when he says, “lick.” Martin doesn’t mean robbery or committing a crime when he says, “jug.” No one did that.

The defense has no burden in this case. It never shifts to them. They have no burden. But they have the right and they have the opportunity. Defense counsel has pointed Martin’s family out to you in the courtroom here. They could have taken the stand and told you he doesn’t mean robbery. But you don’t have that.

Pursuant to North Carolina Rule of Evidence 602, a witness is not competent to testify “unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter.” N.C.G.S. § 8C-1, Rule 602 (2024). Defendant argues that he “is the only person with personal knowledge of the meaning of his own text messages,” and thus any comment made concerning his failure to refute the State’s interpretation of his text messages was a comment on his failure to testify.

We have previously held that “personal knowledge is not an absolute but may consist of what the witness thinks he knows from personal perception.” *State v. Wright*, 151 N.C. App. 493, 495 (2002) (cleaned up). Later on in the closing argument, the State noted that one of the detectives on the case, who worked robberies “most of his career,” never saw the word “lick” have any meaning beside “robbery.” This detective was competent to testify as to his knowledge of the slang term from his own personal perception; similarly, defendant’s family may have been competent to attest

to a different meaning for the slang term and refute the State's evidence.

The State was permitted to comment on defendant's failure to rebut evidence concerning his use of slang by noting that he had not called any family members to the stand, and the State's closing argument did not amount to a suggestion that defendant failed to testify. Even under a *de novo* standard of review, we cannot find that the State's argument violated defendant's constitutional rights. Thus, the trial court did not err in failing to strike it.

C. Testimony on Alternate Perpetrators

Defendant next challenges the trial court's decision to grant a motion *in limine* and motion to strike testimony concerning a potential alternate perpetrator defendant was attempting to elicit. Because the evidence was irrelevant, we find no reversible error.

"We review relevancy determinations by the trial court *de novo* before applying an abuse of discretion standard to any subsequent balancing done by the trial court." *State v. Triplett*, 368 N.C. 172, 175 (2015). However, even though we engage in *de novo* review, we still give deference to the lower court's determination of relevancy. *State v. Allen*, 265 N.C. App. 480, 489–90 (2019) (citation omitted). Under the standard established by *State v. May*, in order to engage in a third-party perpetrator defense, a defendant must offer evidence that "[does] more than create mere conjecture of another's guilt in order to be relevant. Such evidence must (1) point directly to the guilt of some specific person, and (2) be inconsistent with the

defendant's guilt.' ” 354 N.C. 172, 176 (2001) (quoting *State v. McNeill*, 326 N.C. 712, 721 (1990)).

Defendant effectively concedes that this standard was not met at trial, instead arguing that testimony concerning other perpetrators was presented *not* for the purposes of establishing a third-party perpetrator defense, but to impeach the investigation, or lack thereof, by the police. Even with this purpose, the court did not err, as the testimony was cumulative and did not prejudice defendant.

Under Rule 403 of the North Carolina Rules of Evidence, relevant evidence may still 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 (2024). One of defendant's comments in his brief is instructive. Defendant wished to introduce the testimony concerning “Lil Kiko” in order to “bolster the defense's theory that the State failed to investigate alternative suspects.” However, defendant was provided numerous opportunities to call into question the integrity of the investigation.

Two examples are provided here by way of illustration. Defense counsel cross-examined Detective Hefner concerning his investigation:

[Defense counsel]: If Maria Camejo lived on the top level, and Maria Camejo told Officer Brito she saw something outside her peephole, would you not agree that would be important to follow up on?

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[Detective Hefner]: It would be except for the statement I read. It appears she is describing the friends of Mr. McDonald tending to Mr. McDonald. She is describing multiple people going up and down so I did not follow up with her based upon that.

Later, defense counsel asked Detective Hefner, “We have Mr. Phillip’s real name, Diego’s real name and his telephone number. No one was asked to follow up with any additional interviews with Mr. Phillip, were they?” to which Detective Hefner responded, “No, they were not.” Thus, because defense counsel had ample opportunity to impeach the investigation, any additional testimony about “Lil Kiko” or others would have been needlessly cumulative.

For the same reason, we cannot find that, even if the court did err, that error was prejudicial. “[L]itigants are not entitled to receive ‘perfect’ trials; instead, they are entitled to receive ‘a fair trial, free of prejudicial error.’ ” *State v. Malachi*, 371 N.C. 719, 733 (2018) (quoting *State v. Ligon*, 332 N.C. 224, 243 (1992)). “In order to obtain a new trial it is incumbent on a defendant to not only show error but also to show that the error was so prejudicial that without the error it is likely that a different result would have been reached.” *State v. Loren*, 302 N.C. 607, 613 (1981) (citations omitted).

Defendant contends that he was prejudiced because he was excluded “from fully pursuing this [inadequate police investigation] theory of defense.” However, as illustrated above, he was provided ample opportunity to do exactly that. Simply because he was prevented from presenting every piece of testimony concerning the

failures to follow up on witnesses' statements does not mean that the jury did not have the opportunity to weigh this theory. Additional testimony would not have resulted in a different result, and therefore, we find no prejudicial error.

C. Relevancy of Facebook Messages

Finally, defendant argues that numerous Facebook messages between himself and others that either failed to meet the requirements of Rule 404(b), were irrelevant and prejudicial, or were relevant but unduly prejudicial under Rule 403. We disagree.

“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.” *State v. Beckelheimer*, 366 N.C. 127, 130 (2012). These conclusions we review *de novo*. *Id.*

Rule 404(b) provides:

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) (2024). “Rule 404(b) is a ‘general rule of *inclusion* of relevant evidence[,]’ but it operates to exclude 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. Massey*, 287 N.C. App. 501, 504–505 (2023) (quoting *State v. Coffey*, 326 N.C. 268, 278–79 (1990)) (emphasis and alteration

in original).

In order for 404(b) evidence to be admissible, “the trial court is required to make an initial determination pursuant to Rule 104(b) of whether there is sufficient evidence that the defendant in fact committed the extrinsic act.” *State v. Haskins*, 104 N.C. App. 675, 679–80 (1991). Further, the inclusion of evidence under 404(b) is “constrained by the requirements of similarity and temporal proximity.” *State v. Al-Bayyinah*, 356 N.C. 150, 154–55 (2002) (citations omitted).

Defendant challenges a significant number of messages sent between himself and others on Facebook that were admitted under Rule 404(b). We first address the messages to which defendant objected that referred to “licks” and “jugs,” which defendant maintains could have been references to other crimes. Defendant argues that the trial court did not make the proper findings regarding these other potential crimes, and therefore these messages ought to have been excluded. The State does not engage with defendant’s argument, instead discussing the lack of prejudicial effect these messages had. While it appears the State has effectively conceded that these messages were admitted improperly, we will review whether such admission constituted prejudicial error.

“[I]f an appellate court reviewing a trial court’s Rule 404(b) ruling determines in accordance with these guiding principles that the admission of the Rule 404(b) testimony was erroneous, it must then determine whether that error was prejudicial.” *State v. Pabon*, 380 N.C. 241, 260 (2022) (citation omitted). Error is prejudicial if a

different result would have resulted, absent that error. *Loren*, 302 N.C. at 613.

Here, even if the messages that could have conceivably related to different crimes had been omitted, defendant would still have been found guilty. There was ample evidence from which the jury could draw to convict defendant: defendant's DNA was found at the scene of the crime, a properly admitted message indicated defendant was at the scene, and defendant engaged in numerous web searches regarding the shooting and his involvement in it. Thus, we do not find that any error the trial court committed in relation to these messages was prejudicial.

We next address defendant's argument that messages referencing the terms "hot boy" and "bodies" should have been excluded. The State presented the message with "hot boy" not as evidence of a different crime, but as evidence that defendant had committed the crime in question, thus taking it outside the scope of Rule 404(b) entirely. Further, defense counsel never requested a limiting instruction for this message.

Defendant's argument concerning the reference to "bodies" is that the jury could have assumed that this meant that defendant committed multiple murders, which was not the purpose for which the State offered this evidence. In this type of scenario, "[w]hen evidence which is admissible as to . . . one purpose but not admissible as . . . for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly." N.C.G.S. § 8C-1, Rule 105 (2024) However, not only did defense counsel decline to ask for a



limiting instruction, but they explicitly requested there be no limiting instruction for fear that jurors would theorize that defendant had committed multiple murders. On appeal, defendant argues that this evidence should have been excluded on relevancy and prejudice grounds; however, an objection under Rule 403 was never made at trial and is deemed waived. *See* N.C. R. App. P. Rule 10(a).

Defendant's final argument under 404(b) is that messages concerning the sale of marijuana and a firearm should have been excluded or accompanied by limiting instructions. These messages were offered by the State not to prove that defendant was engaged in illegal activity beyond the shooting, but to prove that he had purchased the murder weapon before the shooting and had not sold it (the sale of marijuana being part of the attempted sale of the gun). The first of these messages in question, State's Exhibit 99B, concerned both the sale of marijuana and the sale of a firearm; the court gave a limiting instruction as to the marijuana, but not the firearm. On the second message, State's Exhibit 99E, which concerned only the sale of the gun, the court denied defense counsel's request, noting that a "limiting instruction is [not] necessary or prudent in that circumstance."

We agree with the trial court. The attempted sale of the firearm is not an extraneous bad act by defendant, but is evidence intimately tied to the State's case in chief. Defendant argues that the jury could have inferred that this was not the murder weapon. This is true, and there was nothing preventing the jury from doing so, or preventing defense counsel from arguing this position.

Finally, defendant contends that a message, State's Exhibit 99Z in which defendant used the phrase, "Take a life and get on my level, Little Bruh," was irrelevant and prejudicial, and the court's failure to redact the n-word prejudiced him. We disagree.

We review Rule 403 objections for abuse of discretion. *State v. Lail*, 294 N.C. App. 206, 219 (2024). Relevant evidence is anything that makes a fact consequent to the case more or less probable, and relevant evidence is generally admissible. N.C.G.S. § 8C-1, Rules 401, 402. However, even if evidence is relevant, it may still 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." *Id.*, Rule 403.

The State offered Exhibit 99Z as a possible admission of murder. Defendant contends that there was no evidence as to whether this was merely bravado or projected toughness and refers to the statements as potentially possessing "marginal relevance." However, as the trial court noted, this type of evidence is highly relevant. Even if this message runs the risk of unfair prejudice, this does not outweigh the relevance of a potential admission of guilt. We find no abuse of discretion.

Defendant argues the trial court was obligated to redact the n-word from his messages, and that failure to do so was a violation of Rules 401 and 403. Defendant cites to case law that he contends establishes a practice of redacting the n-word from

evidence. However, the case law demonstrates that this is a *permitted* practice, not an obligatory one. The messages containing the n-word were relevant to the litigation, and we do not find that the court abused its discretion by declining to redact these messages.

III. Conclusion

For the foregoing reasons, we find that defendant received a fair trial free of prejudicial error.

NO ERROR.

Judges GORE and MURRY concur.

Report per Rule 30(e).