IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 10/27/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

STATE OF ARIZONA,	)	1 CA-CR 10-0303
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	
ABDUL JABBAR JACKSON,	)	(Not for Publication –
	)	Rule 111, Rules of the
Appellant.	)	Arizona Supreme Court)
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-006255-001 DT

The Honorable Arthur T. Anderson, Judge

AFFIRMED

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David Cole, Solicitor General
By Kent E. Cattani, Chief Counsel, Criminal Appeals/ Capital Litigation Section
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Attorneys for Appellant

P O R T L E Y, Judge

¶1 Abdul Jabbar Jackson appeals his aggravated assault conviction. Without challenging the sufficiency of the evidence, he argues that the trial court erred by admitting, over his objection, evidence of threats he made to the victim prior to the assault. He also argues that the court erred by denying his motion to dismiss the case for speedy trial violations. For the reasons that follow, we affirm Jackson's conviction.

BACKGROUND

¶2 Jackson was charged with aggravated assault after he attacked his wife with an aluminum baseball bat. He had to be extradited back to Arizona pursuant to the Interstate Agreement on Detainers after he fled to Iowa. *See* Arizona Revised Statutes ("A.R.S.") section 31-481 (2002) (Agreement on Detainers). He was subsequently convicted by a jury as charged, and was sentenced to fifteen years' imprisonment. He filed an appeal, and we have jurisdiction pursuant to Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 12-120.21(A) (2003), 13-4031 and -4033 (2010).

DISCUSSION

I. The Admission of Jackson's Prior Threats

¶3 Jackson first argues the trial court erred when it admitted evidence he had threatened the victim several weeks

prior to the date of the aggravated assault. We review an evidentiary ruling for a clear abuse of discretion. *State v. Amaya-Ruiz*, 166 Ariz. 152, 167, 800 P.2d 1260, 1275 (1990).

¶4 The victim's cell phone worked only as a speakerphone. As a result, anyone near her when she made or received a cell phone call could overhear both sides of any conversation. The victim's aunt ("Aunt") testified that while the victim was living with her, she overheard phone conversations between Jackson and the victim between December 2008 and March 11, 2009, the date of the aggravated assault. When Aunt was about to testify for the first time about a threat she heard Jackson make towards the victim, Jackson raised a hearsay objection. The trial court noted the statement was an admission of a party-opponent and overruled the objection. *See* Ariz. R. Evid. 801(d)(2) (an admission by a party-opponent is not hearsay). When the State asked Aunt what Jackson threatened to do to the victim, another hearsay objection was raised. The court again noted the statement was an admission of a party-opponent. Jackson then asked for a bench conference.

¶5 During the bench conference, Jackson abandoned the hearsay argument and argued there was insufficient foundation to admit his statements as other-act evidence pursuant to Arizona Rule of Evidence 404(b). The trial court ruled that the threats were intrinsic to the offense and, therefore, were not other

acts. The court also held that even if the evidence was not intrinsic, the evidence would be admissible pursuant to Rule 404(b) to prove motive and state of mind. Aunt subsequently testified that Jackson made several threats against the victim between December 2008 and the date of the incident; that Jackson threatened to injure the victim if she did not come back to him; and that he would make the victim's life "a living hell."

¶6 Although Jackson argues that the evidence was not intrinsic or otherwise admissible, we find no error. Even if we assume for purposes of argument that the evidence of the threats was not intrinsic to the aggravated assault, *see State v. Nordstrom*, 200 Ariz. 229, 248, ¶ 56, 25 P.3d 717, 736 (2001), there was no error because the evidence was admissible pursuant to Rule 404(b) to demonstrate "motive, . . . intent, preparation, plan, knowledge, [and] absence of mistake or accident." *State v. Wood*, 180 Ariz. 53, 62, 881 P.2d 1158, 1167 (1994), s*ee also State v. Williams*, 183 Ariz. 368, 378, 904 P.2d 437, 447 (1995) (other-act evidence offered to prove a defendant "would stop at nothing in his jealous need for total control over [] the women in his life" was admissible pursuant to Rule 404(b) as evidence of motive). Moreover, the evidence was also relevant to prove identity, especially because Jackson denied that he attacked the victim.

¶7 Although Jackson made his threats several weeks before he attacked the victim with a bat, the timing of the threats goes to the weight to be given the evidence, not its admissibility. Remoteness generally does not determine the admissibility of other-act evidence. *State v. Van Adams*, 194 Ariz. 408, 416, ¶ 24, 984 P.2d 16, 24 (1999)*; see also State v. Featherman*, 133 Ariz. 340, 345, 651 P.2d 868, 873 (App. 1982) (prior conduct which occurred two months before charged offense was not too remote). Finally, there is nothing in the record to suggest the evidence was unfairly prejudicial. Consequently, the trial court did not abuse its discretion by admitting Aunt's testimony about the threats before the assault.

II. The Denial of the Motion to Dismiss

¶8 Jackson also argues the trial court erred when it denied his motion to dismiss based on the alleged violation of his right to a speedy trial. After he was extradited from Iowa, the trial court asked the parties to determine the "last day" to begin trial and preserve Jackson's right to a speedy trial. Jackson argued that his last day was November 29, 2009, because Arizona Rule of Criminal Procedure 8.3(a) controlled and the trial had to begin within ninety days after he arrived in Arizona.[1] The State, however, argued Article IV of the

[1] The parties agreed time began to run when Jackson arrived in Arizona on September 1, 2009.

Interstate Agreement on Detainers controlled and the last day to begin trial was December 29, 2009 — 120 days after Jackson arrived in Arizona. *See* A.R.S. § 31-481, Art. IV. The trial court agreed with the State, ruled that the 120-day provision of Article IV of the Interstate Agreement on Detainers controlled, and set the trial date accordingly.

¶9 After a continuance, and two days before the trial began on January 6, 2010, Jackson filed a motion to dismiss based on the alleged denial of his right to a "speedy trial." He renewed his argument that the ninety-day provision of Rule 8.3(a) controlled and that his trial should have begun no later than November 29, 2009. His motion was denied.[2]

¶10 Ordinarily, we would review the interpretation of Rule 8.3(a) and the Interstate Agreement on Detainers *de novo*. *State v. Burkett*, 179 Ariz. 109, 111, 876 P.2d 1144, 1146 (App. 1993). Jackson, however, does not allege he suffered any prejudice from the failure to begin his trial on or before November 29, 2009. "[I]n the absence of a showing of prejudice, a speedy trial violation raised as error on appeal after conviction does not warrant reversal of that conviction." *State v. Vasko*, 193 Ariz. 142, 143, ¶ 3, 971 P.2d 189, 190 (App. 1998). Such error is mere "technical error." *Id*. Consequently, because Jackson did

[2] By the time of trial, a new judge had been assigned to the case and declined to revisit the prior ruling.

not allege or demonstrate that he suffered any prejudice, there was no reversible error and we need not address whether the trial court correctly interpreted Rule 8.3(a) and/or Article IV of the Interstate Agreement on Detainers.

CONCLUSION

¶11 Because we find no error, we affirm Jackson's conviction and sentence.

/s/
_____
MAURICE PORTLEY, Judge

CONCURRING:

/s/
_____
JON W. THOMPSON, Presiding Judge

/s/
_____
JOHN C. GEMMILL, Judge