

STATE OF LOUISIANA

*

NO. 2018-K-0616

VERSUS

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COURT OF APPEAL

MARCO PARKER

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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DYSART, J., DISSENTS.

The crime of obstruction of justice is defined, in relevant part, as the “[t]ampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding” when it is “committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding.” La. R.S. 14:30.1 A(1). The statute further provides that “[t]ampering with evidence shall include the intentional alteration, movement, removal or addition of any object or substance either: (a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers; or (b) At the location of storage, transfer, or place or review of any such evidence.” *Id.*

The Louisiana Supreme Court has found:

Louisiana's obstruction of justice statute . . . prohibits mere “movement” of evidence, if done at a location of an incident which the perpetrator has good reason to believe will be the subject of any investigation and if done with the requisite specific intent and knowledge

State v. Jones, 07-1052, p. 14 (La. 6/3/08), 983 So.2d 95, 103. “O]bstruction of justice is a specific-intent crime.” *State v. Vercher*, 14-1211, p. 11 (La. App. 3 Cir. 5/6/15), 162 So.3d 740, 747, *writ denied*, 15-1124 (La. 5/20/16), 191 So.3d 1065.

In this case, the text message defendant sent is directly related to his knowledge that his actions in disposing of the weapon in the garbage would affect a criminal investigation into the crime. The defendant’s knowledge is clearly at issue given his statement to Detective Barrere that he was did not know that Morris was going to shoot the victim or why he shot him. The text messages at issue rebut the defendant’s statements to Det. Barrere.

Furthermore, in my opinion, the text messages are not unduly prejudicial under La. C.E. art. 403. All inculpatory evidence is inherently prejudicial. *State v. Spratt*, 13-0158, p.20 (La. App. 4 Cir. 11/20/13), 129 So.3d 741, 751, *writ denied*, 13-2960 (La. 5/30/14), 140 So.3d 1173, quoting *State v. Rose*, 06–0402, p. 13 (La.2/22/07), 949 So.2d 1236, 1244. The Rose Court indicated that, in employing Article 403’s balancing test, “‘prejudicial’ limits the introduction of probative evidence of prior misconduct only when it is unduly and unfairly prejudicial.” *Rose*, 06–0402, p. 13, 949 So.2d at, 1244. This Court has found that “unfair prejudice thus means “the offered evidence has ‘an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.’” *State v. Henry*, 11–1137, p. 9 (La. App. 4 Cir. 10/24/12), 102 So.3d 1016, 1022.

In my opinion, while the evidence of the text messages may be prejudicial to the defendant, “it is not unfairly prejudicial because it does not suggest a decision on an improper or emotional basis.” *See Spratt*, 13-0158, p. 21, 129 So.3d at 752.

I find that the trial court erred in granting the defendant’s motion in limine. I would grant the State’s writ and reverse the ruling of the trial court.