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NO. COA06-722

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v.

Cumberland County
No. 04CRS068078

TERRENCE LORENZO ROBINSON

Appeal by defendant from judgments entered 1 December 2005 by Judge Gregory A. Weeks in Cumberland County Superior Court. Heard in the Court of Appeals 12 March 2007.

Attorney General Roy A. Cooper, III, by Special Deputy Attorneys General Daniel S. Johnson and Ted R. Williams, for the State.

Kevin P. Bradley for defendant-appellant.

HUNTER, Judge.

The sole issue we must decide is whether the court erred by admitting evidence of a prior incident involving defendant pursuant to Rule 404(b). After a careful review of the record and briefs, we affirm the trial court's admission of the prior incident.

Defendant was charged by indictment with felony speeding to elude arrest, assault with a deadly weapon on a government officer, injury to personal property, and resisting a public officer. He was charged by special indictment with attaining the status of habitual felon. Defendant was also charged by magistrate's order with driving while license revoked, and reckless driving.

All of the charged offenses were tried before Judge James F. Ammons, Jr. at the 17 October 2005 session of Cumberland County Superior Court. Defendant was found guilty of felony speeding to elude arrest, resisting an officer, reckless driving, and driving while license revoked. A mistrial was declared on the habitual felon charge after the jury was unable to reach a verdict. The habitual felon charge was re-tried before Judge Gregory A. Weeks at the 29 November 2005 session of court. Defendant was found guilty of the charge and was sentenced by Judge Weeks on 1 December 2005 to imprisonment for a period of 86 to 113 months for the felony and 120 days for the misdemeanors.

The State presented evidence at the original trial tending to show that on 24 October 2004, Corporal Samuel Goodson of the Cumberland County Sheriff's Department observed a burgundy Ford Taurus automobile leave an apartment complex. Unable to ascertain the state of registration on the vehicle's license plate, Goodson decided to stop the vehicle. As Goodson activated the blue lights on his marked patrol vehicle, the burgundy Taurus failed to stop for a stop sign. Goodson then activated his siren. The burgundy Taurus automobile accelerated to a speed of more than seventy miles per hour in a zone marked thirty-five miles per hour as the maximum speed limit. The burgundy Taurus made several turns as Corporal Goodson and Deputy Sheriff Willard Cornell, in a separate vehicle, pursued it. The burgundy Taurus suddenly stopped halfway down a street and started rolling backward. Two persons exited the Taurus and fled on foot. The person who exited from the driver's side

wore a yellow shirt and blue jeans. Goodson and Cornell chased the driver on foot and saw him run into a line of woods where there was a drop of forty to fifty feet into a creek. Goodson and Cornell then heard a sound like an "exhale of air" or "release of air" coming from the bottom of the hill, followed by silence.

A K9 unit of the Fayetteville Police Department arrived on the scene thereafter. A search dog tracked a scent gathered from the steering wheel of the Ford Taurus to the embankment where Goodson last saw the driver. The dog began barking at that spot. A man, wearing a yellow shirt and blue jeans, emerged from the bottom of the hill and surrendered to the officers. Goodson and Cornell identified this man as defendant.

Over defendant's objection, the court admitted testimony of Corporal Michael Matthews of the Cumberland County Sheriff's Department regarding an incident involving defendant during the morning of 29 March 2004. Matthews testified on *voir dire* that on that date he observed a vehicle bearing what he suspected was a fictitious license tag. He activated the blue lights and siren on his patrol vehicle in order to stop the vehicle for further investigation. The vehicle failed to yield and Matthews pursued the vehicle, at times reaching speeds in excess of 100 miles per hour, through Cumberland County and almost a mile into Sampson County. The vehicle abruptly stopped in the left travel lane of Highway 24 in Autryville. The driver exited the vehicle and fled on foot. Matthews and another deputy sheriff pursued the person on

foot and apprehended him. Matthews identified the man as defendant.

Rule 404(b) of the Rules of Evidence provides in pertinent part:

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, 404(b) (2005). Rule 404(b) is

a clear general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but *one exception* requiring its exclusion 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. Coffey, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990). Evidence is admissible under this rule "if it is substantial evidence tending to support a reasonable finding *by the jury* that the defendant committed a similar act or crime and its probative value is not limited *solely* to tending to establish the defendant's propensity to commit a crime such as the crime charged." *State v. Stager*, 329 N.C. 278, 303-04, 406 S.E.2d 876, 890 (1991). The rule of admissibility is limited by the requirements of similarity and temporal proximity. *State v. Lloyd*, 354 N.C. 76, 88, 552 S.E.2d 596, 608 (2001).

Defendant contends that "the two chases have no similarities other than in the elements of felonious operation of a vehicle to elude a law enforcement officer. Probative value apart from

establishing a propensity to commit that crime is negligible." Defendant further contends that even if the evidence had some probative value, it should have been excluded pursuant to Rule 403 because its probative value was outweighed by the danger of unfair prejudice.

When evidence is offered to prove identity, as in the case at bar, "there must be shown some unusual facts present in both crimes or particularly similar acts which would indicate that the same person committed both crimes." *State v. Moore*, 309 N.C. 102, 106, 305 S.E.2d 542, 545 (1983). However, "[i]t is not necessary that the modus operandi of the crime the state seeks to have admitted rise to the level of the unique and bizarre." *State v. Green*, 321 N.C. 594, 604, 365 S.E.2d 587, 593 (1988). "Rather, the similarities simply must tend to support a reasonable inference that the same person committed both the earlier and later acts." *Stager*, 329 N.C. at 304, 406 S.E.2d at 891. Ultimately the decision whether or not to exclude evidence pursuant to Rule 403 is addressed to the discretion of the trial judge and will not be disturbed unless it is "manifestly unsupported by reason or is so arbitrary it could not have been the result of a reasoned decision." *State v. Syriani*, 333 N.C. 350, 379, 428 S.E.2d 118, 133, *cert. denied*, 510 U.S. 948, 126 L. Ed. 2d 341 (1993).

We conclude there are sufficient similarities between the two incidents to permit a reasonable inference that the same person committed both. In each case, the involved vehicle bore a suspicious license plate; the vehicle immediately accelerated soon

after the deputy turned on blue lights; the vehicle led the deputy sheriff on a chase, at speeds well in excess of the posted speed limit, through Cumberland County; the pursued vehicle suddenly stopped in the roadway; and the driver exited the vehicle and fled on foot.

We hold the court did not abuse its discretion by admitting the evidence.

No error.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).