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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1391

Filed: 6 November 2018

New Hanover County, No. 14 CRS 053046

STATE OF NORTH CAROLINA

v.

JAMES OPLETON BRADLEY

Appeal by defendant from judgment entered 29 June 2017 by Judge Paul L. Jones in New Hanover County Superior Court. Heard in the Court of Appeals 8 August 2018.

*Attorney General Joshua H. Stein, by Solicitor General Matt Sawchak, Assistant Solicitor General Kenzie M. Rakes, and Special Deputy Attorney General Derrick C. Mertz, for the State.*

*Massengale & Ozer, by Marilyn G. Ozer, for defendant-appellant.*

ZACHARY, Judge.

Defendant James Opleton Bradley appeals from his conviction for second-degree murder. Defendant argues that the trial court committed reversible error by admitting evidence of two prior murders, two of his fictional writings, and a prior *pro se* Motion for Appropriate Relief. After careful review, we find no prejudicial error.

### **Background**

Shannon Rippy was last seen sometime around 7:00 p.m. on 5 April 2014, and was reported missing the next day when she did not show up for her birthday lunch with her mother as planned. To date, Shannon's body has not been found. Defendant was the last person to be seen with Shannon and quickly became a person of interest in her disappearance. Defendant was indicted for Shannon's murder on 2 September 2014.

Detectives learned that Shannon and Defendant worked together as the only two regular employees at Mott Landscaping in New Hanover County. Shannon was a recovering alcoholic, struggled financially, and had lost her driver's license. Defendant would often give Shannon rides to work and elsewhere. Defendant admitted that he had romantic feelings for Shannon, and told detectives he loved Shannon. However, Shannon had been in a sporadic relationship with Steve Mott, the owner of Mott Landscaping, for several years. Defendant had asked Shannon out before, but Shannon did not have feelings for Defendant and declined. Although Defendant and Shannon otherwise had a cordial relationship, they could get into "violent argument[s]." Steve Mott testified that while at work, Defendant "would actually fly off the handle sometimes at [Shannon], and I'd have to, you know, kind of separate them[.]"

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Shannon went out with a friend around 3:00 p.m. to celebrate her birthday on the day that she went missing. According to her friend, Shannon hoped to meet up with Steve Mott that evening, and was disappointed when he failed to return her phone calls. Nonetheless, Shannon was otherwise in good spirits and was looking forward to celebrating her birthday with her family the next day. Shannon left the bar around 5:00 p.m. At some point thereafter, Defendant picked Shannon up from her home, and surveillance footage showed the two together at a gas station. Phone records indicated that Shannon continued to use her cell phone throughout the evening until her last phone call at 6:56 p.m. Around 7:00 p.m., Shannon's phone was either turned off or the battery died. Her phone has not been turned on since then.

When detectives first spoke with Defendant about Shannon's disappearance, Defendant said that he had not seen or spoken to Shannon since 3 April 2014, and had no idea that she was missing. Detectives asked to inspect Defendant's cell phone and saw "that his call log had been deleted." Thereafter, detectives learned from Shannon's phone records that Defendant had received a call from Shannon the evening that she went missing. Detectives interviewed Defendant once again; Defendant then admitted that he received a phone call from Shannon on the night of her disappearance, but insisted that he never saw her. When surveillance footage showed Shannon in Defendant's vehicle in the gas station parking lot on the evening that she disappeared, Defendant then admitted to detectives that he had picked

Shannon up, but maintained that he dropped her off at the Village Market around 7:30 p.m.

However, video surveillance footage from the period after Defendant and Shannon were seen at the gas station showed Defendant's vehicle traveling toward his apartment rather than the Village Market. Shannon's phone records from that time also revealed that "her cell phone was moving in a southbound direction and ends up out close to where [Defendant] lived." The detective testified that, when confronted with this information, Defendant began to sweat and seemed nervous. Defendant then changed his story once again, and told detectives that he went to pick Shannon up and that the two drove around the Greenfield Lake area.

According to Defendant, while he and Shannon were driving around Greenfield Lake the two began arguing about Shannon's relationship with Steve Mott. Defendant told Shannon that she could "do better," but Shannon told Defendant that she loved Steve. Defendant claimed that Shannon was upset, got out of the car, and ran off into a "cut" in the woods at approximately 7:00 p.m. Defendant told detectives that Shannon was "very dramatic," and that "that's another reason why I don't like—the woman has more issues than a magazine factory. And, um, and I just don't like being around that." Defendant told detectives that he did not chase after Shannon, and that he never saw her again. Detectives took Defendant in a patrol car to Greenfield Lake. Once there, Defendant indicated the cut of woods into which he

maintained that Shannon vanished. Law enforcement officials and the community thoroughly searched the Greenfield Lake area, but Shannon's body was never found.

A later FBI forensic examination of Defendant's home computer revealed that after meeting with detectives and telling them that he had been with Shannon at Greenfield Lake, Defendant searched the internet for the terms "cellular technology," "cell tower," "cell tower range," "item mode query," "*Star News*," and "Mapquest." Defendant also saved a document to his computer titled "Cell Phone Pinging for Realtime Location Tracking, Fact or Fiction." Moreover, while Defendant was in jail awaiting trial, he sent a letter to a friend in which he admitted to drinking with Shannon at his apartment on the night that she disappeared.

Detectives noticed that in the four days leading up to Shannon's disappearance, Defendant and Shannon exchanged seventeen telephone calls, ten of which were calls that Defendant made to Shannon. However, Defendant never called Shannon again after she disappeared, nor did he assist in any of the community searches for Shannon. Defendant told detectives that "[t]he point of the matter is I was the last one to see [Shannon] alive."

Defendant was arrested for Shannon's murder on 29 April 2014, when detectives found a body that they believed to be Shannon's while searching on a tract of land to which only Defendant and Steve Mott had access. After Defendant was arrested, however, detectives learned that the body was that of another female victim,

Elisha Tucker. Nevertheless, Defendant was indicted for the first-degree murder of Shannon on 2 September 2014.

At Defendant's trial for Shannon's murder, the State also sought to admit the following into evidence:

*a. Defendant's 1990 Conviction for the First-Degree Murder of his Stepdaughter*

In 1990, Defendant pleaded guilty to the first-degree murder of his eight-year-old stepdaughter Ivy Gibson. On the day that she disappeared in 1988, Defendant told investigators that he last saw Ivy earlier that day leaving for school, carrying her lunchbox. Later that day, Ivy's lunchbox was found on the side of the road. Two days later, Defendant confessed to killing Ivy:

[Defendant] said that during the morning [Ivy] had come in, he was watching TV, he had some—some words were exchanged, he pushed her, she hit the TV, started crying or complaining. He started choking her with a sock, realized that he had killed her. Went to the grocery store, bought some trash bags, came back home, put her in a—two trash bags, and put her in the dumpster down the street from the trailer park where he lived.

Defendant also confessed to placing Ivy's lunchbox on the side of the road in order to stage an abduction. No blood or other forensic evidence was ever discovered at the crime scene.

In April 1994, while serving his sentence for Ivy's murder, Defendant filed a *pro se* Motion for Appropriate Relief in the trial court. In his Motion for Appropriate Relief, Defendant alleged that detectives had altered his confession by including a

false statement that he had used socks to strangle Ivy. Defendant also maintained that he could not have been guilty of first-degree murder because he acted in a fit of rage when he killed Ivy, indicating a lack of premeditation.

*b. Discovery of Ms. Tucker's Body*

The search for Shannon ultimately led detectives to a parcel of property owned by Mott Landscaping to which only Defendant and Steve Mott had access. It was there that detectives found the body that they believed to be Shannon's, wrapped in duct tape, stuffed inside of three trash bags, and buried in a shallow grave. However, the autopsy revealed that the body was that of Ms. Tucker, who had been reported missing in 2013.

According to a friend of Defendant, Ms. Tucker was a prostitute who struggled with substance abuse issues and previously had a romantic relationship with Defendant. Around the time that Ms. Tucker disappeared, Defendant told his friend that he and Ms. Tucker "broke up and she had moved out of town, that she moved to South Carolina or was residing [in] Florida[.]"

Forensic Pathologist Dr. Karen Kelly concluded that Ms. Tucker's death was caused by "traumatic head injuries. And other significant conditions included traumatic neck and chest injuries and clandestine burial." Dr. Kelly testified that she has seen a body placed in trash bags before being buried only six times in the roughly

5,000 autopsies that she had performed. An expert in DNA analysis testified that human blood was found inside Defendant's vehicle.

*c. Defendant's Graphic Fictional Writings*

After Defendant was arrested for Shannon's murder, his landlord found two violent short stories that Defendant had authored years earlier. The first story was titled "The Beast Within," and the second was titled "Serial Killer." In "The Beast Within," Defendant describes the killer as a white man named Grainger Wainscott "who transforms into a savage beast to eat all but the heads of his female victims." In "Serial Killer," Defendant describes the killer as an "English Professor [who] abducts young women and strangles them to death with a scarf."

\* \* \*

The State gave notice of its intent to offer into evidence at Defendant's trial for Shannon's murder the details of the murders of Ms. Tucker and Ivy, Defendant's *pro se* Motion for Appropriate Relief, and Defendant's short stories. The trial court conducted a hearing on the admissibility of the evidence in April 2016.

First, Defendant objected to the admission of evidence of Ivy's murder and Defendant's subsequent Motion for Appropriate Relief in that case. Defendant argued that this evidence was irrelevant in that it would be used to tie Defendant to the death of Ms. Tucker, rather than to the murder of Shannon for which Defendant was on trial. Defendant objected on both constitutional and evidentiary grounds.



The State next sought to admit evidence relating to Ms. Tucker's murder. Defendant vigorously argued that Ms. Tucker's murder was not relevant to the instant case, noting that the State had offered nothing by way of comparison between Shannon's murder and Ms. Tucker's murder. Defendant again objected on both evidentiary and constitutional grounds. However, because Shannon also suffered from substance abuse issues and was likewise a subject of Defendant's romantic feelings, the State argued that the details of Ms. Tucker's murder showed a common scheme and plan, lack of accident, and *mens rea* for the first-degree murder of Shannon.

Regarding the admissibility of the two short stories, Defendant argued that they were not relevant in that they were both fictional and devoid of any similarities to the known facts in the instant case.

By order entered 11 August 2016, the trial court found that "the murder of [Ivy] is similar in nature to the murder of [Ms.] Tucker, and to the disappearance of Shannon[.]" The trial court noted that the bodies of both Ivy and Ms. Tucker "were disposed of in an unusual manner, in trash bags[.]" and that forensic examinations revealed that both victims suffered neck trauma. In addition to the indirect ties to Shannon's murder via the similarities to Ms. Tucker's murder, the trial court found that "[t]he circumstances of Defendant's reaction to [Shannon's] disappearance are similar in nature to that in the [Ivy] murder." In particular, the trial court noted that

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Defendant continuously lied to law enforcement when they confronted him about Ivy, “going so far as to stage her abduction from the bus stop, while knowing that he had secreted her body in a neighborhood dumpster[,]” and similarly, that when law enforcement confronted him about Shannon’s disappearance, “Defendant again lied repeatedly, only changing his story when detectives presented evidence that did not support his untruthful story.” Accordingly, the trial court concluded that Ivy’s murder was relevant “to show intent, lack of accident, and motive in the killing of both [Ms.] Tucker and Shannon[,]” and was thus admissible.

The trial court also concluded that evidence relating to Ms. Tucker’s murder was admissible. First, the trial court found that there was “substantial evidence that Defendant killed [Ms.] Tucker.” Next, the trial court concluded that Ms. Tucker’s murder was “temporally proximate to [Shannon’s] disappearance,” and that the circumstances surrounding the two were similar. In particular, the trial court noted that “Defendant was interested in having a romantic relationship with [Shannon] . . . [and] also had a romantic relationship with [Ms.] Tucker[,]” and that, “[i]n both cases, Defendant did nothing to assist authorities or family members in searching for them and, if anything, impeded those efforts by not coming forward or by lying when questioned.” The trial court therefore reasoned that evidence of Ms. Tucker’s murder was admissible, in that it was relevant “to show Defendant’s identity as the person

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who killed [Shannon], to show his motive, intent, and lack of accident in killing [Shannon].”

Lastly, the trial court determined that it would admit Defendant’s writings into evidence. The trial court concluded that Defendant’s *pro se* Motion for Appropriate Relief was relevant evidence of Defendant’s identity as the perpetrator of Ms. Tucker and Shannon’s murders, “his *modus operandi* in disposing of their bodies, lack of accident, intent, and of the elements of premeditation and deliberation[.]” The trial court also concluded that the short stories were relevant to “Defendant’s identity as the perpetrator of both [Ms.] Tucker and Shannon[’s] murders, his motive in committing these crimes, lack of accident, intent, and of the elements of premeditation and deliberation[.]” The trial court further noted that, “[i]n the case at bar, [Shannon’s] body is also not available for examination making Defendant’s prior writings pertaining to strangulation and destruction of evidence all the more relevant.”

Over Defendant’s repeated objections, the jury was presented with all of the above evidence at Defendant’s trial for Shannon’s murder. The jurors were shown two pictures of Ivy before her death, together with photographs of her autopsy and the landfill in which her body was found. The State introduced several autopsy photographs of Ms. Tucker, including photographs of her body inside the opened trash bag, as well as focused images of her injuries. A detective testified to the extensive

search for Ms. Tucker, and the jury was shown nine photographs of Ms. Tucker's body being unearthed. Ms. Tucker's mother also testified emotionally about her daughter.

In charging the jury, the trial court gave four limiting instructions regarding Ivy's murder, Ms. Tucker's murder, Defendant's short stories, and Defendant's *pro se* Motion for Appropriate Relief. As to all of the challenged evidence, the trial court instructed the jury that the evidence had been received for the purpose of showing that "the defendant had the intent which is a necessary element of the crime charged in this case, including premeditation and deliberation, which are elements of first-degree murder," as well as "the absence of accident." The trial court also instructed the jury that the evidence of Ms. Tucker's murder, Defendant's *pro se* Motion for Appropriate Relief, and Defendant's short stories were received "for the purpose of showing the identity of the person who committed the crime charged in this case, if it was committed[.]" The trial court further instructed the jury that it could consider evidence of the murder of Ms. Tucker for the purpose of showing "that the defendant had a motive for the commission of the crime charged in this case[.]" Lastly, the trial court instructed the jury that Defendant's *pro se* Motion for Appropriate Relief and short stories were admitted to show that "there existed in the mind of the defendant a plan, scheme, system, or design involving the crime charged in this case[.]" The trial court instructed the jury to consider the evidence "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 second-degree murder. On 29 June 2017, the trial court entered judgment and commitment against Defendant for second-degree murder and sentenced him to 365 to 450 months' imprisonment. Defendant appeals.

Defendant argues that it was error for the trial court to admit into evidence the particulars of the murders of Ivy and Ms. Tucker, together with Defendant's two short stories and Defendant's *pro se* Motion for Appropriate Relief, and that he is therefore entitled to a new trial. We disagree.

### **Discussion**

It is axiomatic that in order for evidence to be admissible, it must be relevant. N.C. Gen. Stat. § 8C-1, Rule 402 (2017). Evidence is relevant if it “ ‘makes the existence of any fact at issue more or less probable[.]’ ” *State v. Peterson*, 179 N.C. App. 437, 453, 634 S.E.2d 594, 608 (2006) (quoting *Huddleston v. United States*, 485 U.S. 681, 687, 99 L. Ed. 2d 771, 781 (1988)), *aff'd*, 361 N.C. 587, 652 S.E.2d 216 (2007), *cert. denied*, 552 U.S. 1271, 170 L. Ed. 2d 377 (2008). Relevant evidence generally “ ‘is admissible unless the Rules provide otherwise.’ ” *Id.* (quoting *Huddleston*, 485 U.S. at 687, 99 L. Ed. 2d at 781).

Pursuant to Rule 404(b), evidence of a defendant's past crimes or other bad acts must be excluded “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.”

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*State v. Coffey*, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990). However, Rule 404(b) will otherwise allow evidence of a defendant's prior crime or bad act to be admitted "as long as it is relevant to any fact or issue other than the defendant's propensity to commit the crime." *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012) (citation and quotation marks omitted). "The rule lists numerous purposes for which evidence of prior acts may be admitted, including 'motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.'" *Id.* (quoting N.C. Gen. Stat. § 8C-1, Rule 404(b)). "This list of proper purposes is neither exclusive nor exhaustive. Thus, so long as evidence of [the] defendant's prior acts makes the existence of any fact at issue, other than the character of the accused, more or less probable, that evidence is admissible under Rule 404(b)." *Peterson*, 179 N.C. App. at 453, 634 S.E.2d at 608 (citing *Coffey*, 326 N.C. at 278-79, 389 S.E.2d at 54) (other citation and internal quotation marks omitted). In addition, " 'Rule 403 allows the trial judge to exclude relevant evidence if, among other things, its probative value is substantially outweighed by the danger of unfair prejudice.' " *Id.* (quoting *Huddleston*, 485 U.S. at 687, 99 L. Ed. 2d at 781).

Even where a trial court erroneously admits certain character evidence against a defendant, reversal and a new trial are warranted only so long as the defendant can establish "that he was prejudiced by th[o]se errors." *State v. Hayes*, 239 N.C. App. 539, 547, 768 S.E.2d 636, 642 (citing *State v. Hernandez*, 188 N.C. App. 193, 204, 655

S.E.2d 426, 433 (2008)), *appeal dismissed and disc. review denied*, 368 N.C. 282, 776 S.E.2d 203 (2015). “A defendant is prejudiced by errors relating to rights arising other than under the Constitution . . . when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial[.]” N.C. Gen. Stat. § 15A-1443(a) (2017). “The burden of showing such prejudice . . . is upon the defendant.” *Id.* It is clear that if there is substantial evidence “to support the main contentions of the state, the admission of evidence, even though technically incompetent, will not be held prejudicial when defendant does not affirmatively make it appear that he was prejudiced thereby or that the admission of the evidence could have affected the result.” *State v. Young*, 302 N.C. 385, 389, 275 S.E.2d 429, 432 (1981) (citation and quotation marks omitted).

In the instant case, even assuming, *arguendo*, that it was error for the trial court to admit the challenged evidence, Defendant has not met his burden of establishing prejudice. Absent the evidence contested on appeal, the jury was presented with the following circumstantial evidence of Defendant’s guilt at trial:

To date, Shannon’s body has not been found. Defendant and Shannon worked closely with one another at Mott Landscaping, and Defendant was the last person seen with Shannon before she disappeared. Steve Mott testified that Defendant and Shannon’s relationship at work was “not really friendly” and that Defendant “had a bad temper.” Mott explained that Defendant “would actually fly off the handle

sometimes at [Shannon], and I'd have to, you know, kind of separate them like you do with wayward workers." Nevertheless, Defendant admitted that "I've told [Shannon] in the past [that I had feelings for her], you know, repeatedly in the past, and she knew that[.]" Defendant also told detectives that he loved Shannon, but Shannon would not date him. According to Defendant, this was because Shannon "loves [Steve Mott.] She would never do that." Defendant also told Shannon "that she was an idiot for staying with" Steve Mott. Defendant told detectives that "Steve Mott is not good for Shannon" and began "crying about it."

Defendant repeatedly changed his story in the course of the investigation. During one of his interviews with detectives, Defendant remarked that "[i]n the military, we were trained not to tell people nothing when we were interrogated. To think of cover stories." When detectives first spoke with Defendant four days after Shannon went missing, Defendant claimed that the last time he had spoken to or heard from Shannon was a couple of days before she went missing. Upon inspection of Defendant's cell phone, the detectives discovered "that his call log had been deleted." Defendant did not admit to having spoken to Shannon on the day that she disappeared until detectives confronted him with Shannon's phone records. Even then, Defendant maintained that he had only spoken with Shannon, but had not seen her. When surveillance footage showed Shannon in Defendant's vehicle on the night of her disappearance, Defendant then admitted that he was with Shannon but



claimed that he dropped her off around 7:30 p.m. When Defendant was confronted with evidence that this too was untrue, Defendant told detectives that he and Shannon were driving around Greenfield Lake.

Defendant was unable to describe the events at Greenfield Lake with any detail. When pressed on his story, Defendant responded, “I’ve done painted myself into a corner.” According to Defendant, he was not paying attention to his surroundings when he was driving around with Shannon “because we were heated.” Defendant said that he “called [Shannon] an idiot because she was an idiot. [Steve Mott] treated her like dirt.” Shannon, however, told Defendant that she loved Steve. Defendant claimed this was his last interaction with Shannon and that Shannon then “hopped out of the truck.” Defendant told detectives that at that point, “I was glad to be rid of [Shannon]. When she walked out—when she walked across the road, that’s why I didn’t really pursue her that hard, that’s why I didn’t call her, because I didn’t—it was—I’m sick of it.” Defendant said that “I should never, ever have went and picked that woman up that night. That’s where I f\*\*\*ed up. I should have stayed my ass at home.”

Surveillance footage throughout the area revealed no sign of either Shannon or Defendant being in the vicinity of Greenfield Lake. Instead, Shannon’s phone usage from that evening, including Shannon’s last phone call at 6:56 p.m., located her in the service area of Defendant’s apartment. Defendant’s phone was off-network

from 8:16 p.m. until at least 11:00 p.m., which FBI Agent Mike Sutton explained would occur as a result of “the phone either being physically turned off or . . . in a service area . . . where Sprint did not have service[.]” After telling detectives that he last saw Shannon at Greenfield Lake, Defendant’s internet search history revealed searches for “cellular technology,” “cell tower,” and “cell tower range.” Defendant then also saved a document to his computer titled “Cell Phone Pinging for Realtime Location Tracking, Fact or Fiction.”

Testing on one of the swabs from Defendant’s driver’s side floor padding “resulted in a positive confirmation for the presence of human blood.” Most of the results from the other areas of Defendant’s vehicle were inconclusive. However, the expert testified that “I felt from doing these exams that something was going on with my testing[.]” As she explained, her first presumptive test “uses peroxide as one of the chemicals[.]” and “[i]f peroxide or another—the presence of a different peroxidase, which is a chemical that breaks down peroxide, if these chemicals were present already in the surface of the item, that would interact with my test.” The expert testified that peroxide “is present in some cleaners.” Defendant told detectives that he had just washed his truck the Saturday that Shannon went missing. Nevertheless, Defendant washed his truck again on the following Monday and Wednesday.

The evidence further showed that there were approximately seventeen calls between Defendant and Shannon in the days leading up to Shannon’s disappearance,

but after Shannon disappeared, Defendant did not call Shannon once. Defendant also did not assist in any of the searches for Shannon. While Defendant was in jail awaiting trial, he sent a letter to a friend in which he admitted that Shannon was at his apartment the night that she disappeared. Moreover, rather than admitting that he was the last person *to be seen with* Shannon, Defendant twice told detectives that he “was the last one *to see her alive.*” (Emphasis added).

In light of the totality of the above evidence, we are unable to conclude that Defendant has established that there is a reasonable possibility that, absent the challenged evidence, Defendant’s trial would have yielded a different result. Accordingly, we find no prejudicial error in the judgment entered upon Defendant’s conviction of second-degree murder.

### **Conclusion**

For the reasons contained herein, we conclude that Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges ELMORE and HUNTER, JR. concur.

Report per Rule 30(e).