

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Willard E. Beeman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2022

Court of Appeals Case No.
22A-CR-1325

Appeal from the Madison Circuit
Court

The Honorable David A. Happe,
Judge

Trial Court Cause No.
48C04-1906-F2-1371

Bailey, Judge.

Case Summary

[1] Willard E. Beeman (“Beeman”) appeals his conviction for dealing in methamphetamine, as a Level 2 felony.¹ The only issue he raises on appeal is whether the trial court abused its discretion when it admitted evidence of crimes, wrongs, or other acts pursuant to Indiana Rule of Evidence 404(b)(2).

[2] We affirm.

Facts and Procedural History

[3] On May 30, 2019, officers with the Madison County Drug Task Force were conducting surveillance of Beeman at his residence in Anderson. Over a period of approximately two hours, the officers observed Beeman move back and forth between the residence and a white GMC Envoy that was parked outside of Beeman’s home. Sometimes others were with Beeman, and at other times Beeman was alone; at some points, Beeman was in the parked Envoy. One of the officers observed another male and a female interact with Beeman in and around the vehicle, and he also observed them all moving in and out of the residence.

[4] At approximately 8:00 p.m., Beeman drove away from the residence in the white Envoy. Soon thereafter, Anderson police officers pulled Beeman over

¹ Ind. Code § 35-48-4-1.1(a)(2), (e).

due to an active warrant. A drug-sniffing dog alerted to the presence of drugs in Beeman's vehicle, and the officers conducted a search. Inside Beeman's vehicle, the officers found what forensic testing later showed to be 16.73 grams of methamphetamine. The officers also found \$2,419 in cash, empty plastic baggies, pills, marijuana, and a cell phone. The officers arrested Beeman.

[5] On June 5, 2019, the State charged Beeman with dealing in methamphetamine, as a Level 2 felony. The charging information alleged that Beeman possessed, with intent to deliver, methamphetamine in an amount of at least ten grams. On April 8, 2022, the State filed a Notice of Intent to Offer 404(b) Evidence; specifically, "evidence of Defendant's prior drug transactions through cell phone records, ranging from 4/1/2019 to 5/30/2019 (date of crime)" to show "motive, preparation, plan, knowledge, and/or absence of mistake." App. v. II at 123. In response, Beeman filed a motion in limine in which he sought exclusion of the 404(b) evidence. Beeman renewed his objection at a pre-trial hearing, and the trial court overruled the objection.

[6] Beeman's jury trial took place on April 18, 2022. In her opening statement, Beeman's counsel admitted that the police had found Beeman's "stash," which included "meth." Tr. v. I at 193. Defense counsel also stated that Beeman was an addict, but "[h]e didn't possess with intent to deal." *Id.* Rather, counsel argued that the drugs the officers found were for Beeman's "weekend high." *Id.*

[7] At trial, Beeman renewed his objection to the admission of the text messages, and the objection was overruled. The trial court admitted into evidence State's

Exhibits 17A through 17E, which were transcripts of text messages taken from the cell phone found in Beeman’s vehicle. The trial court’s final jury instructions included an instruction offered by Beeman relating to “Prior Wrongful Conduct.” Tr. Vol. II 163, 187. The instruction was that:

[e]vidence has been introduced that the defendant was involved in wrongful conduct, other than the conduct charged in the information in this case. This evidence has been received solely on the issue of the defendant’s intent. The evidence should be considered by you only for that limited purpose.

Id. at 187.

[8] The jury found Beeman guilty as charged. The trial court sentenced Beeman to twenty-five years in the Department of Correction, with twenty-two years executed and three years suspended to probation. This appeal ensued.

Discussion and Decision

[9] Beeman challenges the trial court’s decision to admit evidence of text messages that took place in the two months prior to his arrest. He asserts that evidence was inadmissible under Indiana Rule of Evidence 404(b)(1), which states: “Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” This restriction is designed to prevent the jury “from indulging in the forbidden inference that a criminal defendant’s prior

wrongful conduct suggests present guilt.” *Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019) (internal quotation and citation omitted).

[10] The admission or exclusion of evidence is left to the discretion of the trial court, and we will reverse that decision only for an abuse of discretion. *E.g.*, *Collins v. State*, 966 N.E.2d 96, 104 (Ind. Ct. App. 2012).

An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law. In determining whether an error in the introduction of evidence affected an appellant’s substantial rights, we assess the probable impact of the evidence on the jury. Admission of evidence is harmless and is not grounds for reversal where the evidence is merely cumulative of other evidence admitted.

Id. (citations omitted). We consider any conflicting evidence most favorable to the trial court’s ruling and any uncontested evidence favorable to the defendant. *Id.*

[11] By its clear language, Rule 404(b) “does not totally proscribe other-bad-acts evidence—only its use as character evidence.” *Fairbanks*, 119 N.E.3d at 568. Here, the State maintains that the text messages were admissible under Evidence Rule 404(b)(2) in that they were not offered to prove Beeman’s

character but were “admissible for another purpose[;]” specifically, proving Beeman’s intent. Ind. Evidence Rule 404(b)(2).²

[12] To determine whether evidence of another bad act is admissible for a permitted purpose under Rule 404(b)(2):

first, the court must determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant’s propensity to commit the charged act; and second, the court must balance whether the probative value of the evidence is outweighed by prejudicial effect.

Schnitzmeyer v. State, 168 N.E.3d 1041, 1046 (Ind. Ct. App. 2021) (citing *Pierce v. State*, 29 N.E.3d 1258, 1269 (Ind. 2015)); *see also* Evidence Rule 403 (providing, in pertinent part, that relevant evidence may be excluded if its probative value “is substantially outweighed by a danger of” unfair prejudice).

[13] The exception allowing admission of other bad acts to prove intent

is narrow and is available when a defendant goes beyond merely denying the charged culpability and affirmatively presents a claim of particular contrary intent. *Wickizer v. State*, 626 N.E.2d 795, 799 (Ind. 1993). When a defendant alleges in trial a particular contrary intent, “whether in opening statement, by cross-examination of the State’s witnesses, or by presentation of his own case-in-chief, the State may respond by offering evidence

² Evidence Rule 404(b)(2) states, in relevant part:

This evidence [of crimes, wrongs, or other bad acts] may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

of prior crimes, wrongs, or acts to the extent genuinely relevant to prove the defendant's intent at the time of the charged offense." *Id.* See *Moore v. State*, 653 N.E.2d 1010, 1017 (Ind. Ct. App. 1995) ("in order that intent is affirmatively presented as an issue, an accused must in effect admit to the commission of the act but profess that he acted with some intent contrary to that required by the statute under which he is charged"), *trans. denied*.

Schnitzmeyer, 168 N.E.3d at 1046.

[14] Here, Beeman affirmatively asserted in his opening statement that, although he possessed the methamphetamine, he did not intend to deliver or deal it. He claimed he was an addict who had the large amount of methamphetamine for his own "weekend high." Tr. v. I at 193. Thus, Beeman went "beyond merely denying the charged culpability;" rather, he admitted that he possessed the methamphetamine but specifically denied any intent to deliver or deal it. *Schnitzmeyer*, 168 N.E.3d at 1046. Because Beeman placed his intent at issue, the Rule 404(b) evidence of his recent prior text messages that could be construed as referring to drug deals was relevant and admissible to show his possession "with intent to deliver" the drug on the day in question. See I.C. § 35-48-4-1.1(a)(2).

[15] On appeal, Beeman "concedes that his attorney put intent at issue in her statements to the Court," but asserts that the evidence nevertheless should be excluded because its probative value was outweighed by its potential prejudicial effect. Appellant's Br. at 10. However, Beeman cites no evidence and makes no persuasive argument in support of that assertion. He only asserts that "the

sexually explicit language” contained in the texts “could be highly offensive and inflammatory to the jury.” *Id.* But the trial court specifically considered that argument and decided that any possible prejudice from such language in the text messages was outweighed by “the substantial probative value” related to Beeman’s intent to deliver or deal the drugs. *Tr. v. I* at 173-74. Moreover, any potential prejudicial effect of the evidence was minimized by the trial court’s instruction to the jury that it may consider evidence of Beeman’s other wrongful conduct only for the purpose of determining Beeman’s intent to deliver or deal the drugs.

[16] The trial court did not abuse its discretion when it admitted the evidence of text messages from the preceding two months, as that evidence was relevant and admissible under Evidence Rule 404(b)(2) to show Beeman’s intent to deal or deliver the methamphetamine.

[17] Affirmed.

Riley, J., and Vaidik, J., concur.