

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jordan J. Wolf,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 10, 2023

Court of Appeals Case No.
22A-CR-2370

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

Trial Court Cause No.
20C01-2106-MR-4

Memorandum Decision by Judge Kenworthy
Judge Crone and Senior Judge Robb concur.

Kenworthy, Judge.

Case Summary

- [1] Following a jury trial, Jordan J. Wolf was convicted of murder, a felony.¹ Wolf received a sentence of sixty-three years, enhanced by twelve additional years based on Wolf's admission to using a firearm in committing the offense. Wolf now appeals, challenging the admission of electronic messages exchanged leading up to the murder—evidence indicating, among other things, Wolf was setting up a drug deal. The court admitted the evidence after determining the evidence (1) could be used for one or more permitted purposes under Evidence Rule 404(b)(2) and (2) was more probative than prejudicial under Rule 403. The trial court gave a limiting instruction listing potential uses of the evidence.
- [2] Wolf argues the trial court abused its discretion in admitting the challenged evidence. According to Wolf, the challenged evidence amounts to inadmissible character evidence, and the trial court failed to properly apply Evidence Rules 404(b)(2) and 403. Wolf contends the evidence is unduly prejudicial under the circumstances. He also suggests the court's limiting instruction was inadequate.
- [3] Discerning no abuse of discretion in the treatment of the challenged evidence and concluding, in any case, the alleged error was harmless at most, we affirm.

¹ Ind. Code § 35-42-1-1 (2018).

Facts and Procedural History

- [4] The State charged Wolf with murder, a felony. The State also sought a statutory sentencing enhancement, alleging Wolf knowingly used a firearm in the commission of the offense.² A jury trial was conducted in August 2022.
- [5] At trial, the State presented evidence that, in the early morning hours of June 19, 2021, Wolf was outside a residence at 515 South Fifth Street in Elkhart. Wolf was with his father, Steven Loy. The two came to the area with Joshua Strickland, who drove them, and who was waiting in the car with Katlin Miller.
- [6] Footage from a surveillance camera shows Forrest Howard riding a bicycle into the area around 4:50 a.m. *See State's Elec. Media Ex. 300A "CH01-2021-06-19-04-44-28.avi"* at 06:20 [hereinafter *Video*]. Howard was wearing a backpack. Law enforcement would later discover the backpack contained several plastic baggies containing a green, leafy substance appearing similar to marijuana.
- [7] Howard gets off his bicycle and interacts with Wolf for several minutes. At about 4:55 a.m., Howard takes off his backpack and positions the bag in front of Wolf. Starting at 4:56 a.m., Wolf uses a social-media account to begin sending messages to Loy. The first message said: "Rob this dude[.]" *Ex. at 104*. The next two said: (1) "He got a safe of loud"; (2) "In bag[.]" *Id.* There was evidence "loud" is a term for marijuana. Around this time, Loy steps away

² I.C. § 35-50-2-11(b)(1), (d) (2016).

and enters Strickland's vehicle, where Strickland and Miller are waiting inside. Wolf soon approaches the vehicle. When he does so, Howard appears to "mess[] around with his bag[.]" *Tr. Vol. 4* at 109–10. Wolf turns around, at which point Howard appears to hand something to Wolf. *Video* at 15:05.

[8] Wolf and Howard are face to face. Wolf begins walking forward as Howard walks backward. After a few steps, Wolf reaches toward Howard. Wolf appears to strike Howard's hat, which falls off. Before long, Loy exits the vehicle, approaching Wolf and Howard. There is a struggle and Howard tumbles into the street. As Howard lies on the street, Wolf stands next to him.

[9] Wolf extends his right arm toward Howard. As Wolf does so, the surveillance footage captures a flash of light at the end of Wolf's extended arm. *Video* at 15:13. Around this time, Strickland gets out of the vehicle, having seen an altercation. He hears a gun. Strickland testified, when he exited the vehicle, he saw a person lying "in the street on their stomach with their hand up," and saw Wolf holding a gun. *Tr. Vol. 3* at 49. Strickland said he saw Wolf shoot at Howard. He heard a total of three gunshots. The surveillance footage shows Wolf, Loy, and Strickland returning to the vehicle. Strickland testified he drove the group to a gas station, then up to the area of Eagle Lake, Michigan. The State presented evidence corroborating the group's subsequent travels, including (1) surveillance footage at a gas station showing Wolf outside Strickland's vehicle and (2) cellphone tower records showing the location of Wolf's phone.

- [10] Meanwhile, emergency personnel pronounced Howard dead at the scene. Howard was struck by three bullets, which collectively pierced Howard’s aorta, pulmonary artery, liver, spleen, intestines, and both lungs—killing him.
- [11] Later in the day of the shooting, an Eagle Lake resident called law enforcement after finding part of a gun. Law enforcement then recovered part of a 9mm handgun. An analyst from the South Bend Police Lab eventually determined the bullets inside Howard’s body were all fired from the same weapon, which was consistent with the partial 9mm handgun recovered near Eagle Lake. There was also evidence Wolf used a social-media account to access a photograph of a handgun appearing to be the same model of handgun as the partial handgun recovered near Eagle Lake. And Miller testified that, after she heard gunshots and saw Wolf jump into the vehicle, Wolf was holding a gun.
- [12] Apart from the foregoing evidence, the State presented testimony from Strickland explaining Wolf, Loy, and Strickland planned to make money the morning of the shooting by taking someone’s money. At trial, Wolf objected to the admission of Strickland’s testimony. On appeal, however, Wolf does not re-assert his challenge. In pertinent part, Strickland testified someone Wolf knew was going to “purchase drugs [Wolf, Loy, and Strickland] didn’t have.” *Tr. Vol. 3* at 38. According to Strickland, Wolf “communicated with this person to come to Fifth Street,” and the group was “supposed to meet him there.” *Id.* at 38–39. The plan was for the person to “give [Wolf] some money for drugs.” *Id.* at 39. At that point, Wolf would pretend to “go to a drug dealer around the corner[.]” *Id.* Wolf would then “hop in the car” and they would “take off.” *Id.*

[13] The State also sought to introduce evidence of electronic messages Wolf exchanged leading up to the murder—evidence contained in State’s Exhibits 95 through 101. Wolf objected to the admission of these exhibits, and he re-asserts his challenge on appeal. The challenged evidence—obtained from Wolf’s cellphone—shows Wolf corresponding with a person named Kyle Bolock starting around 3:00 a.m. on the morning of the shooting. After telling Bolock, “I can get you some fire,” *Ex.* at 95, Wolf offers Bolock “[h]alf for 200,” *id.* at 96. At 3:32 a.m., Wolf says: “I’m in Elkhart[.]” *Id.* at 97. Bolock tells Wolf he would be “ready to head [Wolf’s] way” soon. *Id.* at 98. At 3:47 a.m., Wolf gives Bolock the location of 515 South 5th Street. And, at 4:12 a.m., Bolock tells Wolf he is on his way. At 4:48 a.m.—two minutes before Howard rides into the area of 515 South 5th Street—the following message is sent to Bolock from Wolf’s phone: “He said hurry up he got something to do[.]” *Id.* at 101.

[14] In challenging the admission of these electronic messages, Wolf argued the evidence amounted to inadmissible character evidence. Wolf also argued the evidence was unduly prejudicial and should be excluded under Evidence Rule 403. The State asserted the evidence was admissible under Rule 404(b) because it was relevant to “motive, plan, absence of mistake, the whole . . . repertoire.” *Tr. Vol. 4* at 89. The State’s theory was that when Bolock “didn’t show up, [Wolf] switched targets, but he kept the same motive”—*i.e.*, when Howard rode his bicycle into the area, Wolf decided to make money by instead robbing Howard. *Id.* at 94–95. The court decided the evidence was admissible, stating:

I don't find this to be simply bad character evidence with no other proper purpose, and that's why I believe [the] objection should be overruled, and the evidence should come in. I go back to 404(b)(2) first. This evidence could be used to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident; any or all of those. That's for the jury to sort out, not me.

[The State] can argue what [it] wants; [Wolf] can argue in opposition. But I think that's what this comes in on because I do believe that it is, in time, close enough to the communications between the defendant and Steven Loy and then the acts of the defendant as they relate to Forrest Howard that we get into the permitted uses with a limiting instruction to the jury. And, also, when I do the weighing on this, I do not . . . find that the prejudicial aspect of . . . these particular communications outweighs the probative value. And, of course, I'm doing that under [Rule] 403, as I'm required to do.

Id. at 98–99. In admitting the challenged evidence, the trial court gave the following limiting instruction:

I'm instructing you that the questions and answers . . . relate[d] to discussions between or communications between the defendant's phone and Mr. Bolock's phone are to be used by you only for proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. They are, therefore, not to be used by you to determine the ultimate question in this case, the guilt or innocence of [Wolf].

Id. at 100.

[15] The jury found Wolf guilty of murder, and Wolf admitted to the allegations supporting the sentence enhancement. The court sentenced Wolf to sixty-three years for the murder, with an additional twelve-year term for the enhancement.

[16] Wolf now appeals.

Discussion and Decision

[17] Where—as here—an appellant challenges the admission of evidence after a completed trial, we review the evidentiary ruling for an abuse of discretion. *See McCoy v. State*, 193 N.E.3d 387, 390 (Ind. 2022). The trial court abuses its discretion if the ruling is clearly against the logic and effect of the facts and circumstances before it. *See Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). Moreover, even if the trial court erred in admitting the evidence at issue, we will not reverse if the error is harmless. Ind. Appellate Rule 66(A); Ind. Trial Rule 61. Under Appellate Rule 66(A), error is harmless “where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.” *See also Hall*, 177 N.E.3d at 1193 (noting reversible error is that which “affect[s] a party’s substantial rights”).

[18] On appeal, Wolf challenges only the admission of State’s Exhibits 95 through 101. *See Appellant’s Br.* at 15. Those exhibits show the correspondence between Wolf and Bolock, indicating Wolf was arranging to meet Bolock at 515 South Fifth Street. Wolf argues the evidence is inadmissible character evidence.

[19] In general, “[e]vidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance

with the character or trait.” Ind. Evidence Rule 404(a)(1). Thus, “[e]vidence 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.” Evid. R. 404(b)(1). Although this sort of evidence cannot be used to show a person acted in conformity with his character, our Evidence Rules permit admitting the evidence for a different purpose. *See* Evid. R. 404(b)(2). That is, Rule 404(b)(2) states evidence of a crime, wrong, or other act “may be admissible for . . . proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” However, even when the evidence is relevant to a viable purpose, the evidence may be rendered inadmissible by Rule 403, which states: “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.” Moreover, as to the interplay between Rule 404(b)(2) and Rule 403, a court generally does not err in admitting evidence under these rules whenever the court (1) gives “thorough jury admonishments” limiting the use of the evidence to one or more proper purposes and (2) “clearly recognize[s] and carefully evaluate[s] the probative value of the disputed evidence and the danger of unfair prejudice.” *Wilson v. State*, 765 N.E.2d 1265, 1271 (Ind. 2002).

[20] Here, the trial court determined the evidence was admissible for a permitted purpose under Rule 404(b)(2). The court also determined the evidence was more probative than prejudicial, thus not subject to exclusion under Rule 403.

[21] According to Wolf, the trial court misapplied Rules 404(b)(2) and 403. Wolf directs us to the following remarks, which the trial court made in admitting the evidence: “This evidence could be used to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident; any or all of those. *That’s for the jury to sort out, not me.*” *Tr. Vol. 4* at 98–99 (emphasis added). Wolf asserts the trial court erred by first failing to identify a specific purpose the evidence satisfied under Rule 404(b)(2), then by failing to “carefully analyz[e]” the relevance of the evidence as to that specific purpose. *Appellant’s Br.* at 17. In short, Wolf argues a trial court must conduct Rule 403 balancing for each permitted purpose before allowing the jury to consider the evidence for that specific purpose. In other words, Wolf contends a trial court must (1) identify an applicable permitted purpose under Rule 404(b)(2), then (2) apply Rule 403 and balance the relevance of the evidence *as to that purpose* against any unfair prejudicial effect. As to Rule 403 balancing, Wolf claims: “The relevance prong can only be properly applied if it is known ‘to what issue being presented by the [S]tate is such proffered evidence relevant.’” *Appellant’s Br.* at 16. Wolf adds: “This [relevance] prong cannot be properly analyzed by an approach that can be best analogized to grabbing up a handful of darts and flinging them at a dartboard and see[ing] which one[s] stick.” *Id.* at 16–17.

[22] To illustrate his concerns, Wolf turns to what he calls the “intent exception” under Rule 404(b)(2), asserting this exception is generally “only available if a defendant goes beyond a simple denial of culpability and affirmatively presents a claim of contrary intent.” *Id.* at 17. Wolf argues he “never affirmatively

presented a ‘claim of contrary intent,’” so the evidence was unfairly prejudicial with respect to that purpose, and—based on Rule 403—the court should not have allowed the jury to consider the evidence for that purpose. He ultimately argues the trial court erred “by letting the jury ‘sort it out’ as to how such prejudicial evidence is relevant” under the circumstances. *Id.* In so arguing, Wolf seems to suggest the trial court’s limiting instruction was inadequate. That is, Wolf complains the trial court erred because it “essentially let the jury decide how such evidence fits into the listed exceptions of 404(b).” *Id.* at 13.

[23] Wolf does not cite caselaw supporting his synthesis of Rules 404(b)(2) and 403. In any case, the evidence at issue was admissible under Rule 404(b)(2) to prove Wolf’s plan in approaching Howard. And the trial court stated it conducted the required Rule 403 balancing: “[W]hen I do the weighing on this, I do not . . . find that the prejudicial aspect of . . . these particular communications outweighs the probative value. And, of course, I’m doing that under [Rule] 403, as I’m required to do.” *Tr. Vol. 4* at 99. Further, the court gave a limiting instruction, specifically telling the jury it could only use the evidence for the purposes set forth in Rule 404(b)(2): “I’m instructing you that the questions and answers as it relates to discussions between or communications between the defendant’s phone and Mr. Bolock’s phone are to be used by you only for proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” *Id.* at 100. The trial court went on to instruct the jury the evidence at issue was “not to be used by you to determine the ultimate question in this case, the guilt or innocence of [Wolf].” *Id.* This

limiting instruction ensured the jury would not consider the challenged evidence for any impermissible purpose. *See, e.g., Fairbanks v. State*, 119 N.E.3d 564, 565 (Ind. 2019) (noting the purpose of Rule 404(b) “is to prevent the jury from indulging in the ‘forbidden inference’ . . . that a defendant must be guilty of the charged crime because, on other occasions, he acted badly”), *cert. denied*.

[24] Under the circumstances—particularly in light of the court’s instruction not to use Wolf’s communications as character evidence, and the court’s statement it conducted the required balancing under Rule 403—we are not persuaded the trial court abused its discretion in admitting the challenged evidence. *See, e.g., Wilson*, 765 N.E.2d at 1271 (discerning no error in the admission of evidence where the court (1) gave thorough jury admonishments limiting the use of the evidence for a permitted purpose and (2) clearly engaged in Rule 403 weighing).

[25] But even if we assume the trial court erred in admitting the evidence, any error here would be harmless. Whether evidentiary error was harmless “depends on a host of factors” in the case at hand, including “the presence or absence of other, corroborating evidence on material points; whether the impermissibly admitted evidence was cumulative; the overall strength of the prosecution’s case; the importance of the impermissible evidence in the prosecution’s case; and the extent of cross-examination or questioning on the impermissibly admitted evidence.” *Zanders v. State*, 118 N.E.3d 736, 745 (Ind. 2019).

[26] On appeal, Wolf declined to challenge the admission of Strickland’s testimony about the group’s plan to steal money through the ruse of a drug deal. Wolf

therefore waived any challenge to the admission of that testimony. *See generally, e.g., Allen v. State*, 749 N.E.2d 1158, 1163 (Ind. 2001) (“Issues available but not raised on direct appeal are waived[.]”), *cert. denied*. And the evidence Wolf does challenge on appeal—State’s Exhibits 95 through 101, depicting Wolf’s specific correspondence with Bolock—is merely cumulative of Strickland’s testimony.

[27] Regardless, any error in the admission of evidence is harmless whenever the evidence’s probable impact on the jury was insubstantial “in light of all of the other evidence that was properly presented.” *Williams v. State*, 43 N.E.3d 578, 583 (Ind. 2015) (quoting *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014)). At bottom, our role is to assess the probability the jury was “substantially swayed” by the erroneously admitted evidence. *Id.* (quoting *Lafayette v. State*, 917 N.E.2d 660, 665 (Ind. 2009)). Here, even if we put aside *all* evidence concerning the group’s plans to arrange a drug deal for the purpose of robbing the purchaser, the State presented ample independent evidence of Wolf’s guilt, including (1) surveillance footage showing Wolf extend his arm toward Howard, with a flash of light at the end of Wolf’s arm, (2) Strickland’s testimony he exited the vehicle and watched Wolf shoot Howard, and (3) evidence Wolf had a gun and went to the Eagle Lake area, where law enforcement found part of a handgun consistent with the weapon that fired the bullets at Howard. Thus, even if we assume the court erred in admitting the challenged exhibits—State’s Exhibits 95 through 101—and Strickland’s testimony related to those exhibits, we conclude the error is not reversible. *See, e.g., T.R. 61* (“No error in either the admission or the

exclusion of evidence . . . is ground for . . . reversal on appeal, unless refusal to take such action appears to the court inconsistent with substantial justice.”).

Conclusion

[28] The trial court did not abuse its discretion in admitting the challenged evidence and, even assuming error, the error would be harmless under the circumstances.

[29] Affirmed.

Crone, J., and Robb, Sr. J., concur.