SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1504-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHAFFEE C. EDWARDS, a/k/a C, CHAFFEE CORRELIES, CORNELIUS EDWARDS, CORRELIES EDWARDS, ARTIE FREEMAN, and KITTREL FREEMAN,

Defendant-Appellant.

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Submitted April 25, 2023 – Decided June 26, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 20-01-0135.

Joseph E. Krakora, Public Defender, attorney for appellant (Zachary G. Markarian, Assistant Deputy Public Defender, of counsel and on the brief).

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Patrick F. Galdieri, II, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Chaffee C. Edwards appeals the denial of a motion to suppress and the denial of a motion for a Wade[1] hearing, arguing the court erred in allowing the State to admit evidence of his prior bad acts pursuant to N.J.R.E. 404(b) and the court should have held a Wade hearing to determine whether the photo identification was a result of impermissible suggestiveness. We disagree, discern no abuse of discretion with respect to either ruling, and affirm.

We glean the following facts from the record. On the morning of May 2, 2019, the New Brunswick Police Department received calls that shots had been fired near Route 18 North and Paulus Blvd. The calls reported the shots were fired from a silver Infiniti at a silver SUV. Around this time, a detective learned an individual named Tyrell Alston had arrived at Robert Wood Johnson Hospital in a silver Jeep Cherokee with gunshot injuries to his right leg. The detective went to the trauma room to speak to Alston before he was brought to surgery.

Alston told the detective he had been shot by a man he knew only as "C" who frequents the area of Lee Avenue and Seaman Street in New Brunswick.

[1] United States v. Wade, 388 U.S. 218 (1967).

Based on his experience, the detective believed that "C" was Chaffee Edwards, the defendant. Alston claimed surveillance footage from a local motel on Route 1 in New Brunswick would show "C" was the passenger in a silver Infiniti that followed Alston's car out of the parking lot prior to the shooting. The detective went to the local motel and a neighboring motel, where he learned defendant had stayed at the neighboring motel, and he watched video showing defendant in the parking lot.

After Alston's surgery, two other detectives took a recorded statement from him. Alston said when he drove away from the local motel, he noticed a silver Infiniti "coming in my rear-view mirror, rust on the side of it." He stated the car "came speeding up on the side" of his car and "C" rolled his window down and shot at Alston about ten times. Alston was unable to see the driver of the car.

Alston told the detectives he had known "C" for five or six months prior to the shooting and had purchased cocaine from him twice. Alston said "[t]here was never no beef" or negative interactions between the two men. When asked how often he saw "C" around the area of Lee and Seaman, Alston said, "all the time," explaining, "Seaman and Remsen, it's a little area right there." One of the detectives responded "Right. He's always over there."

After this conversation, the detective showed Alston a photo of defendant and asked, "Do you know who that is?" Alston responded, "That's C." The detective then asked, "A hundred percent?" and Alston responded, "A hundred per, actually ten percent." The detective then clarified, "A hundred ten percent?" and Alston said, "Yes."

Defendant was charged with conspiracy to commit first-degree conspiracy to commit murder, N.J.S.A. 2C:11-3(a) and 2C:5-2(a)(1) (count one); first-degree attempted murder, N.J.S.A. 2C:5-1 and 2C:11-3 (count two); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count three); and second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count four). A second indictment charged him with second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1) (count one).

In advance of trial, the State moved to admit evidence of defendant's prior bad acts pursuant to N.J.R.E. 404(b), arguing that evidence had nothing to do with the charges against him, which related to the shooting of Tyrell Alston. Alston told police he was able to identify Edwards because the two men regularly crossed paths in a particular area of New Brunswick. Alston also told police he had twice purchased cocaine from Edwards. But Alston never claimed

he believed Edwards shot him for any reason related to those two sales. In fact, he insisted the men had "no beef" prior to the shooting.

Defendant asserted the State's only purpose in seeking introduction of evidence of his cocaine dealing was to encourage jurors to infer he was a bad person with a propensity to commit crime.

After the State's motion was granted in part, defendant pled guilty to first-degree conspiracy to commit murder and was sentenced to a seven-year term, subject to a five-year period of parole ineligibility (less than the eight-year NERA term recommended by the plea agreement). Defendant preserved his right to challenge the two trial court rulings.

Defendant claims he accepted the plea offer because he did not want to go to trial, facing the possibility of spending the rest of his life in prison, if the State could introduce evidence tarnishing him as a drug dealer. Defendant contends the trial court erred in ruling the cocaine sales were admissible. He argues that ruling must be reversed, and he should be permitted to withdraw his plea.

Admitting evidence of other crimes, wrongs or acts is left to the discretion of the trial judge. State v. Marrero, 148 N.J. 469, 483 (1997); State v. Crumb, 307 N.J. Super. 204, 232 (App. Div. 1997). As with other evidential rulings by a trial judge, our scope of review is limited. State v. Foglia, 415 N.J. Super.

106, 122 (2010). "However, if the trial court admits evidence of other bad acts without applying the appropriate four-step Cofield analysis, the trial judge's determination does not receive deference and the reviewing court reviews the issue de novo." State v. Goodman, 415 N.J. Super. 210, 228 (App. Div. 2010).

We discern no abuse of discretion in the granting of the State's motion to introduce evidence of defendant's two prior cocaine sales to Alston.

N.J.R.E. 404(b) allows for the admission of evidence of other crimes or wrongs for one of the reasons delineated in the rule — proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident — but not "to prove a person's disposition in order to show that on a particular occasion the person acted in conformity with such disposition." "'[B]ecause N.J.R.E. 404(b) is a rule of exclusion rather than a rule of inclusion,' the proponent of evidence of other crimes, wrongs or acts must satisfy a four-prong test." State v. Carlucci, 217 N.J. 129, 140 (2014) (quoting State v. P.S., 202 N.J. 232, 255 (2010)). Pursuant to this "Cofield test", to be admissible under N.J.R.E. 404(b), the evidence of the other crime, wrong or act: (1) "must be admissible as relevant to a material issue"; (2) "must be similar in kind and reasonably close in time to the offense charged"; (3) "must be clear and

convincing"; and (4) its probative value "must not be outweighed by its apparent prejudice." State v. Cofield, 127 N.J. 328, 338 (1992).

To satisfy the first prong of Cofield, the evidence must have "a tendency in reason to prove or disprove any fact of consequence to the determination of the action." See N.J.R.E. 401 (defining "[r]elevant evidence"). The evidence must also concern a material issue, "such as motive, intent, or an element of the charged offense." State v. Rose, 206 N.J. 141, 160 (2011) (quoting P.S., 202 N.J. at 256). Pursuant to Cofield, an issue is material if "the matter was projected by the defense as arguable before trial, raised by the defense at trial, or was one that the defense refused to concede." Ibid. (quoting P.S., 202 N.J. at 256).

As to the first prong, the trial court found that defendant's distribution of the cocaine was "relevant to a material issue, mainly identity." The judge deemed sanitization of such evidence to be unnecessary, as the jury would be presented with the evidence "simply [to] understand the nature of their alleged relationship."

Proof of the second prong is not required in all cases, but only in those that replicate the facts in Cofield, where "evidence of drug possession that occurred subsequent to the drug incident that was the subject of the prosecution

was relevant to prove possession of the drugs in the charged offense." State v. Barden, 195 N.J. 375, 389 (2008) (quoting State v. Williams, 190 N.J. 114, 131 (2007)).

The third prong requires clear and convincing proof that the person against whom the evidence is introduced committed the other crime or wrong. Carlucci, 217 N.J. at 143. "[T]he prosecution must establish that the act of uncharged misconduct . . . actually happened by 'clear and convincing' evidence." Rose, 206 N.J. at 160 (quoting Cofield, 127 N.J. at 338).

After finding that the second prong was not applicable, the trial court considered the third prong and found there was clear and convincing evidence, noting Alston was willing to incriminate himself by informing the police about the two cocaine sales.

Lastly, the fourth prong is "generally the most difficult part of the test." Barden, 195 N.J. at 389. "Because of the damaging nature of such evidence, the trial court must engage in a 'careful and pragmatic evaluation' of the evidence to determine whether the probative worth of the evidence is outweighed by its potential for undue prejudice." Ibid. (quoting State v. Stevens, 115 N.J. 289, 303 (1989)). The analysis incorporates balancing prejudice versus probative value required by N.J.R.E. 403, but does not require, as does N.J.R.E. 403, that

the prejudice substantially outweigh the probative value of the evidence. State v. Reddish, 181 N.J. 553, 608 (2004). Rather, the risk of undue prejudice must merely outweigh the probative value. Ibid.

The trial court found the probative value of the two cocaine sales outweighed the prejudicial effect. It noted the link between Alston and defendant through the cocaine sales was crucial to the jury's understanding of how Alston was able to readily identify the shooter as "C."

We conclude the trial court engaged in a through and well-reasoned Cofield analysis and we discern no abuse of discretion in the court's findings.

Defendant also claims he was entitled to a pre-trial Wade hearing regarding the suggestive identification process. His motion for a Wade hearing was denied.

We review the denial of a Wade hearing for abuse of discretion. State v. Ortiz, 203 N.J. Super. 518, 522 (App. Div. 1985). We uphold a trial judge's admission of an out-of-court identification if "the findings made could reasonably have been reached on sufficient credible evidence present in the record." State v. Wright, 444 N.J. Super. 347, 356 (App. Div. 2016) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). To obtain a Wade hearing, a defendant must proffer some evidence of impermissible suggestiveness, which

could lead to an erroneous identification. State v. Henderson, 208 N.J. 208, 288 (2011).[2] If a defendant presents sufficient evidence of impermissible suggestiveness, the court should conduct an evidentiary hearing where the State must offer proof the proffered eyewitness identification is reliable based several variables. Henderson, 208 N.J. at 288-89. Importantly, a Wade hearing is not required for a "confirmatory" identification because such an identification is "not considered suggestive." State v. Pressley, 232 N.J. 587, 592 (2018). "A confirmatory identification occurs when a witness identifies someone he or she knows from before but cannot identify by name." Id. at 592-93. The court explained the person identified "may be a neighbor or someone known only by a street name." Id. at 593. That is what happened here. Alston knew "C" and identified "C" when shown a photo of defendant. This was a confirmatory identification. Therefore, a Wade hearing was not required. Id. at 592. Accordingly, denying a Wade hearing was not an abuse of discretion.

Affirmed.

[2] The Supreme Court subsequently modified Henderson in part, adding where "no electronic or contemporaneous, verbatim written recording of the identification procedure is prepared" defendants are entitled to a Wade hearing. State v. Anthony, 237 N.J. 213, 233 (2019). Anthony does not change our analysis because Alston's identification was taped.