

IN THE COURT OF APPEALS OF IOWA

No. 22-1547
Filed March 27, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MALACHI ISAIAH VANDERPOOL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Tom Reidel, Judge.

A defendant appeals his convictions for murder in the second degree and felon in possession of a firearm, challenging evidentiary rulings from his jury trial.

AFFIRMED.

Zachary G. Hecht of Causey & Ye Law, P.L.L.C., Des Moines, for appellant.

Brenna Bird, Attorney General, and Timothy M. Hau, Assistant Attorney General, for appellee.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

TABOR, Presiding Judge.

Malachi Vanderpool challenges two evidentiary rulings from his murder trial. One: the district court allowed the jury to hear recordings of calls that Vanderpool made from jail. Two: it permitted the jury to see a “Snapchat selfie” of Vanderpool holding a Glock 19 pistol. On appeal, Vanderpool contends the court abused its discretion in admitting those two pieces of evidence. Because those discretionary rulings complied with the rules of evidence, we affirm his convictions.

I. Facts and Prior Proceedings

In March 2022, twenty-year-old Vanderpool thought of sixteen-year-old T.S. as a little brother. But after learning that T.S. stole his Glock, Vanderpool felt betrayed. Vanderpool—a felon who could not legally possess a firearm—still believed that the weapon was key to his identity. He explained: “I regard my gun higher than any of my other possessions. It’s like a piece of me, my safety.”

T.S. secreted the gun away after a night of drinking with Vanderpool and his girlfriend Aurea. Feeling anxious without his weapon, Vanderpool drove a friend’s Cadillac to T.S.’s neighborhood and confronted him about taking the gun. T.S. pulled the gun from his waistband and handed it to Vanderpool. Then T.S. touched his shoulder, sending Vanderpool into “full-on rage.” Vanderpool reached into his pocket, grabbed his knife, and swung it at T.S. When T.S. ran, Vanderpool “gave chase”—gun in hand. Vanderpool fired at T.S. twice. A security camera in the neighborhood captured the confrontation. It also showed Vanderpool returning to the Cadillac where Aurea was waiting for him. They drove the car back to his place, removed the plates, and covered it with a tarp.

Meanwhile Davenport police responded to a call of “shots fired” just after 6:00 a.m. Responders found T.S. lying lifeless in the driveway. An autopsy showed T.S. suffered two knife wounds and two gunshot wounds.

During the police investigation, Detective Patrick Sievert interviewed Vanderpool, who lied about his whereabouts on the night of the murder. When asked why T.S. had his gun, Vanderpool again lied: “My gun? I don’t have a gun, never had a gun.” Later in the interview, Vanderpool tried to frame his mother, Angie, for the crime. Despite Vanderpool’s denials, the State charged him with murder in the first degree and being a felon in possession of a firearm.

Before trial, prosecutors had trouble tracking down Aurea, a key witness against Vanderpool. The State filed what it called an “anticipatory motion for finding of forfeiture by wrongdoing.”¹ The motion detailed the content of calls that Vanderpool made from jail to his “confidant” Caden, Aurea’s cousin. In those conversations, Vanderpool sought Caden’s help in “procuring” Aurea’s absence from the trial. The State argued the calls were admissible to show why Aurea was unavailable to testify. Vanderpool responded that the motion was premature because it was unknown whether the witness would appear. When Aurea did appear for trial, the State offered the jail recordings to show Vanderpool’s “consciousness of guilt.” The State asserted that the calls stood in “stark contrast

¹ “When a court finds that a defendant has procured a witness’s unavailability, the defendant is precluded from asserting his constitutional right to confront the witnesses against him as a basis to prevent the admission of prior statements given by the witness. Hearsay objections are also forfeited.” *State v. Hallum*, 606 N.W.2d 351, 356 (Iowa 2000) (internal citations omitted).

to what the jury heard him say to Detective Sievert.” The court agreed and allowed the State to play the jail recordings for the jury.

Vanderpool also moved to exclude this photo obtained from his Snapchat records showing him holding the Glock.



The court denied the motion, finding the photo was admissible: “Primarily it’s relevant to show motive and intent. I think it’s more probative rather than just prejudicial. In light of the evidence here his motive is an important factor. Accordingly, the court is going to allow—I think it’s a good balancing to allow just the one photograph.” The State offered the photo into evidence through Detective Sievert.

After the State’s case in chief, Vanderpool decided to testify in his own defense. He admitted stabbing and shooting T.S. But Vanderpool said he didn’t mean to kill him. The jury acquitted Vanderpool of first-degree murder but returned

guilty verdicts on second-degree murder and possession of a firearm as a felon. Vanderpool appeals.

II. Scope and Standard of Review

We review the challenged evidentiary rulings for an abuse of discretion. See *State v. Amisi*, 997 N.W.2d 683, 688 (Iowa 2023). A district court abuses its discretion when it bases the ruling on untenable grounds or relies on a faulty application of the law. *State v. Lacey*, 968 N.W.2d 792, 805–06 (Iowa 2021).

III. Analysis

A. Jail Phone Calls

Over Vanderpool's objection, the State offered recordings of six telephone calls that he made from the Scott County jail while awaiting trial in May and June 2022. The first, fourth, and sixth calls were to Caden. The second and third calls were to Aurea. And the fifth call was with Angie.

In the first conversation with Caden, Vanderpool complained that Aurea was “jabbing” too much and he was depending on Caden to “take care of business.” In later calls, Vanderpool told Caden that out-of-court statements were inadmissible hearsay unless the witness testified at trial. And when Caden said police were having trouble locating Aurea, Vanderpool chimed: “Keep hiding little baby, keep hiding.” When talking to Aurea, Vanderpool stressed “anything anybody” previously told police wouldn't matter if that speaker didn't appear at trial. He also said he would be out soon “[s]o long as certain things don't occur, certain things don't happen, and people don't come to, like, court dates, and say things that they shouldn't.” In the call with his mother, Vanderpool asked her to craft an alibi for him; she agreed to say he was sleeping at her house when the murder happened.

On appeal, Vanderpool argues that the content of these recordings was irrelevant and unduly prejudicial. See Iowa Rs. Evid. 5.401, .403. He insists the district court abused its discretion in allowing the jury to hear these conversations after Aurea testified for the State. We disagree. As the district court reasoned, Vanderpool's attempts to interfere with a key witness's testimony were admissible to show his consciousness of guilt. See *State v. Campbell*, No. 10-0117, 2013 WL 4011071, at *1–2 (Iowa Ct. App. Aug. 7, 2013) (finding jail phone calls in which Campbell urged the complaining witness to “leave her apartment and hide elsewhere to avoid being subpoenaed” were relevant to show his guilty knowledge). Likewise, his orchestration of false exculpatory evidence with his mother showed his consciousness of guilt. See *Commonwealth v. Rega*, 933 A.2d 997, 1009 (Pa. 2007) (discussing Rega's efforts to conspire with his mother to concoct an alibi). And the probative value of the evidence, given Vanderpool's shifting stories to police, outweighed the danger of unfair prejudice. The district court did not abuse its discretion in allowing the jury to hear recordings of the jail calls even after Aurea testified.

B. Snapchat Selfie

On admission of the selfie, the State offered the photograph of Vanderpool holding his gun as proof of his motive and intent to kill T.S. On appeal, Vanderpool maintains the photograph was not material to any legitimate issue in the trial. See Iowa R. Evid. 5.404(b). Instead, he claims the State used the exhibit to show his “general propensity for wrongfully possessing firearms as a prohibited person.”

In Iowa, rule 5.404(b) is a rule of exclusion. See *State v. Thoren*, 970 N.W.2d 611, 625 (Iowa 2022). Evidence of prior bad acts “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." Iowa R. Evid. 5.404(b). Yet such evidence may be offered as proof of "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." *Id.* Admissibility rides on three questions: (1) was the evidence relevant to a disputed factual issue?; (2) is there clear proof that Vanderpool engaged in the act?; and (3) does the danger of unfair prejudice from its admission substantially outweigh the act's probative value? *See Thoren*, 970 N.W.2d at 626.

All three queries support the district court's decision to admit the photograph. First, whether Vanderpool had a gun was a disputed factual question. He told Detective Sievert he did not have one. The photo of him holding the gun was relevant to that factual dispute. Second, Vanderpool's own picture-taking met the clear proof test. Third, the danger of unfair prejudice did not substantially outweigh the probative value of the photo. The jurors saw surveillance footage of Vanderpool's confrontation with T.S. And they saw crime scene and autopsy photos of the victim's fatal injuries. By comparison, the Snapchat selfie would not have had the power to evoke a strong emotional reaction from the jurors. Plus, the State did not dwell on the photo in its case in chief or closing argument. The State did ask Vanderpool about the photo during his testimony. He confirmed that it was a photograph of the gun he found missing.

On this record, we find no abuse of discretion in the district court's decision to allow the State to offer the Snapchat selfie into evidence. Nor do we find any

abuse of discretion in its ruling allowing the jury to hear the jail calls. Because those evidentiary rulings were proper, we affirm Vanderpool's convictions.

AFFIRMED.