STATE V. JETER

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STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
JONAH JETER,
Defendant-Appellee.

NO. 33,533

SUPREME COURT OF NEW MEXICO

October 28, 2013

ORIGINAL PROCEEDING

COUNSEL

Gary K. King, Attorney General, Sri Mullis, Assistant Attorney General, Santa Fe, NM, for Appellant

Bennett J. Baur, Acting Chief Public Defender, Jeffrey J. Buckels, Capital Crimes, Public Defender, Albuquerque, NM, for Appellee

JUDGES

EDWARD L. CHÁVEZ, Justice. WE CONCUR: PETRA JIMENEZ MAES, Chief Justice, RICHARD C. BOSSON, Justice, CHARLES W. DANIELS, Justice, BARBARA J. VIGIL, Justice

AUTHOR: EDWARD L. CHÁVEZ

DECISION

CHÁVEZ, Justice.

{1} Defendant Jonah Jeter is charged with the first degree murder of Oliver Yazzie in violation of NMSA 1978, Section 30-2-1(A)(1) (1994) and tampering with evidence in

violation of NMSA 1978, Section 30-22-5 (2003). Jeter was seventeen years old at the time of the incident, but he is being treated as a serious youthful offender. Jeter admitted to the police that he stabbed and killed Yazzie at a truck stop in the early morning hours of November 3, 2010, but he claims that he did so in self-defense after Yazzie accosted him.

{2} At issue in this interlocutory appeal is the district court's exclusion of (1) evidence of the presence of a sperm fraction recovered from Yazzie's backside that matched Jeter's DNA, and (2) Jeter's statement that after the violent encounter resulting in Yazzie's death, Jeter became so angry that he masturbated on Yazzie's corpse. We reverse the district court's exclusion of the evidence of sperm on Yazzie's body that matched Jeter's DNA, but affirm the district court's exclusion of Jeter's statement regarding how and when the sperm was deposited on Yazzie's body.

PROCEDURAL HISTORY

{3} Jeter filed a sealed motion in limine on January 27, 2012 requesting that the State be prohibited from entering into evidence or referencing in any way the fact that Jeter ejaculated on Yazzie's body after Yazzie's death. In particular, Jeter moved to preclude expert testimony that Jeter's sperm was taken off Yazzie's body and Jeter's statements to police that he had masturbated on Yazzie's "butt crack" after Yazzie's death. Jeter alleged that this evidence is irrelevant, and noted that the district court had so stated on its own initiative during a hearing prior to the preliminary hearing. Jeter then argued that the evidence should be excluded under Rule 11-403 NMRA because it is highly prejudicial, calling it "sensational information" that is "certain to cause unfair prejudice." He alleged that introduction of the evidence would be a waste of time because it would require expert psychological testimony, lead to confusion of the issues, and mislead the jury. Jeter also argued that the evidence should be excluded under Rule 11-404(B) NMRA because it is uncharged misconduct that would only show his alleged propensity for perversion.

{4} On February 10, 2012, the State filed a response to Jeter's motion in limine. In its response, the State argued that the evidence should be admitted because it is relevant to Jeter's state of mind, motive, and intent, and the probative value of the evidence outweighs the danger of unfair prejudice. The State argued that the evidence would not be introduced for the impermissible purpose of establishing Jeter's propensity, but to establish the specific intent element of both first degree murder and tampering with evidence and to refute Jeter's claim of self-defense.

{5} On February 22, 2012, the district court heard argument on the motion. During that hearing, the State argued that the evidence should be admitted because it lends context and goes toward motive and intent. The district court did not rule on the motion during the hearing, and the State did not make an offer of proof. On February 24, 2012, the district judge sent a short letter to the attorneys in the case which stated: "The Court having read the Defendant's Sealed Motion in Limine to Preclude Evidence, the State's Response and the briefs, and having heard arguments from counsel, finds that the

Defendant's motion should be granted. Mr. Buckels, please submit an appropriate order." On February 27, 2012, the State filed requested findings of fact and conclusions of law that offered greater detail regarding how the evidence is relevant to the State's theory. Proposed finding no. 7 states:

> It is the State's theory of the case that Oliver Yazzie and the defendant had a sexual encounter in the early hours of November 3, 2010, before Oliver Yazzie's death. During this sexual encounter the defendant ejaculated on the back side of Oliver Yazzie. Immediately thereafter, Oliver Yazzie and the defendant started to argue and that this is the confrontation that Mr. Grooms heard when he woke from his sleep.[1] This confrontation ultimately led to the defendant stabbing and killing Oliver Yazzie at the truck stop. Thus, the sexual act, the confrontation, and the stabbing and killing of Oliver Yazzie were connected, unitary in nature, and part and parcel of the same event (the murder of Oliver Yazzie).

{6} The next day, the district court entered an order granting the sealed motion in which it restated the contents of its February 24, 2012 letter to the attorneys. The order states: "Having considered the motion [in limine to preclude evidence], the response thereto, having heard argument of counsel at the hearing on February 22, 2012, and being otherwise fully advised, I find that the motion is well taken and it will be granted." The district court did not elaborate further.

STANDARD OF REVIEW

{7} Evidentiary rulings are reviewed for an abuse of discretion. *State v. Flores*, 2010-NMSC-002, ¶ 25, 147 N.M. 542, 226 P.3d 641. "An abuse of discretion is found when the trial court's decision is contrary to logic and reason." *Davila v. Bodelson*, 1985-NMCA-072, ¶ 12, 103 N.M. 243, 704 P.2d 1119. "We cannot say the trial court abused its discretion by its ruling unless we can characterize it as clearly untenable or not justified by reason." *State v. Woodward*, 1995-NMSC-074, ¶ 6, 121 N.M. 1, 908 P.2d 231 (internal quotation marks and citations omitted), *abrogated on other grounds by State v. Mendez*, 2010-NMSC-044, ¶ 22, 148 N.M. 761, 242 P.3d 328. Where the district court makes no findings of fact regarding the suppression of evidence, this Court will "indulge in all reasonable presumptions in support of the district court's ruling." *State v. Jason L.*, 2000-NMSC-018, ¶ 11, 129 N.M. 119, 2 P.3d 856 (internal quotation marks and citation omitted).

{8} In this case, the record is silent regarding the district court's reasoning behind its decision to preclude the evidence. Neither the decision letter nor the order granting the motion in limine specified the grounds on which the district court decided to preclude the evidence. Absent such grounds, we analyze the district court's decision based on the two arguments advanced by the prevailing party in the motion in limine and at the hearing on the motion: (1) the evidence in question is more prejudicial than probative under Rule 11-403, and (2) it is evidence of uncharged misconduct that is prohibited under Rule 11-404(B).

{9} The primary argument that Jeter advanced in his motion in limine was that the evidence should be precluded under Rule 11-403, which requires a determination that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. Assuming that the district court excluded the evidence under Rule 11-403, we first examine the probative value of the proffered evidence. *State v. Rojo*, 1999-NMSC-001, ¶ 48, 126 N.M. 438, 971 P.2d 829 ("In determining whether the trial court has abused its discretion in applying Rule 11-403, the appellate court considers the probative value of the evidence."). Second, we must examine whether the district court erred in determining that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

{10} The district court could have adopted Jeter's alternative argument and found that the evidence was uncharged misconduct evidence prohibited by Rule 11-404(B). Evidence of uncharged misconduct is admissible under Rule 11-404(B) if the proponent of the evidence demonstrates that the evidence is probative of a consequential fact in dispute and not introduced merely to show propensity. *State v. Serna*, 2013-NMSC-033, ¶ 17, 305 P.3d 936. However, this Court has cautioned that such evidence "must ... have a real probative value, and not just possible worth on issues of intent, motive, absence of mistake or accident, or to establish a scheme or plan." *Id.* (internal quotation marks and citation omitted). "In other words, more is required to sustain a ruling admitting [other-acts] evidence than the incantation of the illustrative exceptions contained in the Rule." *Id.* (internal quotation marks and citation omitted).

THE PRESENCE OF JETER'S SPERM ON YAZZIE'S BODY IS ADMISSIBLE

{11} In addition to contending that the evidence of Jeter's sperm on Yazzie's body is relevant to Jeter's identity, the State posits that the presence of Jeter's sperm on Yazzie's body permits a reasonable inference that Jeter and Yazzie engaged in consensual sexual relations before the violent encounter, which is evidence that Jeter was not afraid of Yazzie. The State also argued during oral argument before this Court that a prior sexual encounter would be inconsistent with Yazzie attacking Jeter. As such, the State contends that the evidence is principally important for its ability to prove that Jeter did not kill Yazzie in self-defense.

{12} Rule 11-401 NMRA provides the test for relevance. "Evidence is relevant if A. it has any tendency to make a fact more or less probable than it would be without the evidence, and B. the fact is of consequence in determining the action." *Id.* "[T]he determination of relevancy ... rests largely within the discretion of the trial court." *Wright v. Brem*, 1970-NMCA-030, ¶ 19, 81 N.M. 410, 467 P.2d 736. "There is, and can be, no fixed rule delineating relevant and irrelevant evidence. The problem must be decided on a case-by-case basis." *Ohlson v. Kent Nowlin Constr. Co.*, 1983-NMCA-008, ¶ 20, 99 N.M. 539, 660 P.2d 1021. Any doubt about relevance should be resolved in favor of admissibility. *State v. Balderama*, 2004-NMSC-008, ¶ 23, 135 N.M. 329, 88 P.3d 845.

{13} The State correctly asserts that the precluded DNA evidence is probative of identity. The killer's identity is a fact of consequence because the State must prove

beyond a reasonable doubt that it was Jeter who killed Yazzie. Evidence that Jeter's DNA was found on Yazzie's body would tend to make that fact more probable than it would be without the evidence. Jeter does not refute that the DNA evidence is probative of identity. Instead, Jeter vigorously argues that identity is not at issue because he admitted that he killed Yazzie: Jeter's defense is not based on mistaken identity, but self-defense.

{14} The State contends that the DNA evidence is still very important to prove identity because two pieces of evidence connect Jeter to Yazzie: Jeter's confession and the DNA evidence. The State claims that Jeter may successfully argue at trial to suppress his confession and/or the jury may not believe Jeter's confession. We agree with the State on this point and conclude that it is untenable not to permit this evidence to be considered by the jury on the issue of identity.

{15} In addition, central to this appeal are the issues of whether the precluded evidence is relevant to Jeter's state of mind at the time he killed Yazzie and whether Jeter killed Yazzie in self-defense. To secure its conviction, the State must prove that Jeter killed Yazzie with "deliberate intention." UJI 14-201 NMRA. "Because deliberation is an essential element of first-degree murder, evidence with any tendency to make the existence of deliberation more probable or less probable is by definition relevant." *Balderama*, 2004-NMSC-008, ¶ 25. The State correctly asserts that it may prove deliberate intent by introducing all relevant evidence. UJI 14-201 ("A deliberate intention may be inferred from all the facts and circumstances of the killing."); *State v. Guerra*, 2012-NMSC-027, ¶ 28, 284 P.3d 1076 ("In determining whether a defendant made a calculated judgment to kill, the jury may infer intent from circumstantial evidence; direct evidence of a defendant's state of mind is not required.").

{16} In this case, the existence of Jeter's sperm on Yazzie's body may be probative of a consensual sexual encounter between them that occurred before Yazzie's death. We recognize that the mere existence of the sperm neither proves nor refutes reasonable inferences regarding where a consensual sexual encounter between them may have taken place, when a consensual sexual encounter may have occurred before Yazzie's death, or who became the first aggressor during the violent encounter. Nevertheless, the evidence is relevant to whether Jeter feared Yazzie and it is additional circumstantial evidence of a relationship between them.

{17} The only other evidence of a relationship between them and the violent encounter comes from Jeter's statement to the police, which we summarize as follows. Jeter is the son of a professional long-haul truck driver, he has lived in numerous states, and he travels with his mother when she is working. On the night of the incident, Jeter, his mother, and his younger sister were parked at the Pilot Truck Stop in McKinley County, New Mexico. Jeter went in to the truck stop to get drinks for his family when he first noticed Yazzie standing outside. Yazzie said something to Jeter. Jeter returned to the truck and stayed there for a couple of hours. Around 10:40 p.m., Jeter went to take a shower. When he was walking toward the truck stop showers, he encountered Yazzie

standing on the fuel island. Jeter described Yazzie as acting “like a girl,” and noticed Yazzie’s long, dyed hair.

{18} Yazzie again spoke to Jeter, saying “something weird ... in a light voice.” Jeter could not recall Yazzie’s exact words during the police interview, but stated that Yazzie said “something about the anus” or “trying to make me a bitch.” Jeter claims that he again ignored Yazzie’s comment, went in to the truck stop, and took a long shower. When Jeter came out of the showers approximately two hours later, he noticed that Yazzie was still standing on the fuel island. Jeter went back to the truck, got inside, and put his pack down. He then got back out to inspect the truck. His mother and sister were already asleep in the truck. Jeter walked around the truck, checking the tires, making sure everything was locked, and checking the tanks. Jeter usually kept a hunting knife with him for safety as he walked around the truck, and he took it with him that night because Yazzie was standing outside and “because my mom and my sister’s asleep, the door [is] unlock[ed], there [are] a lot of things that could happen bad, it’s dark.”

{19} Jeter claimed that Yazzie suddenly approached him from behind and grabbed his wrists. Yazzie cut Jeter’s wrist during the scuffle and grabbed and scratched Jeter’s face. Jeter grabbed his knife from the steps of the truck. Jeter told the police, “he’s trying to take me down, but somehow I basically got the upper hand because I’ve got the blade.” Jeter “got him first, um, in the stomach” and “saw something come out.” In the ensuing altercation, Jeter “just kept on swinging,” Yazzie “was still going at it,” and they fell to the ground and rolled underneath another trailer. Yazzie’s bag got knocked over during the scuffle and the contents spilled out.

{20} Although Yazzie was unarmed, Jeter stabbed Yazzie at least five times. Yazzie sustained grievous wounds to his abdomen, back, and head, and had twenty-three defensive wounds on his hands. Yazzie died of his injuries. Jeter denied having been in any other fights before, saying “I really wasn’t around too many people.”

{21} The State is not obligated to accept as true Jeter’s statement that he was suddenly attacked by Yazzie, and it is entitled to introduce the forensic evidence as circumstantial evidence that may rebut Jeter’s statement. To preclude the State from offering its theory of the case based on evidence that is uncontradicted—that Jeter’s sperm was found on Yazzie’s body—would be untenable.

{22} The presence of Jeter’s sperm on Yazzie’s body is admissible because it permits a reasonable inference that Jeter and Yazzie engaged in consensual sexual relations before the violent encounter, which is probative of identity, relevant to Jeter’s state of mind and intent at the time of Yazzie’s death, and could prove that Jeter did not kill Yazzie in self-defense. Exclusion of the sperm and DNA evidence was an abuse of the district court’s discretion. We therefore reverse the district court on this issue.

JETER’S STATEMENT REGARDING WHEN HE EJACULATED ON YAZZIE IS INADMISSIBLE BECAUSE ADMISSION OF THIS STATEMENT WOULD BE UNFAIRLY PREJUDICIAL

{23} The State contends that Jeter's statement that he masturbated on Yazzie's corpse is relevant to deliberate intention because it leads to the following conclusions: (1) Jeter had no remorse, (2) he was not in fear of Yazzie, (3) he felt scorn and aversion toward Yazzie, and (4) he felt victorious. It is unclear how these conclusions, even if they are valid and not speculative, are probative of whether Jeter actually deliberated before killing Yazzie.

{24} In *State v. Garcia*, 1992-NMSC-048, ¶¶ 32-33, 114 N.M. 269, 837 P.2d 862, we determined that there was insufficient evidence of deliberate intent and overturned a first degree murder conviction. In *Garcia*, the defendant's post-homicide admission that "'I did it. I did it. I'm not ashamed to admit it. I told my brother I did him and I'd do him again'" was not probative of whether he formulated a deliberate intent to kill. *Id.* ¶¶ 11, 32. We held that Garcia's confession provided direct evidence of his current feeling toward the victim, but did "not show that Garcia deliberated and intended to kill his victim before the stabbing." *Id.* ¶ 32. We also held that the fact that Garcia concealed his identity was irrelevant to the analysis of deliberate intent: "The jury could easily infer that Garcia, having stabbed and killed [the victim], desired to conceal his identity; but that understandable desire did not give rise to any inference as to his state of mind *before* the stabbing." *Id.* ¶ 31.

{25} In *State v. Adonis*, 2008-NMSC-059, ¶ 25, 145 N.M. 102, 194 P.3d 717, we affirmed the rule from *Garcia* that, absent other evidence of deliberation, the defendant's post-homicide attitude toward the victim does not permit an inference regarding his or her mens rea before the homicide occurred. In this case, apart from its assertion that "[m]asturbation in a public parking lot over a corpse is highly inconsistent with a mental state of being in mortal fear," the State does not offer support for its theory that the evidence otherwise is probative other than to simply state: "Therefore, Defendant's post-homicide conduct suggests that he was not in fear of Yazzie." However, a lack of fear does not equate to actual deliberation. "Such an inferential leap must be supported by other specific evidence tending to prove that the defendant actually deliberated before killing the victim." *Adonis*, 2008-NMSC-059, ¶ 25. Because Jeter's statement that he masturbated on Yazzie's corpse is not probative of a deliberate intent to kill, the district court was correct to exclude this portion of Jeter's statement.

{26} In addition, the district court was correct to exclude this portion of Jeter's statement under Rule 11-403, which provides: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of ... unfair prejudice ...." Unfair prejudice, in this context, "means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *State v. Stanley*, 2001-NMSC-037, ¶ 17, 131 N.M. 368, 37 P.3D 85 (internal quotation marks and citation omitted). Evidence is unfairly prejudicial "if it is best characterized as sensational or shocking, provoking anger, inflaming passions, or ... provoking hostility or revulsion or punitive impulses, or appealing entirely to emotion against reason." *Id.* (internal quotation marks and citation omitted). Because determining unfair prejudice is fact sensitive, "much leeway is given trial judges" in making that determination. *State v.*

Otto, 2007-NMSC-012, ¶ 14, 141 N.M. 443, 157 P.3d 8 (internal quotation marks and citation omitted). Rule 11-403 decisions are reviewed for abuse of discretion. *Id.* This Court will only overturn a district court's decision on an abuse of discretion standard if the decision was "clearly untenable or not justified by reason." *Flores*, 2010-NMSC-002, ¶ 25 (internal quotation marks and citations omitted).

{27} New Mexico appellate courts generally uphold district courts' decisions that either admit or exclude evidence on Rule 11-403 grounds. *See, e.g.*, *Otto*, 2007-NMSC-012, ¶¶ 14, 22 (finding no abuse of discretion where the district court admitted evidence of the defendant's uncharged acts and the victim's statements to her mother over a Rule 11-403 challenge); *Coates v. Wal-Mart Stores, Inc.*, 1999-NMSC-013, ¶¶ 40-42, 127 N.M. 47, 976 P.2d 999 (finding no abuse of discretion where the district court excluded on Rule 11-403 grounds relevant evidence that the plaintiff's husband had been incarcerated for murder); *State v. Dombos*, 2008-NMCA-035, ¶ 32, 143 N.M. 668, 180 P.3d 675 (finding no abuse of discretion where the district court admitted on Rule 11-403 grounds a potentially inflammatory video of the defendant sodomizing the victim with a carrot, given that the video was the only evidence of the crime); *State v. Gibbins*, 1990-NMCA-013, ¶ 19, 110 N.M. 408, 796 P.2d 1104 (finding no abuse of discretion where the district court excluded relevant testimonial evidence on Rule 11-403 grounds); *Davila*, 1985-NMCA-072, ¶¶ 12-16 (finding no abuse of discretion where the district court admitted evidence of the plaintiff's three abortions over her NMSA 1978, Evid. R. 403 (Repl. Pamp. 1983) (precursor to Rule 11-403) objection).

{28} Jeter's statement that he masturbated on Yazzie's corpse is the type of evidence that one could reasonably conclude is "sensational or shocking, provoking anger, inflaming passions, or ... provoking hostility or revulsion or punitive impulses, or appealing entirely to emotion against reason." *Stanley*, 2001-NMSC-037, ¶ 17. It is self-evident why this statement could be construed as sensational or shocking. We therefore affirm the district court's exclusion of this evidence.

CONCLUSION

{29} We reverse the exclusion of the sperm and DNA evidence for abuse of discretion by the district court and affirm the exclusion of Jeter's statement that he masturbated on Yazzie's corpse for lack of showing by the State of abuse of discretion by the district court.

{30} IT IS SO ORDERED.

EDWARD L. CHÁVEZ, Justice

WE CONCUR:

PETRA JIMENEZ MAES, Chief Justice

RICHARD C. BOSSON, Justice

CHARLES W. DANIELS, Justice

BARBARA J. VIGIL, Justice

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[1] Michael Grooms, who was parked next to Jeter's truck on the night of the killing, testified at the preliminary hearing that he heard an altercation and heard someone call out, "somebody help me, please help."