

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2024-KA-01370-COA

**LARRY THOMAS LARUE A/K/A LARRY
LARUE A/K/A LARRY T. LARUE**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	09/04/2024
TRIAL JUDGE:	HON. CHRISTOPHER LOUIS SCHMIDT
COURT FROM WHICH APPEALED:	HARRISON COUNTY CIRCUIT COURT, FIRST JUDICIAL DISTRICT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALEXANDRA LEBRON
DISTRICT ATTORNEY:	WILLIAM CROSBY PARKER
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 09/29/2026
MOTION FOR REHEARING FILED:	

BEFORE WILSON, P.J., EMFINGER AND LASSITTER ST. PÉ, JJ.

WILSON, P.J., FOR THE COURT:

¶1. Following a jury trial, Larry Larue was convicted of possession of methamphetamine and possession of oxycodone. On appeal, Larue argues that the trial court erred by admitting evidence of his prior convictions, that the prosecution committed a discovery violation by not disclosing an anonymous tip, and that the jury's verdict is contrary to the overwhelming weight of the evidence. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

¶2. In August 2022, Detective Derek Matthews of the Gulfport Police Department

stopped Larue's white 1970 Oldsmobile Delta 88 at the intersection of Highway 49 and Pass Road in Gulfport after he observed Larue fail to use his turn signal. Larue was the driver and sole occupant of the car. After Matthews initiated his blue lights, Larue continued driving for "several hundred yards" before stopping, and Matthews observed Larue "moving around in the vehicle and reaching down and to his right" as if he was "trying to conceal something."

¶3. When Matthews approached Larue's car, he advised Larue of the reason for the stop and asked for his driver's license. Rather than providing his license, Larue "immediately just stepped out of the vehicle on his own." Larue then handed Matthews his license and consented to a search of his person and the car.

¶4. Matthews found approximately seven grams of methamphetamine and six individually bagged oxycodone pills in the crease of the car's front seat. The car "had a bench seat that went all the way across," and the drugs were in the crease of the seat "where [Larue's] right hip would have been" and where he appeared to have been reaching after Matthews initiated the stop. Matthews testified that Larue was "sitting on top of the bag." Detective McKinley West assisted in the search of Larue's car, and he also testified that Larue consented to the search and that the methamphetamine and oxycodone pills were found in the seat of the car where Larue had been sitting.

¶5. Larue was arrested and charged as a subsequent drug offender with possession of at least two grams but less than ten grams of methamphetamine with the intent to transfer (Count I) and possession of less than ten dosage units of oxycodone with the intent to transfer (Count II). The State later filed a motion to amend the indictment to charge Larue as a

nonviolent habitual offender, which the trial court granted.

¶6. Prior to trial, Larue filed a motion in limine in which he stated that he expected the State “to elicit testimony . . . regarding an alleged anonymous tip of illegal drug activity on the part of [Larue].” Larue argued that any such testimony should be excluded pursuant to Mississippi Rules of Evidence 401 through 404 and 801 through 804. At a pretrial hearing, Larue argued that he believed the “anonymous tip” actually came from “the mother of his child,” “Bridgette Whitfield.” Defense counsel stated that he wanted to know if Whitfield was “working with the police” as a confidential informant or otherwise. Counsel argued that Whitfield “might have been involved in planting the drugs” in Larue’s car and that the State had a duty to disclose whether the police had received “a genuine anonymous tip” or knew the tipster’s identity. The State responded that Matthews had received an “anonymous tip” regarding Larue and that Matthews did not know Whitfield or who she was. The court denied Larue’s ore tenus motion to disclose the tipster’s identity since the court could not “order the State to give [Larue] something they [did not] have or have knowledge of.”¹

¶7. Larue also filed a motion in limine to exclude evidence of his prior convictions in Louisiana for possession of marijuana with the intent to distribute (in 2000) and distribution of marijuana (in 2009). However, the trial court overruled the motion, finding that the convictions were admissible under Mississippi Rules of Evidence 404(b) and 403 because they were relevant to show intent and because the danger of unfair prejudice did not

¹ Although Larue’s written motion in limine sought to exclude any evidence of an “anonymous tip,” his ore tenus motion sought to compel the State to disclose the tipster’s identity, and he did not seek or obtain a ruling on his written motion in limine.

substantially outweigh the probative value of the evidence.²

¶8. At trial, Matthews testified that after he stopped Larue for failing to use his turn signal, he requested consent to search the car (a) because the Gulfport Police Department had received an “anonymous tip” that “Larue was dealing or distributing narcotics” and (b) because of Larue’s suspicious movements and behavior after Matthews initiated the stop. On cross-examination, Matthews testified that he was not conducting surveillance on Larue at the time and that he stopped Larue because he committed a traffic violation. Matthews also testified that he did not conduct a fingerprint analysis of the plastic bag containing the narcotics because Larue was literally sitting on it. West corroborated Matthews’s testimony regarding the search of Larue’s car.

¶9. Larue testified and claimed that Whitfield must have planted the drugs in his car. Larue testified that there was a “hole in . . . the bottom of [the] floor” of his car and that Whitfield must have “stuck her hand through the hole,” unlocked the car, and planted the drugs in the front seat. Larue did not have any pictures of the hole or any other evidence to support this theory. Larue also testified that he never saw the drugs, although he was sitting on them. Larue eventually acknowledged that he previously had been convicted of possession of marijuana with the intent to distribute and distribution of marijuana.

¶10. At the close of testimony, the jury found Larue guilty of the lesser-included offenses of simple possession of at least two grams but less than ten grams of methamphetamine (Count I) and simple possession of less than ten dosage units of oxycodone (Count II). The

² Larue also pled guilty and was convicted in 2019 of simple possession of cocaine, but no evidence of that conviction was offered or admitted at trial.

court sentenced Larue as a nonviolent habitual offender to serve consecutive terms of four years and two years in the custody of the Department of Corrections.

ANALYSIS

I. Rule 404(b) Evidence

¶11. Larue argues that the trial court abused its discretion under Mississippi Rules of Evidence 403 and 404(b) by admitting evidence of his prior convictions for possession of marijuana with the intent to distribute and distribution of marijuana.

¶12. “This Court reviews the admission or exclusion of evidence for an abuse of discretion.” *Colburn v. State*, 368 So. 3d 347, 349 (¶7) (Miss. Ct. App. 2023). “Absent an abuse of that discretion, the trial court’s decision will not be disturbed on appeal.” *Id.* (brackets omitted) (quoting *Clarke v. State*, 859 So. 2d 1021, 1024 (¶18) (Miss. Ct. App. 2003)). “As long as the trial court remains within the confines of the Mississippi Rules of Evidence, its decision to admit or exclude evidence will be accorded a high degree of deference.” *Id.* (quoting *Clarke*, 859 So. 2d at 1024 (¶18)).

¶13. Under Mississippi Rule of Evidence 404(b), “[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.” MRE 404(b)(1). However, such “evidence may be admissible for another purpose, such as proving motive, opportunity, *intent*, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” MRE 404(b)(2) (emphasis added). Such evidence may be admissible for other purposes as well—the examples listed in the rule “are not exclusive.” *Id.* advisory committee note.

“Evidence offered for a valid, non-character purpose ‘is properly admissible if it passes muster under [Mississippi Rule of Evidence] 403 and is accompanied by a proper limiting instruction.’” *Wallace v. State*, 369 So. 3d 83, 89 (¶18) (Miss. Ct. App. 2023) (quoting *Fairley v. State*, 275 So. 3d 1012, 1019 (¶30) (Miss. 2019)). “[R]elevant evidence should not be excluded under Rule 403 unless its ‘probative value is *substantially outweighed* by the danger of unfair prejudice.’” *Id.* at (¶19) (quoting MRE 403).

¶14. Here, Larue was charged with possession of controlled substances *with the intent to distribute*. The Mississippi Supreme Court has held that “[e]vidence of prior involvement in the drug trade is admissible [under Rule 404(b)] to prove intent to distribute.” *Holland v. State*, 656 So. 2d 1192, 1196 (Miss. 1995). The Court has explained that “while the prior act is not accepted as evidence of the entire crime, it is accepted as evidence of a constituent element of the crime [(i.e., intent to distribute)].” *White v. State*, 842 So. 2d 565, 574 (¶26) (Miss. 2003) (holding that “previous involvement with drugs can be admitted on the issue of intent to distribute”). Moreover, “a not-guilty plea sufficiently raises the issue of intent to permit the admission of Rule 404(b) evidence” to prove intent. *Johnson v. State*, 44 So. 3d 1040, 1044 (¶16) (Miss. Ct. App. 2010) (citing *United States v. Pompa*, 434 F.3d 800, 805 (5th Cir. 2005)). Therefore, evidence of prior drug sales by the defendant is admissible to show intent to distribute. *White*, 842 So. 2d at 573-74 (¶26). “In addition, this Court has specifically held that prior convictions for possession with intent are admissible under Rule 404(b) to show intent to distribute.” *Levi v. State*, 397 So. 3d 941, 945 (¶9) (Miss. Ct. App. 2024) (citing *Hosey v. State*, 77 So. 3d 507, 516-17 (¶¶33-34) (Miss. Ct. App. 2011);

Colburn, 368 So. 3d at 349-53 (¶¶8-21)).

¶15. Larue argues that his prior convictions lacked probative value because the most recent occurred thirteen years prior to the subject charges. However, we rejected this argument in *Colburn*, holding that “Colburn’s prior conviction [for possession with intent] was not too remote in time (thirteen years) from the current charge” and that “any remoteness could merely weaken the evidence’s probative value, not bar its admission under Rule 404.” *Colburn*, 368 So. 3d at 351 (¶14). Indeed, “an inquiry into the age of prior convictions is not relevant for a 404(b) analysis,” although it may be considered under Rule 403. *Id.*

¶16. Larue also argues that his prior convictions lack probative value because they involved a different controlled substance (marijuana) than the present case. However, we also rejected this argument in *Colburn*, emphasizing that “[p]rior drug convictions can be properly admitted under Rule 404(b)’s exceptions involving drugs different than the charge at issue.” *Id.* at 351-52 (¶16) (discussing additional cases in which prior convictions involving different drugs were admitted under Rule 404(b)). In fact, “the more closely the extrinsic offense resembles the charged offense, the greater the prejudice to the defendant.” *Id.* at 351 (¶15) (quoting *United States v. Cockrell*, 587 F.3d 674, 679 (5th Cir. 2009)). Thus, Larue’s prior convictions were *less* prejudicial because they involved marijuana. *Id.*

¶17. Larue ultimately argues that his prior convictions should have been excluded under Rule 403 because they “were remote in time,” “involved a different substance,” and “their minimal probative value was far outweighed by their prejudicial effect.” However, our Supreme Court has stated that when a prior conviction is admissible under Rule 404(b), even

if its probative value “is doubtful because of remoteness, the better practice is to admit the evidence, leaving it to the jury to determine its credibility and weight.” *Mai v. State*, 384 So. 3d 1242, 1252 (¶30) (Miss. Ct. App. 2024) (brackets omitted) (quoting *Gore v. State*, 37 So. 3d 1178, 1187 (¶19) (Miss. 2010)). Moreover, “Rule 403’s scope is narrow, and it is an extraordinary measure that should be used very sparingly.” *Wallace*, 369 So. 3d at 89 (¶19) (brackets omitted) (quoting *Curry v. State*, 202 So. 3d 294, 298-99 (¶13) (Miss. Ct. App. 2016)). Relevant evidence should not be excluded under Rule 403 unless its “probative value is *substantially outweighed* by the danger of unfair prejudice.” MRE 403 (emphasis added). “Even then, exclusion is permissive, not mandatory. That decision is committed to the broad discretion of the trial judge, and our standard of review is highly deferential.” *Curry*, 202 So. 3d at 298-99 (¶13). Here, because the State bore the burden of proving the essential element of intent to distribute, and because Larue’s prior convictions had some probative value on that issue, we cannot say that the trial judge abused his “broad discretion” by admitting such evidence.

¶18. Larue also argues that the trial court abused its discretion by allowing the State to cross-examine him about his prior convictions under Rule 609. However, Larue’s prior convictions were admitted as substantive evidence of intent under Rule 404(b), not to “attack[his] character for truthfulness” under Rule 609. MRE 609(a).³ The State never argued that Larue’s prior convictions were relevant to his “character for truthfulness” under

³ “A defendant’s credibility, key to the believability of his testimony, is quite a different matter from the purposes for which evidence is admitted under [Rule] 404(b).” *State v. Brown*, 782 P.2d 1013, 1020 (Wash. 1989).

Rule 609 and *Peterson v. State*, 518 So. 2d 632 (Miss. 1987), and Larue never objected that his prior convictions were an improper subject of cross-examination. Moreover, the State did not cross-examine Larue about the convictions because they had inherent impeachment value; rather, the State cross-examined Larue about his curious *direct examination* testimony that “I don’t even deal drugs or whatever. Never dealt with that.” The State was entitled to cross-examine Larue about this apparently false testimony. *See Vick v. Cochran*, 316 So. 2d 242, 250 (Miss. 1975) (“Where a false statement is given on direct examination which is relevant and material to the inquiry, the falsity of the statement may be shown on cross-examination.”). Therefore, any argument regarding Larue’s cross-examination about his prior convictions is without merit.

II. The Anonymous Tip

¶19. Larue next argues that the State violated Rules 17.2 and 17.8 of the Mississippi Rules of Criminal Procedure by failing to timely disclose that law enforcement had received an “anonymous tip” that Larue was selling drugs. Those rules provide as follows:

Rule 17.2 Disclosure by the Prosecution.

Subject to the exceptions of Rule 17.6(a) and 17.7, the prosecution must disclose to each defendant . . . the following which is in the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecution:

- (1) Names and addresses of all witnesses in chief proposed to be offered by the prosecution at trial, together with a copy of the contents of any statement (written, recorded or otherwise preserved) of each such witness and the substance of any oral statement made by any such witness;
- (2) Copy of any written or recorded statement of the defendant and the substance of any oral statement made by the defendant;

- (3) Copy of the criminal record of the defendant;
- (4) Any reports, statements, or opinions of experts (written, recorded or otherwise preserved) made in connection with the particular case and the substance of any oral statement made by any such expert;
- (5) Any physical evidence, photographs, and data or information that exists in electronic or magnetic form relevant to the case or which may be offered in evidence; and
- (6) Any exculpatory material concerning the defendant.

Upon a showing of materiality to the preparation of the defense, the court may mandate such other discovery to the defendant's attorney as justice may require.

Rule 17.8 Continuing Duty to Disclose.

Both the State and the defendant have a duty timely to supplement discovery. If, subsequent to compliance with these Rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's attorney of the existence of such additional material or information and, if the additional material or information is discovered during trial, the court shall also be notified.

¶20. Larue's argument is without merit. To begin with, it is apparent that Larue knew about the anonymous tip well in advance of trial. *Two months prior to trial*, Larue filed a motion in limine to exclude evidence of the anonymous tip, and Larue accurately anticipated Matthews's testimony that the police had received an anonymous tip that he was involved in selling drugs. Thus, it is clear that Larue was aware of the tip well before trial, and Larue never requested a continuance to further investigate the tip.

¶21. Moreover, Larue fails to explain how the State committed any discovery violation under Rules 17.2 and 17.8. The mere fact that law enforcement previously received an

anonymous tip about the defendant does not fall within any of the categories of information or evidence that the State is required to disclose under Rule 17.2. We also note that Rule 17.6(a)(2) regarding “[d]isclosure of an informant’s identity” is inapplicable here because the case involves only an *anonymous* tip by a person whose identity was unknown to law enforcement, not a confidential informant. As the trial judge correctly observed, the court could not “order the State to give [Larue] something they [did not] have or have knowledge of.” *See Hill v. State*, 865 So. 2d 371, 381 (¶40) (Miss. Ct. App. 2003) (recognizing that “[t]he State would not have been able” to disclose the identities of unknown anonymous tipsters “even had it been so inclined”).

¶22. In sum, Larue clearly knew about the anonymous tip well before trial, and the State did not commit any discovery violation or fail to disclose any information in its possession. Accordingly, this issue is without merit.

III. Weight of the Evidence

¶23. Lastly, Larue argues that he is entitled to a new trial because the jury’s verdict finding him guilty of simple possession of methamphetamine and oxycodone is contrary to the overwhelming weight of the evidence. Larue argues that the verdict is against the weight of the evidence because “no fingerprints were collected from the plastic bag” containing the drugs and because “others, including Bridgette Whitfield, could access” Larue’s car.⁴

¶24. For challenges to the weight of the evidence, we “view the evidence in the light most

⁴ Within his weight-of-the-evidence argument, Larue also reasserts that he was unfairly prejudiced by the admission of his prior convictions and the alleged “late discovery disclosure” of the anonymous tip. However, for the reasons explained above, those issues are without merit and do not affect our analysis of the weight of the evidence.

favorable to the verdict and disturb the verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Little v. State*, 233 So. 3d 288, 289 (¶1) (Miss. 2017). “We do not reweigh evidence. We do not assess the witnesses’ credibility. And we do not resolve conflicts between evidence. Those decisions belong solely to the jury.” *Id.* In addition, we “review the trial court’s decision to . . . deny a new trial for an abuse of discretion.” *Id.* at 292 (¶21).

¶25. Here, Matthews testified that after he initiated the traffic stop, Larue continued driving for several hundred yards and appeared to be trying to conceal something. Matthews and West both testified that they found the methamphetamine and oxycodone right where Larue had been sitting and where Matthews had observed him apparently trying to conceal something. Matthews testified that he did not attempt to get fingerprints off the bag containing the drugs because Larue was literally “sitting on top of” the bag. The car belonged to Larue, and he was the sole occupant. Although Larue maintains others had access to the car, at trial he only speculated that Whitfield could have accessed the car’s interior through a hole in its floor. Larue claimed that he believed Whitfield had been in the car because he noticed “her hair . . . all over” the car; however, Larue also claimed he did not notice the drugs he was sitting on. Larue offered no other evidence to substantiate his theory or any evidence that there was a hole in his car. There was ample evidence to support the jury’s verdict, and we cannot say that it was contrary to the overwhelming weight of the evidence or that the trial judge abused his discretion by denying Larue’s motion for a new

trial. Accordingly, this issue is also without merit.

CONCLUSION

¶26. In sum, Larue identifies no reversible error, and the jury's verdict is not contrary to the overwhelming weight of the evidence.

¶27. **AFFIRMED.**

BARNES, C.J., CARLTON, P.J., WESTBROOKS, McDONALD, LAWRENCE, McCARTY, EMFINGER, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR.