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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
March 21, 2023 Session

STATE OF TENNESSEE v. RICKEY LATINOS HAYMER

Appeal from the Circuit Court for Rutherford County
No. 84814 James A. Turner, Judge

No. M2022-00515-CCA-R3-CD

The Defendant, Rickey Haymer, appeals his convictions of crimes involving the attempted unlawful purchase or possession of a firearm. He argues that the evidence is insufficient to support his convictions because his actions in seeking to purchase a firearm did not constitute a "substantial step" toward the completed crimes. He also argues that the trial court committed plain error in admitting various text messages showing his contact with the putative seller. On our review, we respectfully affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right;
Judgments of the Circuit Court Affirmed

TOM GREENHOLTZ, J., delivered the opinion of the court, in which TIMOTHY L. EASTER and JOHN W. CAMPBELL, SR., JJ., joined.

Ben Wetsell (on appeal) and James B. Robinson (at trial), Murfreesboro, Tennessee, for the appellant, Rickey Latinos Haymer.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Jennings H. Jones, District Attorney General; and Dana S. Minor, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On June 22, 2018, the Defendant, Rickey Haymer, contacted Mr. Craig Baker by text message and offered to purchase a firearm from him. The Defendant knew Mr. Baker from working with him at Taylor Farms Tennessee, Inc. in Rutherford County. The Defendant also knew that Mr. Baker owned a Ruger LCP, as the two had previously discussed Mr. Baker selling the pistol to the Defendant a "few times maybe at work."

When he texted Mr. Baker in June 2018, the Defendant had been previously convicted of the felony offense of aggravated robbery in Illinois. He also was subject to an unrelated order of protection that did not expire until the following October. The fourth page of that order, which the Defendant signed, provided that the Defendant "must not have, or attempt to have, receive or attempt to receive or in any other way get any firearm while this or any later protective order is in effect." The order also warned the Defendant that he could "not have any firearm while this Order is in effect. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any firearm or ammunition."

The text message chain between the Defendant and Mr. Baker started at 6:36 a.m. on June 22 when the Defendant reached out to Mr. Baker with a text that read, "Craig ill give you whatever price you want for that." Mr. Baker did not respond, and the Defendant reached out for a second time later that afternoon. The following exchange then occurred:

Defendant: "Craig I got $300.00 right now"

Mr. Baker: "For mine? I'm at work sorry I can't answer at the moment"

Defendant: "Yes ill meet you at tbortons"[1]

Mr. Baker: "I'm not really wanting to sell it considering I've put money into it already. Didn't you want me to buy [one for you]"

Defendant: "$325.00 today Craig i need it"

Mr. Baker. "Ok let me think for a min I'll get back to you before my dinner break"

Mr. Baker: "I only have the pistol and two mags"

Defendant: "Ok hey is ole girl working today"

Mr. Baker: "Crystal? Who"

Defendant: "Yeah"

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[1] The testimony at trial suggested that this reference, and the one later made, are likely to "Thornton's," a convenience store in Murfreesboro.

Mr. Baker: "Yeah I saw her"

Defendant: "Ok let me know what time you wanna meet at Thor[n]tons"

Mr. Baker: "Ok"

Mr. Baker: "Here's the thing. I called the shop I got it from and they registered it alongside my permit. I'll have to hold onto mine, but I can still buy one"

The day before the text message exchange, the Defendant was discharged from his job at Taylor Farms, allegedly for violating company confidentiality policies by speaking about a grievance filed against him. Mr. Baker thought it was "a little odd" for the Defendant to ask to buy his weapon and then immediately ask if Ms. Crystal Henderson was at work. Ms. Henderson also worked at Taylor Farms, and Mr. Baker knew that the Defendant had "a history" with her.

Mr. Baker was unaware that the Defendant could not lawfully possess a firearm. Still, he decided not to sell his pistol to the Defendant because of the Defendant's inquiry about Ms. Henderson. Mr. Baker then went to find Ms. Henderson, and he told her of the text message conversation, including that the Defendant was attempting to purchase a weapon from him. They then spoke with their supervisor.

Someone in the human resources department called the Smyrna Police Department, and Officer Harry Bellinger was dispatched to Taylor Farms. When Officer Bellinger arrived at Taylor Farms, he spoke with Mr. Baker. Mr. Baker showed the officer the text messages that he exchanged with the Defendant, and Mr. Baker identified the phone number used in the exchange as being the Defendant's phone number. The officer then photographed the messages as they appeared on Mr. Baker's cell phone. The officer later testified that he believed that the parties did not meet or exchange any money.

In relevant part, the Rutherford County grand jury charged the Defendant with the Class C felony offense of attempted possession of a firearm after having been convicted of a felony crime of violence. Tenn. Code Ann. § 39-17-1307(B)(1)(A) (2018). It also charged him with the misdemeanor offenses of violating an order of protection and attempting to purchase a firearm unlawfully. Tenn. Code Ann. §§ 39-13-113; 39-17-1316 (2018).

The matter was tried in June 2021. Because Mr. Baker had passed before trial, the trial court permitted the jury to hear Mr. Baker's earlier testimony given at the preliminary hearing. In addition, although the original text messages no longer existed, Officer

Bellinger was permitted to introduce the pictures that he took of the text messages from Mr. Baker's phone. After the trial, the jury found the Defendant guilty of each offense as charged.

Following a sentencing hearing, the trial court found that the Defendant was a Range III, persistent offender. As to the conviction for the Class C felony offense, the court sentenced the Defendant to a term of ten years, which was suspended to supervised probation after service of one year. The court also sentenced the Defendant to serve eleven months and twenty-nine days for each misdemeanor conviction, and it ordered that all sentences would be served concurrently. After the trial court denied the motion for a new trial on April 11, 2022, the Defendant filed a timely notice of appeal on April 20, 2022.

In this appeal, the Defendant raises two issues. First, the Defendant argues that because he did not take a substantial step toward possessing, purchasing, or receiving a firearm, the proof is insufficient to support his convictions for attempted crimes. Second, the Defendant argues that the trial court committed plain error when it admitted Officer Bellinger's photographs of the text message exchange with Mr. Baker. Because we respectfully disagree, we affirm the judgment of the trial court.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

The Defendant first argues that the evidence is insufficient to support each of his convictions for attempted crimes. Correctly noting that "[a]ll three convictions are based on the defendant's 'attempt' to possess, purchase, [receive] or otherwise obtain a firearm," the Defendant argues that the evidence did not show that he took a "substantial step" toward obtaining a firearm. He argues that no conduct beyond speech occurred, and he notes that the evidence does not show that he paid any money or met with Mr. Baker.

The State argues that the evidence is sufficient for a reasonable jury to find that the Defendant attempted to possess a firearm. The State notes that the Defendant reached out to Mr. Baker to acquire a handgun, made an initial offer, increased his offer, and proposed a meeting place. The State argues that, although the transaction was not completed because Mr. Baker decided not to continue with the deal, "[t]he fact that the defendant was unsuccessful in striking a deal does not negate his initiation of the negotiation and repeated requests to meet." We agree with the State.

1. Standard of Appellate Review

"The standard for appellate review of a claim challenging the sufficiency of the State's evidence is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). When "'making this determination, we afford the prosecution the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom.'" *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011) (quoting *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010)). The trier of fact, not this Court, resolves "all questions as to the credibility of trial witnesses, the weight and value of the evidence, and issues of fact raised by the evidence," and this Court "may not re-weigh or re-evaluate the evidence." *State v. Lewter*, 313 S.W.3d 745, 747 (Tenn. 2010).

2. Liability for Attempted Crimes in Tennessee

One of the purposes of the criminal law is to "[p]roscribe and prevent conduct that unjustifiably and inexcusably causes or threatens harm to individual, property, or public interest[s.]" Tenn. Code Ann. § 39-11-101(1) (2018). To further its crime prevention purpose, the law seeks to punish appropriately crimes that have been committed. But the law also aims to punish crimes that are attempted but which, for one reason or another, have not been completed. *Id.* § 39-12-101 (2018).

a. The Timeline Issue

A recurring issue with deciding how to punish attempted crimes concerns how to define *when* the Defendant should be held criminally liable during the timeline of events leading to a crime. At one end of the continuum, criminal liability cannot attach simply because one thinks about committing a crime. This is because "[o]ne of the basic premises of the criminal law is that bad thoughts alone cannot constitute a crime," and, as such, a defendant's mere thoughts about committing a crime could never constitute a criminal attempt. 2 Wayne R. LaFave, *Substantive Criminal Law*, § 11.4 (3d ed. 2017) (footnotes omitted). At the other end of the continuum, if the law were to wait until a completed crime is imminent before recognizing the possibility of criminal liability, the law's interest in discovering and preventing criminal activity would be undermined significantly. *State v. Reeves*, 916 S.W.2d 909, 913-14 (Tenn. 1996).

Before 1989, our law of criminal attempt was defined by the common law. *State v. Davis*, 354 S.W.3d 718, 732 (Tenn. 2011). The common law addressed the timeline issue

by asking whether the defendant's actions were a "mere preparation" to commit the offense or were part of the actual "attempt" itself. *Dupuy v. State*, 325 S.W.2d 238, 240 (Tenn. 1959). For an attempt to occur under this common-law structure, the defendant must have taken actions "beyond mere preparation" before he or she could be held criminally liable for an attempted crime. As such, if a defendant had only engaged in "devising or arranging the means or measures necessary for the commission of the offense," then he or she could not be held criminally liable for an attempted crime. *Id.*

Our supreme court later recognized that the common-law rule was subject to "persistent criticism." *Reeves*, 916 S.W.2d at 913. First, the court noted that distinguishing between the concepts "is a difficult, if not impossible, task." *Id.* After all, while "'[p]reparation is not an attempt,'" it is also true that "'some preparations may amount to an attempt.'" *Id.* n.1 (citation omitted). Moreover, the supreme court observed that the common-law's rule had been criticized for waiting "until the actor is on the brink of consummating the crime" before imposing criminal liability. *See id.* at 913-14.

In 1989, our General Assembly completely revised the criminal code as part of "a comprehensive modernization of the State's criminal law." *State v. Williams*, 38 S.W.3d 532, 538 (Tenn. 2001); *see* 1989 Tenn. Pub. Acts, ch. 591. As part of this revision, the legislature replaced the common law standard governing attempt liability with a new statutory standard that "was substantially derived from section 5.01 of the Model Penal Code[.]" *State v. Mateyko*, 53 S.W.3d 666, 675 (Tenn. 2001); *Davis*, 354 S.W.3d at 731. As is relevant to this case, this statute provides as follows:

> (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
>
> . . . .
>
> (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct *constitutes a substantial step* toward the commission of the offense.

Tenn. Code Ann. § 39-12-101(a)(3) (emphasis added). According to this standard, "a defendant who acts with the required culpable mental state 'may be convicted of criminal attempt based on conduct constituting a substantial step toward the commission of the offense.'" *Davis*, 354 S.W.3d at 730 (citation omitted).

b. Significant Aspects of Current Attempt Law

The legislature's adoption of the "substantial step" test for attempt liability "brought Tennessee in line with a majority of states" that have also adopted variations of the Model Penal Code's test. *Davis*, 354 S.W.3d at 731-32. Three aspects of this "substantial step" test are significant in this case.

First, the nature of the conduct that constitutes a "substantial step" toward committing a crime will vary from case to case. Indeed, the sentencing commission comments to section 39-12-101 note expressly that "[b]ecause of the infinite variety of factual situations that can arise, subdivision (a)(3) leaves the issue of what constitutes a substantial step for determination in each particular case." Tenn. Code Ann. § 39-12-101, Sent. Comm'n Cmts. Likewise, our supreme court has recognized that "the question of whether a defendant has taken a substantial step toward the commission of a crime sufficient to support a conviction for criminal attempt is necessarily a heavily fact-intensive inquiry determined by the specific circumstances shown in each individual case[.]" *Davis*, 354 S.W.3d at 733. Thus, where possession of an object is itself the intended crime, conduct seeking to possess that object *may* constitute a substantial step toward committing that offense even when this same conduct would not be sufficient for attempt liability in another context.

Second, "[c]onduct does not constitute a substantial step under subdivision (a)(3), unless the person's entire course of action is corroborative of the intent to commit the offense." Tenn. Code Ann. § 39-12-101(b). A substantially similar provision appears in the Model Penal Code, which also requires that the conduct constituting a substantial step be "strongly corroborative of the actor's criminal purpose." Model Penal Code § 5.01(2). As one federal circuit court has observed, the purpose behind this requirement is to prevent "the conviction of persons engaged in innocent acts on the basis of a mens rea proved through speculative inferences, unreliable forms of testimony, and past criminal conduct." *United States v. Hernandez-Galvan*, 632 F.3d 192, 198 (5th Cir. 2011) (citations omitted).

Third, and most importantly, the law no longer asks how close (or how far away) one was to completing a crime. Instead, the offense of criminal attempt "*is basically one of criminal intent* coupled with acts that clearly demonstrate the offender's proclivity toward criminality." Tenn. Code Ann. § 39-12-101, Sent. Comm'n Cmt. (emphasis added). Thus, the law identifies the actions that have already occurred and asks whether those actions show a "course of action [that] is corroborative of the intent to commit the offense." Tenn. Code Ann. § 39-12-101(b).

This change in focus is significant. Attempt liability under our statute may arise "in *preparing and planning* the commission of the offense," even when the defendant has "not

done all that he intends to do." *State v. Elder*, 982 S.W.2d 871, 875 (Tenn. Crim. App. 1998) (emphasis added). Thus, even where additional steps remain to complete a crime, attempt liability may be present where the actions already taken by the defendant strongly corroborate his or her intent to commit the crime. *Cf. Model Penal Code Commentaries* § 5.01, at 329 ("That further major steps must be taken before the crime can be completed does not preclude a finding that the steps already undertaken are substantial. It is expected, in the normal case, that this approach will broaden the scope of attempt liability.").

c. Negotiations as a "Substantial Step" in Attempted Possession Cases

Tennessee courts have not addressed the extent to which negotiations can constitute a "substantial step" in the context of attempted possession crimes. However, other courts have addressed similar issues under the "substantial step" test adapted from the Model Penal Code. For example, in *United States v. Mims*, 812 F.2d 1068 (8th Cir. 1987), the Eighth Circuit concluded that the defendant had taken a "substantial step" toward obtaining heroin—and thus affirmed the defendant's conviction for attempted possession of a controlled substance—under circumstances that are substantially similar to those present here. In *Mims*, the defendant contacted a known source of heroin on three occasions by telephone. He offered the dealer a definite purchase price and increased the proposed purchase price to encourage the sale further. *Id.* at 1078. No meeting between the two took place, and no money was exchanged, because the dealer decided not to complete the exchange. *See id.*

The Eighth Circuit recognized that the conversations were "more than 'general conversation' or 'mere abstract talk.'" Instead, the court concluded that the discussions "were directly aimed at the commission of the offense of attempting to possess heroin" and that the phone calls "were strongly corroborative of the firmness of [the defendant's] intent." *Id.* at 1078-79. Although the court observed that a different result may obtain if the defendant, rather than the dealer, terminated the transaction, the court nevertheless held that the defendant's "conduct amounted to substantial steps" and that "there was sufficient evidence that [the defendant] committed the underlying offense of attempt to possess heroin." *Id.* at 1079.

Similarly, the Sixth Circuit has emphatically recognized that negotiations themselves can, and likely will, constitute the "substantial step" necessary in attempted possession crimes:

> [W]e hold that when a defendant engages in active negotiations to purchase drugs, he has committed the "substantial step" towards the crime of

> possession required to convict him of attempted possession. We simply cannot contemplate a situation where a defendant's active negotiations to purchase drugs would not strongly corroborate the firmness of his intent to possess narcotics, assuming he had such an intent.

United States v. Bilderbeck, 163 F.3d 971, 975-76 (6th Cir. 1999). Although the attempted crime in *Bilderbeck* involved additional actions not present in the case at bar, other cases have been clear that steps beyond negotiation are not necessarily required for an attempted-possession crime.

For example, in *United States v. Burns*, 298 F.3d 523 (6th Cir. 2002), the defendant negotiated a receipt of crack cocaine with an informant and an undercover agent in separate telephone conversations. During the first call, the informant agreed to deliver thirty ounces of crack cocaine to the defendant as payment for a debt he owed to the defendant. In a second conversation with the undercover agent, the defendant agreed to a proposed meeting place and time for the delivery. *Id.* at 533.

The Sixth Circuit concluded that the defendant's "negotiations to possess the drugs during the recorded conversation with [the informant] and the first recorded conversation with undercover agent Ellison also constituted a substantial step toward the completion of the offense." *Id.* at 539. Although the defendant later appeared at the delivery location, the Sixth Circuit was careful to note that this appearance "was a *second* substantial step toward the completion of the offense." *Id.* (emphasis added). In other words, while the fact that the defendant's later appearance at the scene to complete the exchange may evidence a "second" substantial step, such an action is unnecessary where the defendant's negotiations already satisfied the "substantial step" element required for the attempted crimes. *See id.*

Making this point clear in later attempted-possession cases, the Sixth Circuit has expressly recognized that "[d]emonstrating a 'substantial step' does not require a physical act; a defendant's words alone can be 'a substantial step.'" *United States v. LaPointe*, 690 F.3d 434, 444 (6th Cir. 2012) (citation omitted). Nor does the "substantial step" necessarily require "a confirmed deal based on active negotiations." *United States v. Castanon-Campos*, 519 F. App'x 403, 407 (6th Cir. 2013).

With these principles in mind, we turn to the facts of this case.

d. The Defendant's Liability for Attempted Possession of a Firearm

In this case, the Defendant concedes that he intended to obtain a firearm. He also agrees that he "and Mr. Baker exchanged text messages negotiating the purchase of a firearm." The issue in this case is whether the Defendant's conduct and his entire course of action corroborate his intention to possess a firearm. Tenn. Code Ann. § 39-12-101(b).

When seen in this light, we conclude that a reasonable jury could have found beyond a reasonable doubt that the Defendant attempted to possess a firearm unlawfully. After admittedly forming an intention to acquire a firearm, the Defendant reached out to Mr. Baker via a text message. This affirmative act, which was not in response to a contact initiated by Mr. Baker, sought to purchase a specific firearm that the Defendant knew Mr. Baker possessed.

In reaching out to Mr. Baker, the Defendant offered to purchase the firearm for "whatever price" Mr. Baker wanted for the pistol. Mr. Baker did not respond to this initial text message. Some eleven hours later, though, Defendant reached out to Mr. Baker for a second time, again through text message. This time, the Defendant offered the sum certain of $300 to purchase the firearm. When Mr. Baker responded that he was at work, the Defendant proposed that they meet at Thornton's.

Mr. Baker noted that he did not wish to sell his weapon, telling the Defendant that he had "put money into it already." The Defendant then increased his monetary offer to $325, and he proposed that the exchange occur "today," emphasizing that he "need[ed]" the weapon.

When Mr. Baker said that he needed to "think for a min[ute]," the Defendant then asked about Crystal Henderson. When Mr. Baker confirmed that Ms. Henderson was still at work, the Defendant asked him when they could meet at Thorntons. Mr. Baker then concluded the discussion, saying that he could not sell his firearm because the "shop" had "registered [i]t alongside my permit."

The Defendant's actions here fully corroborated his intent to purchase, and therefore possess, a firearm. First, he contacted Mr. Baker multiple times of his own volition, proposing first to pay "whatever price" the seller wanted. He then offered a specific purchase price and later increased that offer to encourage the exchange. He twice proposed a meeting for the exchange, and he identified a particular location, Thorntons. Finally, the Defendant did not contemplate the possibility of an exchange occurring at some undetermined point in the future. Instead, he emphasized that the exchange should occur "today," and he asked Mr. Baker for a time to meet on that day.

Although the sale did not occur, the completion of the purchase and possession crimes was not due to any action or renunciation of the criminal purpose by the Defendant. *See* Tenn. Code Ann. § 39-12-104 (2018). Instead, it was due only to the actions of the other party, Mr. Baker. Thus, even if the Defendant's actions did not result in a "completed agreement" because of Mr. Baker's reluctance, the events here reveal the Defendant's "criminal intent coupled with acts that clearly demonstrate [his] proclivity toward criminality." Tenn. Code Ann. § 39-12-101, Sent. Comm'n Cmt.

In response, the Defendant argues that he could not have taken a "substantial step" toward committing the crimes because other significant actions remained for him to do. He asserts, for example, that no proof shows that he traveled to Thorntons or that he was prepared to pay the price he suggested. Respectfully, the Defendant's argument may misconceive how the law of criminal attempt applies in this context.

Unlike the previous common-law rule, section 39-12-101(a)(3) does not narrowly focus on what remaining actions may be necessary to complete the intended crime. Instead, this broader law looks to whether the defendant intended to commit a particular offense and, if so, whether his entire course of action corroborates that intent. Tenn. Code Ann. § 39-12-101, Sent. Comm'n Cmt. Here, the Defendant's entire course of action strongly corroborates his admitted intent to possess a firearm unlawfully. As such, he may be found guilty now of the attempted-possession crimes even if "other major steps" remained to complete those crimes. *Cf. Model Penal Code Commentaries* § 5.01, at 329.

In summary, we conclude that the Defendant's actions in negotiating the purchase of a firearm here fully corroborated his admitted intent to purchase, and therefore possess, a firearm. The Defendant's actions were more than just "general conversation" or "mere abstract talk," and we cannot perceive any non-criminal purpose that could have been the focus of his actions. *See Mims*, 812 F.2d at 1078-79. As such, the Defendant's negotiation with Mr. Baker to purchase his firearm was a substantial step toward the Defendant's intended crimes of unlawful purchase and possession of a firearm. *See Burns*, 298 F.3d at 539. Because the Defendant does not challenge the sufficiency of any element of his convictions apart from the attempted purchase or possession, we respectfully hold that the evidence is sufficient to support each of his convictions.

B. Admission of Defendant's Text Messages to Mr. Baker

The Defendant also argues that the trial court committed plain error in allowing his text messages with Mr. Baker to be admitted into evidence through the testimony of Officer Bellinger. More specifically, the Defendant argues that the officer relied upon inadmissible hearsay, or statements made to him by Mr. Baker, to authenticate the text messages. Conceding that the issue must be reviewed for plain error—trial counsel did not object to

the admission of the text messages on the grounds of improper authentication—the Defendant asserts that consideration of this issue is necessary to do substantial justice. For its part, the State argues that the Defendant has failed to establish plain error and that the text messages were properly authenticated. We agree with the State.

Our supreme court has recognized that "[u]nlike plenary review, which applies to all claims of error that are properly preserved, plain error review is limited to those errors which satisfy five criteria." *State v. Vance*, 596 S.W.3d 229, 254 (Tenn. 2020). These criteria are as follows:

> (a) the record must clearly establish what occurred in the trial court;
>
> (b) a clear and unequivocal rule of law must have been breached;
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> (c) a substantial right of the accused must have been adversely affected;
>
> (d) the accused did not waive the issue for tactical reasons; and
>
> (e) consideration of the error is "necessary to do substantial justice."

See, e.g., *State v. Jones*, 589 S.W.3d 747, 762 (Tenn. 2019). Whether plain error exists "must depend upon the facts and circumstances of the particular case." *State v. Smith*, 24 S.W.3d 274, 282 (Tenn. 2000). Even then, however, the "plain error must be of such a great magnitude that it probably changed the outcome of the trial," *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994), and only "rarely will plain error review extend to an evidentiary issue," *State v. Ricky E. Scoville*, No. M2006-01684-CCA-R3-CD, 2007 WL 2600540, at *2 (Tenn. Crim. App. Sept. 11, 2007).

Of course, the "defendant bears the burden of establishing all of these elements." *State v. Linville*, 647 S.W.3d 344, 354 (Tenn. 2022). As such, an appellate court "need not consider all of the elements when it is clear from the record that at least one [of] them cannot be satisfied." *State v. Reynolds*, 635 S.W.3d 893, 931 (Tenn. 2021). "Whether the plain error doctrine has been satisfied is a question of law which we review de novo." *State v. Knowles*, 470 S.W.3d 416, 423 (Tenn. 2015).

In this case, the Defendant has not shown that a clear and unequivocal rule of law was breached in the admission of the text messages. Tennessee Rule of Evidence 901 provides that evidence is properly authenticated or identified when the proponent introduces evidence sufficient "to support a finding by the trier of fact that the matter in question is what its proponent claims." Evidence may be authenticated through testimony

from a witness with knowledge that a matter is what it is claimed to be. Tenn. R. Evid. 901(b)(1).

We have previously addressed the authentication of text messages by an officer. In *State v. Lacy Lyndon Austin*, No. M2018-00591-CCA-R3-CD, 2020 WL 6277557 (Tenn. Crim. App. Oct. 27, 2020), a sheriff's deputy located a cell phone in the defendant's car and observed text messages on the phone. Based on the location of the phone and the content of the messages, the officer believed that the defendant was the author of the text messages. *See id.* at *5. At trial, the State sought to introduce photographs of the text messages into evidence. The defendant objected, arguing that the deputy's testimony did not sufficiently link him to the phone or the messages.

On appeal, this Court affirmed the admissibility of the photographs, recognizing that the deputy properly authenticated the cell phone and text messages "as the phone he found inside the [d]efendant's car and the messages he viewed on that phone." *Id.* at *16. As to the defendant's argument that the authentication did not adequately link him to the cell phone or the text messages, we concluded that this was "an issue of the weight of the evidence," rather than of its admissibility. *Id.*

In this case, Officer Bellinger testified that he met with Mr. Baker after arriving at Taylor Farms. Mr. Baker identified the text messages on his phone, and the officer took photographs of the messages as they appeared on Mr. Baker's phone. Officer Bellinger also confirmed that the photographs admitted at trial were a "copy of the text message[s] that Mr. Baker gave [him]."

In addition, before the photographs were admitted, the trial court and jury heard Mr. Baker's preliminary hearing testimony given before he passed. In this testimony, Mr. Baker testified that he had the Defendant's phone number and that he had "spoken with [the Defendant] via text message and phone." He stated that the Defendant texted him on June 22 about "purchasing [his] handgun." Mr. Baker confirmed that he spoke with the police regarding "the incident" and that "the police took copies" of the text messages.

With this foundation from Mr. Baker and Officer Bellinger, the State brought forward sufficient evidence for the jury to conclude that the document was what the State claimed it was: photographs of a text message conversation between the Defendant and Mr. Baker. In fact, the foundation established in the Defendant's case here exceeded that approved by us in *Lacy Lyndon Austin*. As in that case, the Defendant's arguments here more appropriately go to the weight of this evidence, not to its admissibility. *See also State v. Vermaine M. Burns*, No. M2014-00357-CCA-R3-CD, 2015 WL 2105543, at *12 (Tenn. Crim. App. May 5, 2015) ("To the extent that the Defendant argues that the State was required to affirmatively prove that the Defendant was the author of the message, we agree

with reasoning from other jurisdictions that such [a] challenge goes to the weight of the evidence, not its admissibility."). Because no clear and unequivocal rule of law has been breached, the trial court did not commit plain error in admitting the text messages.

CONCLUSION

In summary, we hold that the evidence is sufficient to support the Defendant's convictions. We also hold that the trial court did not commit plain error in admitting the text messages between the Defendant and Mr. Baker. Accordingly, we respectfully affirm the judgments of the trial court.

____

TOM GREENHOLTZ, JUDGE