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NO. COA09-626

NORTH CAROLINA COURT OF APPEALS

Filed: 3 August 2010

STATE OF NORTH CAROLINA

v. Cabarrus County
Nos. 04 CRS 8966-67, 9284-85
TYRONE RAYNARD GLADDEN 04 CRS 13160, 10943, 12008
05 CRS 2084-87

Appeal by Defendant from judgments and commitments entered 3 August 2007 by Judge Christopher M. Collier in Superior Court, Cabarrus County. Heard in the Court of Appeals 14 January 2010.

Attorney General Roy Cooper, by Assistant Attorney General Joan M. Cunningham, for the State.

Glover & Petersen, P.A., by Ann B. Petersen, for Defendant.

STEPHENS, Judge.

On 26 July 2007, a jury found Tyrone Raynard Gladden ("Defendant") guilty of two counts of first-degree murder; first-degree burglary; conspiring with Melvin West ("West") to commit murder; and soliciting West, James Galyan, Twanda Applewhite,¹ and Timothy Robinson to commit murder. The jury found Defendant not guilty of soliciting Deshone Carter and Clarence Graeber to commit murder. The trial court sentenced Defendant to life imprisonment

¹James Galyan's, Deshone Carter's, and Twanda Applewhite's names are spelled inconsistently throughout the parties' briefs, the record on appeal, and the transcript of trial. We apply the spellings used on the jury verdicts throughout this opinion.

without parole for each of the murder charges and to additional terms of imprisonment on the remaining convictions.² From the judgments and commitments entered upon the jury's verdict, Defendant appeals.

I. Factual Background and Procedural History

This matter came on for trial during the 21 May 2007 Criminal Session of the Superior Court, Cabarrus County, the Honorable Christopher Collier presiding. The evidence presented at trial tended to show the following:

Tara Chambers ("Tara") was murdered on 11 June 2002. Prior to her death, Tara lived in Concord, North Carolina with her two children, Quentez and Brettany, who were 10 and 12 years old, respectively, at the time. In June 2002, Defendant lived in Salisbury, North Carolina. Defendant and Tara had been in a romantic relationship off and on for the past eight years. Tara claimed she was pregnant with Defendant's child, who was due on 24 June 2002. Defendant disputed Tara's paternity claim.

Brettany testified about incidents involving violence between Tara and Defendant in the months before Tara's murder. Brettany described one incident in which Defendant hit Tara during an argument over one of Tara's former boyfriends. She described another incident in which Defendant banged on the door to Tara's

²Defendant was sentenced to a term of 77 to 102 months imprisonment on the first-degree burglary conviction. Defendant was sentenced to a term of 189 to 236 months imprisonment for conspiracy to commit first-degree murder. Defendant was sentenced to 100 to 129 months imprisonment for each of the four solicitation convictions.

home when Tara would not let him inside. Brettany also testified that on another occasion, Defendant held a knife to Tara's throat when Tara tried to end their relationship.

Other witnesses for the State testified that Defendant was happy about Tara's pregnancy at first, but later changed his mind and wanted Tara to have an abortion. Tara did not want to have an abortion, and told her friends and family members that she was ending her relationship with Defendant, but that he would be allowed to see the baby after she was born. Tara told several individuals that she planned to seek child support from Defendant, but she told Defendant's mother that she would not ask for child support.

Defendant also had a long-term romantic relationship with Stacy Stroud ("Stroud"). Stroud and Defendant have two children together, a son born in November 2001, and a daughter born in April 2003. Stroud testified that Defendant "wanted to be there" for Tara if she needed him. Stroud said that Defendant had never hit her or pulled her arm and that Defendant was a big talker who was known to exaggerate and brag. Stroud also testified that Defendant carried a gun at all times.

Tara and Brenda Navarro ("Navarro") were good friends. In December 2001, Defendant confronted Navarro for telling Tara not to get an abortion. Defendant mentioned Rae Carruth to Navarro's husband, Jose Navarro, and said that he saw why Carruth conspired

to murder his pregnant girlfriend.³ Defendant said Carruth was "stupid" and said that Defendant could get away with it. Julian Carter ("Julian") testified that in 2001 or 2002, prior to Tara's murder, Defendant asked him to kill the mother of Defendant's oldest child, Tara Blake,⁴ because she would not allow Defendant to pick their child up from Blake's house.

In the months before Tara's murder, Defendant approached several individuals and either told them that he wanted Tara killed or asked them to kill her. Defendant met Tim Robinson ("Robinson") in 2000 when they were both employed at Collins and Aikman, a furniture company. Robinson testified that one day after work, he ran into Defendant in a park in Concord. Defendant asked Robinson to ride with him to Tara's house. On the way to Tara's house, Defendant told Robinson that Tara was pregnant and another woman was also pregnant with Defendant's child. Robinson waited in Defendant's truck while Defendant went inside Tara's house. Robinson heard a commotion and saw Defendant grab Tara, who was noticeably pregnant, by the neck. Defendant came back to the truck, and said, "I want this B killed." Defendant told Robinson that he did not want to pay child support and that he wanted Tara to have an abortion but she refused. After they drove away,

³Rae Carruth, a former professional football player, was convicted of conspiracy to commit murder, *inter alia*, in 2001. *State v. Wiggins*, 159 N.C. App. 252, 256, 584 S.E.2d 303, 308 (2003). Carruth conspired with another individual to murder his girlfriend, who was pregnant at the time. *Id.* at 255, 584 S.E.2d at 307.

⁴Julian testified that Tara Blake also goes by the name, "Raquel."

Defendant offered Robinson \$1,500 to kill Tara.

Defendant told Robinson that he had a plan for executing the murder, and that he would get a gun from a woman in Salisbury. On the agreed-upon night, Defendant would go to Tara's house to make sure the children were asleep. Approximately 15 minutes after Defendant left, he wanted Robinson to drive to Tara's house. Defendant said that Tara would answer the door and told Robinson to "just shoot her" as soon as she opened the door.

In early 2002, Defendant approached James Galyan ("Galyan") at Sysco Systems. Defendant told Galyan that he wanted to have his girlfriend killed, and that she was pregnant and he did not want to pay child support. Galyan testified that Defendant offered him \$10,000 to kill Tara. Defendant told Galyan, "You can get whoever you want to do it. I don't care who you get. I don't want to know the person you get." Galyan said Defendant approached him approximately 20 times regarding Tara's murder. Galyan worked as a security guard at Latino night clubs which were frequented by gang members. Galyan believed Defendant wanted him to find a member of a gang who could commit the murder and then return to Mexico. Galyan had surgery in April 2002 and had no further contact with Defendant after that point. When he learned of Tara's murder, Galyan contacted the police and told him about his conversations with Defendant.

In April 2002, Defendant's cousin, Deshone Carter ("Deshone"), and Twanda Applewhite ("Applewhite"), were walking on Lincoln Street in Concord. Defendant drove up and told them that he needed

to "get somebody off the face of the earth." Deshone walked away, but Applewhite got into the car with Defendant for a ride. Afterward, Applewhite told Deshone that Tara was the one Defendant wanted to "make a hit" on. Defendant offered Applewhite \$500 or \$1000 to kill Tara. Defendant told Applewhite that he was not the father of Tara's baby and that Tara was cheating on him.

Also in 2002, Defendant approached Brian Kent Moss ("Moss") at Sysco Systems and asked about having someone "knocked off." Moss had heard Defendant speak admiringly about Rae Carruth and Moss thought that Defendant idolized Carruth for what he had done. Several nights later, Defendant told Moss that he needed a "trigger man." When Moss refused, Defendant said that Defendant would not be the "trigger man" because that was where Rae Carruth had made his mistake - by being present at the scene where Carruth's girlfriend was shot. Defendant told Moss that he was not going to lose his house or his car over child support.

Two weeks before Tara's murder, Defendant asked Quentina Price ("Price") to find him a gun on the street even though he had guns of his own. One week before the murder, Price rode with Defendant to Concord and stopped at a barbershop called "Trendsetters." Defendant went into the barbershop alone. Two days before Tara's murder, Defendant called Corey Smith ("Smith") at Trendsetters and told Smith that he had left something in the shop. Smith checked and found a gun in a drawer at the barbershop. Defendant wanted to get the gun immediately but Smith was leaving for the day. Smith offered to take the gun home and bring it back the next day.

Defendant picked up the gun the next day and said it was a "wrap, he got with somebody, he wanted that bitch dead." In May 2002, Smith had heard Defendant ask one of the other barbers if he knew someone who could shoot Tara. In June, when Smith gave the gun back to Defendant, Smith said he did not want his fingerprints on the gun if Defendant planned to use the gun to murder Tara. Defendant told Smith, "[I]f you say something about that gun being at this barbershop, I'll burn your black ass.'" Smith took Defendant's comment to mean Defendant would shoot him. Thereafter, Defendant threatened Smith on several occasions, telling Smith to "keep [his] . . . mouth shut."

Marcus Mashore ("Marcus") and Corderio Everhart testified that on the day before Tara was murdered, Defendant showed them a gun wrapped in a towel in his car and told them "it's going down." Defendant then told them to "watch the news, it's going down." He also told them he would be out of town when it happened and that he would not have to pay child support. After Tara's murder, Defendant pulled a gun on Marcus and threatened that if Marcus "squealed" on him, "something" could happen to him.

On 11 June 2002 at approximately 5:30 a.m., an intruder forced open the front door of Tara's home, entered the residence, and shot Tara in the right shoulder, the ride side of her lower neck, the abdomen, and in the head near her left ear. The gunshot to the head was fatal.

Brettany had been sleeping in a nearby room when she awoke to the sound of her mother screaming. Brettany heard gunshots, and

when she looked into the hallway, she saw her mother lying on a vent and a man shooting her. Brettany saw that the shooter had a gun in his left hand and was holding a plastic bottle over the gun's muzzle with the other hand. After the shooter fired the last shot, he dropped a roll of black tape and the bottle before leaving through the front door. The water bottle was recovered from the floor by police investigators. The bottle had electrical tape around the neck and steel wool inside; the bottom of the bottle was missing. It was apparently used as a silencer for the gun. The bottle was sent to the State Bureau of Investigation ("SBI") crime laboratory. The fingerprints identified on the water bottle did not match West or any other individual identified as a suspect. Brettany crawled under her bed with a telephone and called 911. When the police arrived, Brettany could not positively identify the shooter, but she said that he had a round belly similar to Defendant's.

Tara was transported to the hospital where physicians performed an emergency caesarean section to try to save the life of her unborn child, whom Tara had named "T'Kaiya." When removed from Tara's body, the baby was not breathing, had no heartbeat, and her higher brain functions were severely damaged, but much of her lower brain functions were intact. After several minutes of resuscitation, T'Kaiya produced a heartbeat. T'Kaiya died approximately one month later, on 12 July 2002.

On 11 June 2002, when Tara was murdered, Defendant was in Kansas City, Missouri, on a business trip. At that time, Defendant

was employed by Auto Truck Transport and delivered trucks to buyers. On 9 June 2002, Defendant and Samuel McMillan ("McMillan") drove from Cleveland, North Carolina, to Troy, Illinois, to deliver trucks. On 10 June 2002, they drove to Kansas City for another delivery, where they spent the night. Defendant and McMillan flew back to Charlotte on the afternoon of 11 June 2002, arriving at approximately 3:30 p.m. Defendant's mother and several of her friends met Defendant at the airport and told him that Tara had been murdered.

Judy Ries ("Ries") lived two houses down from Tara's house. On 11 June 2002, Ries saw a beige Ford Taurus parked in front of the house between her and Tara's house. A short while later, when Ries heard the sounds of emergency vehicles arriving at Tara's house, the beige Taurus was gone. Ries talked to investigators on 12 June 2002 and told them the car she had seen was a beige Ford Taurus. On 8 August 2002, investigators searched Defendant's house and seized his white 1999 Chevrolet Malibu. When Ries was questioned that day, she told investigators that the car she had seen was white. Ries was shown a picture of Defendant's white Malibu and was 99% sure that it was the car she had seen parked near Tara's house. At trial, Ries was shown a photograph of a 1999 gold Taurus West had rented on 10 June 2002 and returned on 12 June 2002. Ries testified that West's rental car looked like the car she had seen.

Brettany later described her mother's murderer to investigators as African American, approximately five feet, eight

to ten inches tall, with a mustache and a round belly, who walked with a limp. Sergeant John Tierney, a sergeant in the criminal investigation division with the Concord Police Department, described West as five feet eight or nine inches tall, with a mustache and a "pot" belly. West also had a goatee and a visible scar on his face. Brettany was shown several arrays of photographs, each including one suspect. Brettany did not identify West when she saw his picture.

In early 2004, Dr. Michael Lauffenberger treated West to remove some cysts and a bullet that West said had been in his leg for eight years. He testified that the bullet in West's leg might have caused West to walk with a limp, but he could not be certain. Neither Dr. Lauffenberger nor any other witnesses testified that they ever saw West walking with a limp.

Defendant was arrested for Tara's murder on 13 May 2004 and was brought into police custody. Robert Hill ("Hill") was incarcerated in the Randolph County jail in January 2006. Hill testified that Defendant talked to him about his case every day over the course of a month when they were incarcerated together. Defendant told Hill that he was in jail for hiring a hit man to kill a pregnant woman and her baby, and that West had done the killing. After talking to investigating officers from Concord, Hill had further conversations with Defendant. Hill testified that Defendant asked him if he could find a "dummy," a fall guy that would say he had done it. Defendant said he would give the fall guy money for the prison canteen for the rest of his life. Hill

testified that Defendant told him specific details about the crime so that the "fall guy" would be believable. William Crouch ("Crouch") testified, however, that he was in the same cell block as Hill and Defendant, and he never heard Defendant and Hill talking about Defendant's case.

Paul Henderson ("Henderson") was incarcerated with Defendant at the Cabarrus County Jail in May 2004, and testified that Defendant told him bits and pieces about his crime over the course of several months, and that Defendant ultimately confessed to hiring West to kill Tara. Henderson testified that Defendant told him he had hired West and Clarence Graeber ("Graeber") to kill Tara while he was in Kansas City delivering trucks, that West was the shooter, and that Graeber was supposed to wait outside in the car. Defendant told Henderson that he paid West \$10,000 in installments and that he took West in advance to show him Tara's house.

The jury found Defendant guilty of two counts of first-degree murder; first-degree burglary; conspiring with West; and soliciting West, Galyan, Applewhite, and Robinson to commit murder. Defendant appeals.

II. Discussion

A. Evidence of Dismissal of Charges Against West

The State's theory at trial was that Defendant had conspired with and solicited West to kill Tara, and that West was the individual who shot Tara in her home. Before Defendant's trial, the State voluntarily dismissed the charges against West, which consisted of two counts of first-degree murder, first-degree

burglary, and conspiracy to commit murder. Defendant argues on appeal that the trial court erred in excluding evidence of the dismissal of the charges against West. We disagree.

On 20 April 2007, the State filed a motion *in limine* requesting that the trial court exclude evidence of the disposition of cases against other defendants in this matter because these other dispositions were irrelevant. The trial court granted the State's motion at a pretrial hearing on 17 May 2007.

A motion *in limine* seeks pretrial determination of the admissibility of evidence proposed to be introduced at trial, and is recognized in both civil and criminal trials. The trial court has wide discretion in ruling on motions *in limine* and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is so arbitrary that it could not have been the result of a reasoned decision.

State v. Maney, 151 N.C. App. 486, 491, 565 S.E.2d 743, 746 (2002) (internal citations and quotation marks omitted).

Defendant and West were both charged with the murders of Tara and T'Kaiya. The State dismissed the case against West, however, in order to prosecute Defendant's case first. The State's reasons for the dismissal were that witnesses in the case against West had been difficult to locate and that some of the evidence against Defendant would be inadmissible against West. The State explained that

we wanted to try [Defendant] first and by waiting to charge Melvin West we're going to be assured of that.

Again, here we were, if we would have already charged Melvin West, the defense just asked for a continuance, that could have

happened and we'd have been in the same situation last year, this year as we were last year. The basis of that dismissal was not we felt we had . . . the wrong person. It was that we couldn't find witnesses and so forth. Number two, the law allows the State to choose which case is the best and try it, and that's what we're doing with [Defendant].

Defense counsel made several attempts to introduce evidence that the charges against West had been dismissed and that West was not currently incarcerated. Each time, the trial court held that this evidence was inadmissible. Defense counsel attempted to elicit testimony from lead detective, John Tierney, that at the time of Defendant's trial, West was not incarcerated. The State objected to defense counsel's question, and this objection was sustained. Defendant was able to eventually present evidence of West's whereabouts, however, during the testimony of Dan Carlsen ("Carlsen"), a private investigator hired by Defendant. Carlsen was able to testify that he visited West at West's place of employment in China Grove, North Carolina on 21 June 2007. The State objected to Carlsen's testimony, and the trial court sustained the State's objection "for the sixth time" and instructed the jury to "disregard the testimony regarding this alleged meeting with Mr. West." In making its ruling, the trial court considered sanctioning defense counsel for repeatedly attempting to circumvent its ruling. The trial court admonished defense counsel, stating that, despite multiple rulings against the admissibility of this evidence and the trial court's instruction to the jury to disregard this evidence, defense counsel had presented the fact that Melvin West is "a free man" to the jury by virtue of Carlsen's testimony

that he visited West at West's place of employment,

and that's what you've been trying to get before the jury this whole trial. I think that's the whole purpose of asking these questions about these meetings. You have no good faith basis for getting in the hearsay of Melvin West. I think the sole basis of you calling this witness is to get before this jury that Melvin West is a free man, even though you knew I wouldn't allow it before.

Furthermore, defense counsel presented the following to the jury during closing arguments:

Now, if the State genuinely believed that Melvin West was a murderer, then you tell me why he's out there right now free as a bird. Have you heard any evidence of his being arrested?

After I'm finished the State's going to have the opportunity to deliver to you their perspective as to what the evidence shows. Don't you want them to tell you why Melvin West is out there free as a bird? If in fact their evidence is to be believed, if in fact [Defendant] was involved with conspiring with him to kill Tara Chambers, if in fact there is any truth to that, why then is Melvin West out there working free as a bird? Does that make sense? Is that proof beyond a reasonable doubt that [Defendant] conspired with Melvin West to kill Tara Chambers? Is that proof beyond a reasonable doubt that [Defendant] conspired with Melvin West to commit first degree burglary? Of course it's not. It violates your sensibilities.

Would the State genuinely allow a person that they say they have proof beyond a reasonable doubt that in fact was the principal, the in fact killer of Tara Chambers, to be walking among us, standing beside you in the checkout line at the grocery store possibly, going over to Lowe's Hardware, the guy standing right beside you there in the line looking for plumbing fixtures? Why? Because they know better.

The State made a timely objection to this argument, which the trial court sustained, stating, "Members of the jury, Mr. Gladden is on

trial, not Mr. West."

During the State's closing argument, the prosecutor argued the following:

[THE STATE:] They mention Melvin West. Melvin West knows his trial's next.

[DEFENSE COUNSEL:] Objection.

[THE STATE:] Melvin West knows --

[DEFENSE COUNSEL:] Objection.

[THE COURT:] Overruled.

[THE STATE:] -- that he could have come in here and testified to his innocence, but did not.

[THE COURT:] Sustained as to that.

[THE STATE:] Another jury will decide Melvin West's fate. And as the Court instructed you, today we're here to decide Tyrone Gladden's fate. Under our rules of evidence there's an order when you have other people who are charged with a case.

[DEFENSE COUNSEL:] Objection.

[THE STATE:] And we will make sure --

[THE COURT:] Overruled.

[THE STATE:] -- that Melvin West comes to justice.

Defendant argues on appeal that his case was prejudiced by the trial court's exclusion of evidence that the charges against West were dismissed and by the State's closing argument that West "knows his trial's next." "The general rule is that if all participants charged in a conspiracy have been legally acquitted, except the defendant, then the inconsistent charge or conviction against the sole remaining defendant must be set aside." *State v. Gibson*, 333

N.C. 29, 51, 424 S.E.2d 95, 107 (1992). "There is no requirement, however, that more than one person be charged with conspiracy. If more than one person is charged with the conspiracy, the dismissal of a charge(s) pursuant to a plea agreement does not constitute an acquittal at law[,]” *State v. Saunders*, 126 N.C. App. 524, 527-28, 485 S.E.2d 853, 855 (1997) (internal citations and quotation marks omitted), nor does a voluntary dismissal by the State constitute an acquittal at law.

Defendant contends that the instant case is analogous to this Court’s decision in *State v. Green*, 91 N.C. App. 127, 370 S.E.2d 604 (1988). In *Green*, the defendant was charged with conspiracy to traffic in more than 400 grams of cocaine. *Id.* at 127, 370 S.E.2d at 605. This Court vacated and remanded the decision of the trial court where the trial court excluded evidence that one of the defendant’s co-conspirators had been tried and acquitted. *Id.* at 128, 370 S.E.2d at 605.

Green is easily distinguishable from the instant case, however. Here, West was not acquitted. Rather, the State voluntarily dismissed the case against West. “A voluntary dismissal taken by the State . . . does not preclude the State from instituting a subsequent prosecution for the same offense if jeopardy has not attached.” *State v. Muncy*, 79 N.C. App. 356, 360, 339 S.E.2d 466, 469 (1986). Thus, evidence of the disposition of the case against West was not relevant because there had been no disposition of West’s case. See *State v. Phillips*, 127 N.C. App. 391, 392, 489 S.E.2d 890, 891 (1997) (State’s voluntary dismissal

of charged offense was not a final disposition).

Additionally, Defendant's objections to the State's statements during closing argument regarding the future trial of West were properly overruled. The prosecutor's remarks were consistent with the record and did not espouse personal opinion or conjecture. Furthermore, the State's remarks were appropriate to rebut defense counsel's remarks that Melvin West was "out there working free as a bird[.]" See *State v. Snider*, 168 N.C. App. 701, 705, 609 S.E.2d 231, 234 (2005) (In first-degree murder prosecution, Defendant's objection to the State's remarks during closing arguments was properly overruled where prosecutor's statements were consistent with the record, did not espouse personal opinion or conjecture, and were appropriate to rebut defense counsel's remarks about the State's failure to call certain witnesses.).

Defendant also contends that he was entitled to rebut the "false impression put before the jury" that West remained charged as Defendant's co-conspirator. Any such impression was not made until the State's closing argument, which as stated *supra*, was properly allowed to rebut defense counsel's closing argument. Thus, because defense counsel initially implied that West was not going to be charged as a co-conspirator since he was not in custody, the State was entitled to rebut this impression. Defense counsel was not entitled to further rebuttal.

Accordingly, we find no error in the trial court's exclusion of the evidence that charges against West had been dismissed. Defendant's argument is overruled.

B. Evidence of Alleged Plot to Murder Tara Blake

Defendant also argues that the trial court erred in admitting Julian's testimony that Defendant had asked him to murder Tara Blake ("Blake") because she would not allow Defendant to pick their daughter up from Blake's house. We disagree.

Rule 404(b) of the North Carolina Rules of Evidence provides that

[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

N.C. Gen. Stat. § 8C-1, Rule 404(b) (2009). "[E]vidence of other offenses is *admissible* so long as it is *relevant to any fact or issue other than* the character of the accused." *State v. Weaver*, 318 N.C. 400, 403, 348 S.E.2d 791, 793 (1986) (emphasis added). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2009). Rule 404 is a general rule of inclusion of evidence, subject to an exception when the only probative value of the evidence is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged. *State v. West*, 103 N.C. App. 1, 9, 404 S.E.2d 191, 197 (1991). The decision to admit evidence under Rule 404 "rests in the discretion of the court upon consideration of the facts supporting relevancy." *State v.*

Wortham, 80 N.C. App. 54, 62, 341 S.E.2d 76, 81 (1986), *reversed in part on other grounds*, 318 N.C. 669, 351 S.E.2d 294 (1987).

In *State v. Strickland*, 98 N.C. App. 693, 391 S.E.2d 829 (1990), the defendant was convicted of solicitation to commit the murder of his wife. *Id.* at 694, 391 S.E.2d at 830. The trial court admitted testimony of an undercover SBI agent that 11 months after the charged solicitation, the defendant had solicited him to kill the defendant's wife, the district attorney, and two law enforcement officers. *Id.* at 695, 391 S.E.2d at 831. This Court found no error in the trial court's ruling, holding that the evidence of the other solicitation was admissible on "many grounds[,] " including to show knowledge, *modus operandi* or common plan or scheme, and to show a continuing offense. *Id.*; *see State v. Peterson*, 361 N.C. 587, 599-600, 652 S.E.2d 216, 225-26 (2007) (Probative value of evidence concerning death of individual close to defendant as a result of alleged accidental fall down the stairs outweighed danger of unfair prejudice in trial for murder of defendant's wife, who also allegedly died as a result of accidental fall down the stairs; evidence was relevant to establish intent, knowledge, and absence of accident, and substantial evidence in the form of sufficient similar facts and circumstances existed between the two deaths so that a jury could reasonably find defendant caused both deaths), *cert. denied*, 552 U.S. 1271, 170 L. Ed. 2d 377 (2008).

In *State v. Parker*, 113 N.C. App. 216, 438 S.E.2d 745 (1994), the defendant was convicted of second-degree murder of his

girlfriend after she had asked him to move out of the home they shared. *Id.* at 218, 438 S.E.2d at 747. The trial court admitted testimony from the defendant's former girlfriend that "tended to show how defendant acted after he had been rejected and what he was motivated to do in attempting to effect a satisfactory resolution." *Id.* at 224, 438 S.E.2d at 750. This Court upheld the ruling of the trial court, finding that the former girlfriend's testimony was relevant to show motive and identity. Our Court noted that after the former girlfriend and the victim had each rejected the defendant in a relationship, the "defendant kept both women under constant surveillance; threatened to kill both women; threatened to commit suicide over both women; ran both women off of the road with his vehicle; pulled weapons on both women;" and that he had stabbed his former girlfriend with grass shears requiring hospitalization. *Id.* at 225, 438 S.E.2d at 751. The similarities between the defendant's behavior toward his former girlfriend and the victim after being rejected by each was probative of his motive to kill the victim in that case.

We conclude that Julian's testimony regarding Defendant's plot to kill Blake was substantially similar to the evidence regarding Defendant's efforts to solicit the death of the victim in this case, and was thus relevant to show motive and *modus operandi* or common scheme or plan. Julian testified that Defendant approached him at some time in 2001 or 2002, prior to the murder of Tara Chambers, and told Julian that he had "some real business that you need to take care of." Defendant brought Julian a 12-gauge shotgun

with a sawed-off barrel and told Julian "he wanted me to kill his baby's mama." Defendant offered to pay Julian "[f]orty-five hundred, five thousand dollars[]" to kill Blake. Defendant showed Julian where Blake lived and told Julian when Blake usually left for work and when she returned. Defendant instructed Julian to "kill her and leave." Defendant also informed Julian that "[h]e would be somewhere out of sight with an alibi[.]"

The similarities between Defendant's solicitation of Julian to kill Blake and the murder of Tara are abundant. The similarities between the two plots are as follows: (1) Defendant planned to be somewhere else at the time of the murders in order to have an alibi; (2) Defendant had been in a relationship with both women; (3) Defendant was angry at both women due to disputes over the women's children, regardless of paternity; (4) Defendant sought another individual to do the actual killing; (5) the murder weapon was a firearm which Defendant offered to provide for the actual murderer; (6) Defendant offered to pay the person he asked to carry out the murder; (7) Defendant conducted surveillance of each woman's home; and (8) Defendant instructed the murderer to carry out the act at each woman's home as opposed to a public place.

The substantial similarities between Defendant's solicitation of Julian to kill Blake, and the evidence of the manner in which he plotted the murder of Tara in this case, render Julian's testimony admissible as probative of motive and *modus operandi* or common scheme or plan. Accordingly, we conclude that the trial court properly ruled that Julian's testimony was admissible. Defendant's

argument is overruled. We hold that Defendant received a fair trial free from error.

NO ERROR.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).