NO. COA10-1246
NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

STATE OF NORTH CAROLINA

v. Wake County
No. 08 CRS 6466

ROBERT LEE ADAMS REAVES

Appeal by defendant from Judgment entered 9 October 2009 by Judge Donald W. Stephens in Wake County Superior Court. Heard in the Court of Appeals 28 April 2011.

Roy Cooper Attorney General, by Daniel P. O'Brien, Assistant Attorney General, for the State.

Staples Hughes, Appellate Defender, by Anne M. Gomez, Assistant Appellate Defender, for Defendant.

THIGPEN, Judge.

Robert Lee Adams Reaves ("Defendant") appeals from a judgment entered convicting him of first-degree murder and sentencing him to life imprisonment for the killing of Latrese Curtis ("Ms. Curtis"). We must determine whether the trial court erred by admitting Rule 404(b) evidence showing Defendant's sexual advances towards other males. Because the Rule 404(b) evidence in question showed Defendant's motive and

capability, and because the probative value of the Rule 404(b) evidence was not outweighed by alleged prejudice stemming from the fact that Defendant's sexual advances were toward people of the same sex, we conclude the evidence was properly admitted. We further conclude Defendant had a fair trial, free from prejudicial error.

The evidence of record tends to show that Steven Randolph ("Randolph"), a college student and basketball player, met Robert Lee Adams Reaves ("Defendant") in the Spring of 2007. Defendant asked Randolph what he did for a living, and Randolph answered that he was trying to find a job. Defendant told Randolph he was a clinical research associate and could probably help Randolph. Defendant met Randolph several times at Southpoint Mall, and Defendant offered to let Randolph live with Defendant. Randolph did not have a stable living situation, so he accepted Defendant's offer, agreeing to pay $300.00 per month. Willie Mae Thorpe ("Thorpe"), Defendant's sister, also lived in the house with Defendant. Defendant and Thorpe had separate bedrooms upstairs, and Randolph moved into an apartment in the basement. The house had an alarm system, which recorded instances of the system being activated and disarmed. The system recorded the user code only when the system was disarmed.

Each person in the house had a separate user code. Evidence tends to show that only Defendant knew and used the master code.

Defendant had a disability: Defendant's left arm was "half-paralyzed" because Defendant had been mugged in New York and stabbed in his left arm. Thorpe stated that Defendant could not carry anything heavy with his left hand and did not have a good grip with that hand. Thorpe also stated Defendant's use of his left hand was "[v]ery minim[al]."

A few weeks after Randolph moved in with Defendant, "Ms. Curtis" visited Randolph at Defendant's house, and Randolph and Ms. Curtis had sex. Ms. Curtis was married to Darrin Curtis ("Mr. Curtis"), but she told Randolph they had separated. Defendant talked to Randolph about Randolph having sex with Ms. Curtis. Defendant also talked to Randolph about rent payments, asking whether Randolph had ever considered being a male escort. Defendant told Randolph that male escorts sometimes had male clients, but Randolph said he would not do that. Defendant then told Randolph about a fraternity party he had once attended, during which he began receiving oral sex; however, when the lights came on, he discovered a man was performing oral sex on him. Randolph realized Defendant wanted to perform oral sex on him, and Randolph left the house. However, Randolph returned

ten minutes later and made it clear to Defendant that nothing would happen between them. Defendant apologized to Randolph.

Subsequent to the foregoing incident, Defendant brought up this subject once or twice more. Defendant told Randolph that receiving oral sex from a man does not make you gay; Defendant also suggested that there was no difference in "a girl doing it and a guy doing it." Defendant also suggested Randolph could stay with Defendant rent free as an incentive, but Randolph did not allow Defendant to perform oral sex on him. In fact, Randolph borrowed a 9mm Ruger from his cousin shortly after the initial incident.

Randolph had a second girlfriend, Velma Newton ("Newton"), about whom Defendant also knew. In late October 2007, Newton received threatening phone calls, and she told Randolph about the calls. The caller sounded younger than Defendant, and the caller threatened Randolph, stating he was going to end Randolph's basketball career and break Randolph's legs; the caller also said Newton needed to tell her boyfriend to stop "doing whatever he was doing[.]"

Randolph also received a threatening phone call from a private number. The caller sounded younger than Defendant and said he hoped Randolph had a gun. However, Randolph's gun was

missing earlier the same day. Randolph later discovered Defendant had "confiscated" the gun.

On 11 December 2007, Randolph planned to go to Newton's house; however, his car had a flat tire. Randolph fixed the flat at a gas station and continued to Newton's house. Randolph again began receiving threatening phone calls from a private number while at Newton's house. Later the same night, when he left Newton's house to return to Defendant's house, Randolph discovered all four of his tires had been slashed. Defendant also called Randolph that night, stating that someone had been ringing his front doorbell and running. Defendant offered to have Randolph's car towed from Newton's house. Randolph "could tell [Defendant] wanted me to come home." Randolph did not return to Defendant's house that night, because he "didn't think it was safe."

The next day, Defendant towed Randolph's car back to Defendant's house, and Defendant let Randolph drive Defendant's car to school until Randolph could get the money to repair his car.

During Christmas break of 2007, Randolph went to visit his family in Baltimore. While Randolph was in Baltimore, Newton received an odd phone call. The caller, who sounded like

Defendant, said he had slashed Newton's tires, and he was sorry. Newton recorded the call. Shortly thereafter, Newton discovered that her tires had been slashed.

Defendant had three phones: a house phone, a cell phone, and a cell phone he referred to as his "fun phone" or the phone he used "for play." Telephone records revealed that on 1 December 2007, six calls were placed from Defendant's "fun phone" to Newton's phone. The calls were blocked intentionally, so Defendant's number would not be revealed. Also on 1 December 2007, telephone records revealed that a blocked call was made from Defendant's "fun phone" to Randolph's phone. On 11 December 2007, the day Randolph's tires were slashed, seven blocked calls were placed from Defendant's "fun phone" to Randolph's phone. Two calls were also made from Defendant's "fun phone" to Newton on the day her tires were slashed.

On the evening of 29 January 2008, Ms. Curtis came to Defendant's house, and Randolph and Ms. Curtis had sex. The condom came off inside Ms. Curtis and they could not get it out. Ms. Curtis left the house after several failed attempts to get the condom out. Randolph was upset about the incident and called his friend, Warren Robertson, to tell him what happened. Randolph and Robertson met at Newton's house after 10:00 p.m.,

and Randolph and Ms. Curtis talked on the phone while Randolph was at Newton's house. Ms. Curtis told Randolph over the phone that she wanted to take their relationship further and Randolph agreed to talk about it the next time they saw each other. Shortly after this phone conversation, Randolph received another call from Ms. Curtis' phone; he answered the phone but no one said anything. Randolph stayed at Newton's house until approximately 1:30 a.m., then drove to Defendant's house, armed the alarm, and went to sleep. Randolph did not recall Defendant's vehicle being in the driveway when he arrived home. Randolph awoke the next morning to go to an early class, and he noticed a call had come in from Ms. Curtis' phone around 2:00 a.m.

Ms. Curtis' friend, Kimberly Parker also received a strange call from Ms. Curtis' cell phone at 2:00 a.m. on 30 January 2008. Parker answered the phone and heard only wind, footsteps on gravel, and cars passing by. Parker called back, but the phone went to voicemail.

Ms. Curtis did not return home on the night of 29 January 2008, and Mr. Curtis became worried. Mr. Curtis suspected Ms. Curtis had stayed with her parents that night until he drove on I-540 the next morning and saw a crime scene and a car that

looked like Ms. Curtis' car. Mr. Curtis looked up the numbers Ms. Curtis had called the night before and discovered she had called Randolph several times the previous night. Mr. Curtis called Randolph, introduced himself, and said Ms. Curtis had not come home the previous night. Randolph asked Mr. Curtis to let him know she was okay. Mr. Curtis went back to the crime scene, realized the car was, in fact, Ms. Curtis' car, and was told Ms. Curtis had been killed.

Ms. Curtis' throat had been cut, and she had sustained approximately forty stab wounds to her face, head, neck, and torso. Ms. Curtis also suffered from blunt-force injury to her head, behind her right ear. Ms. Curtis' phone was found several hundred feet east of her body, along I-540 westbound. The phone had been turned off and exposed to rain and elements.

Five witnesses testified to having seen cars similar to Ms. Curtis' and Defendant's cars at the scene of the crime on I-540 on the night of 29 January 2008. Testimony shows that during the course of the night, the two vehicles were at first parked oddly close together, but later, on opposite sides of the highway.

At 1:30 a.m., Highway Patrol Trooper Isaac Cooper saw Defendant's vehicle, near the scene of the crime on I-540.

Trooper Cooper confirmed the vehicle was Defendant's vehicle by checking the license tag. The hazard lights were on, and the driver's side window was half-way down, despite intermittent rain; the door was unlocked; the keys were in the ignition; but no one was around. Trooper Cooper also noticed Ms. Curtis' car on the opposite side of I-540 with its hazard lights on. Trooper Cooper stated that he saw Ms. Curtis' car in the location where Ms. Curtis' body was found later that morning. There was blood in the interior of Ms. Curtis' car, and the console was broken. DNA samples were taken from various places in Ms. Curtis' car. The DNA samples contained a mixture of DNA sources from two people, the predominant component from Ms. Curtis. Randolph and Mr. Curtis were excluded as possible contributors, but Defendant could not be ruled out and was considered a possible contributor. The lowest probability that someone other than Defendant in the North Carolina African American population contributed the DNA discovered on Ms. Curtis' steering wheel was one in 147,000.[1]

[1]The statistics provided at trial by Agent Michelle Hannon, a forensic biologist with the North Carolina State Bureau of Investigation, also showed the probability that someone other than Defendant in the North Carolina Caucasian population contributed the DNA was one in 584,000; in the North Carolina Lumbee Indian population, one in 163,000; and in the North Carolina Hispanic population, one in 803,000.

Both Randolph and Defendant went to the police on 1 February 2008. Defendant had "a gouge" on his right hand and scrapes or abrasions on his right leg, which he said happened while moving a desk from the basement in his house to the first floor. The abrasions looked "fresh" or "fairly new." Willie Mae Thorpe stated that Defendant and Randolph had moved a desk, but did not mention Defendant getting hurt. When asked whether anyone was injured while moving the desk, Randolph stated, "We moved it with no problem."

While at the police station, Defendant also implied that Randolph was guilty of the murder of Ms. Curtis, volunteering that he knew Randolph had sex with Ms. Curtis on 29 January 2008; that Ms. Curtis told Randolph she wanted their relationship to be more serious; that Randolph received a call from Ms. Curtis in the early morning hours of 30 January 2008; that Randolph had a collection of swords and knives; and that Defendant discovered a gun under Randolph's pillow.

Defendant told police he did not have an explanation as to why his vehicle was at the scene of the crime, but Defendant did say that Randolph had a key to his vehicle and could use it without special permission. Defendant could not say when Randolph had last driven his vehicle; however, he did not recall

Randolph driving Defendant's vehicle during the past week, prior to 1 February 2008. In fact, the slashed tires on Randolph's car had been repaired or replaced two and one-half weeks prior to 1 February 2008. Defendant stated that on 29 January 2008, he saw Ms. Curtis' white sedan in front of his house when he left for church at 8:00 p.m. According to Defendant, church was over at 10:00 p.m.; Defendant said he returned home at 11:00 or 11:30 and did not go anywhere else. Thorpe said she returned from church that night at 8:45 or 9:00 p.m. When she returned to Defendant's house, Randolph was there with Ms. Curtis. Defendant was not there. Thorpe went upstairs to watch the television and heard Randolph and Ms. Curtis leave at approximately the same time, 9:30 or 10:00 p.m. Thorpe said no one else came home that night until after she had gone to sleep at approximately 12:00 or 12:30 a.m. Nothing woke Thorpe up during the night, and the next morning, Thorpe woke up at 7:15 a.m. and heard Randolph in the bathroom downstairs and saw Defendant in bed in Defendant's bedroom.

On 30 January 2008 at 1:28 a.m., the alarm system in the house was armed. This is consistent with Randolph's testimony that he returned to Defendant's house from Newton's house at approximately 1:30 a.m. At 2:30 a.m. the same night, the alarm

was triggered and four seconds later disarmed by someone using the master code. Randolph testified that he did not know the master code, or any other code for the alarm system besides the separate code Defendant had given him.

On 30 January 2008, Defendant was indicted for the murder of Ms. Curtis. Defendant's case was tried at the 5 September 2009 session of Wake County Superior Court. The jury found Defendant guilty of first-degree murder, and the trial court entered a judgment consistent with the jury's verdict, convicting Defendant of first-degree murder and sentencing Defendant to life imprisonment without parole. From this judgment, Defendant appeals.

I: Rule 404(b) Evidence

In Defendant's first argument, he contends that any probative value of the Rule 404(b) testimony of LaQuentin Ford and John Ross was substantially outweighed by the danger of unfair prejudice, specifically due to Defendant's history with young men. We disagree.

"Evidence 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." N.C. Gen. Stat. § 8C-1, Rule 404(b) (2009). However, evidence of other crimes, wrongs,

or acts may be "admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." *Id.* This rule is "a clear general rule of inclusion of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but *one exception* requiring its exclusion if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *State v. White*, 340 N.C. 264, 284, 457 S.E.2d 841, 852, *cert. denied*, 516 U.S. 994, 116 S. Ct. 530, 133 L. Ed. 2d 436 (1995) (quotation omitted). "The list of permissible purposes for admission of 'other crimes' evidence is not exclusive, and such evidence is admissible as long as it is relevant to any fact or issue other than the defendant's propensity to commit the crime." *Id.* at 284, 457 S.E.2d at 852-53. However, the prior bad acts' admission "is constrained by the requirements of similarity and temporal proximity." *State v. Al-Bayyinah*, 356 N.C. 150, 154, 567 S.E.2d 120, 123 (2002) (citations omitted). Regarding the "similarity" requirement, "[e]vidence of a prior bad act generally is admissible under Rule 404(b) if it constitutes substantial evidence tending to support a reasonable finding by the jury that the defendant

committed the *similar* act." *Id.* at 155, 567 S.E.2d at 123 (citations and quotation omitted) (Emphasis in original).

A trial court follows the following procedure in considering the admissibility of evidence pursuant to Rule 404(b):

> The trial court must first make the determination that the evidence is of the type and offered for a proper purpose under the rule. Next, a determination of relevancy should be made. Relevancy is defined as "any tendency to make a 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.G.S. § 8C-1, Rule 401 (1986). Upon a finding that the evidence offered is of the type intended, that its purpose is other than to show propensity, and that it is relevant, the trial judge is then required to balance the probative value of the extrinsic conduct evidence against its prejudicial effect.

State v. Bynum, 111 N.C. App. 845, 848-49, 433 S.E.2d 778, 780, *disc. review denied*, 335 N.C. 239, 439 S.E.2d 153 (1993) (citations omitted).

On appeal from a trial court's ruling on admission of Rule 404(b) evidence, the standard of review is whether the trial court abused its discretion in admitting the evidence. *Id.* at 849, 433 S.E.2d at 780-81.

i: LaQuentin Ford

In the present case, LaQuentin Ford testified that while working at a kiosk in Southpoint Mall in 2005, Defendant began talking to Ford and offered Ford a ride home. Ford lived fifteen to twenty miles away, which took a long time on the city bus, so he accepted Defendant's offer. Ford said that on the way home they had "guy talk[,]" which included talk about sex with women. When Defendant dropped off Ford at his home, he asked Ford how much rent he paid. Ford answered, $100.00 per month, and Defendant suggested that Ford could stay with Defendant for free. Ford initially declined his offer.

Sometime later, Defendant showed Ford where he lived, and Ford began having problems with his current living arrangement. Ford decided to live with Defendant. Shortly after Ford moved into Defendant's house, Defendant left town and Ford was instructed to house sit and care for Defendant's dog. Ford invited his girlfriend to the house, and they had sex. Ford placed the used condoms in a grocery bag, which he hung on the doorknob on the outside of his bedroom door. When Defendant returned home, he asked Ford if anyone had been over to the house; Ford said no, after which Defendant asked, "[s]o why do you have condoms?" Defendant was displeased with Ford having a girlfriend and allowing her to visit Defendant's house

One night shortly thereafter, Defendant began talking to Ford about escort services, asking whether Ford would be interested in escorting. Defendant stated that one could not tell the difference between a man and a woman performing oral sex on him. Ford became upset and went to his bedroom to call his mother; he had nowhere to go since he had moved out of his old apartment.

After Ford's girlfriend's visit and after the discussion with Defendant about escorting, Ford discovered that nothing was free and he owed Defendant rent. Moreover, the day after the discussion of escorting, the police came to the mall where Ford worked and arrested Ford. Defendant had told the police that Ford had damaged his property. Charges were filed, but ultimately, the charges were dismissed.

The trial court instructed the jury:

> I'll permit the jury to consider the testimony of Mr. Ford only as it relates to evidence with regard to any motive that the defendant may have to commit the crime charged, if you find this evidence bears upon the issue of motive. If you believe this evidence, you may consider it, but only for the limited purpose for which it was received. That is, as it bears upon and is relevant to any motive for the commission of the crime charged in this case.

The State's theory of the case was that after Randolph's rejection of Defendant's sexual advances, Defendant retaliated by killing Ms. Curtis. The State argued Ford's testimony was relevant to show Defendant's similar reaction and response upon Ford's rejection of Defendant's sexual advances. The pertinent question with regard to Ford's testimony is not, as Defendant contends, whether evidence of Defendant's sexual orientation was properly admitted pursuant to N.C. Gen. Stat. § 1A-1, Rule 404(b). *State v. Laws*, 345 N.C. 585, 597, 481 S.E.2d 641, 647 (1997) ("A [person]'s homosexuality has no more tendency to prove that he would be likely to sexually assault a male than would a [person]'s heterosexuality show that he would be likely to sexually assault a female"). Rather, the pertinent questions to determine whether the evidence was properly admitted for purposes of Rule 404(b) to show Defendant's motive are: (1) whether evidence of Defendant's sexual advances toward Ford and Randolph, followed by their rejection of his advances, created a motive for retaliation – regardless of the sexual orientation or gender of either Defendant, Ford, or Randolph; in other words, was Ford's testimony relevant; (2) whether the similarities[2]

[2]Defendant does not put forth any argument with regard to the temporal proximity of the prior bad acts; rather, Defendant only contends the evidence was neither relevant nor sufficiently

between Defendant's relationship with Ford and Defendant's relationship with Randolph, were sufficient to show Defendant's motive, and not simply to show Defendant's propensity to commit the crime; and (3) whether the probative value of Ford's testimony was not outweighed by unfair prejudice, stemming from Defendant's sexual orientation and history with young men. Many similarities exist between Defendant's actions toward Ford and his actions toward Randolph. In both instances, Defendant talked to Ford and Randolph about sex; Defendant made offers for housing with Defendant; Defendant made sexual advances which began with a conversation about escorting; Defendant suggested that one could not tell the difference between oral sex from a man and from a woman; Defendant offered free rent. In both instances, Defendant's sexual advances were rejected, and evidence tends to show that Defendant then retaliated against Randolph and Ford. Ford's testimony showed that after Ford rejected Defendant's sexual advances, Defendant began charging Ford for rent and called the police to report Ford for damaging his property. Evidence was also submitted from which the jury could reasonably infer that after Randolph rejected Defendant's sexual advances, Defendant either slashed Randolph's tires or

---

similar; in the alternative, Defendant argues any relevance was outweighed by unfair prejudice.

orchestrated the slashing of Randolph's tires, retaliated against Randolph's girlfriends, and volunteered a range of information to the police implicating Randolph in Ms. Curtis' death. "The State may . . . introduce [other crimes] evidence if it is relevant to establish a pattern of behavior on the part of the defendant tending to show that the defendant acted pursuant to a particular motive." *State v. Lloyd*, 354 N.C. 76, 89-90, 552 S.E.2d 596, 609 (2001); *State v. Ross*, 100 N.C. App. 207, 212, 395 S.E.2d 148, 151 (1990) (holding testimony involving the defendant's homosexual acts toward the victims, which "was used to show motive and a pattern of conduct toward the victims [and was] consistent with the State's theory of the case[,]" was admissible pursuant to Rule 404(b)). Based on the foregoing, we conclude Ford's testimony was relevant and sufficiently similar. Furthermore, we do not believe the probative value of the evidence was outweighed by unfair prejudice. *See State v. Robinson*, 336 N.C. 78, 107, 443 S.E.2d 306, 319 (1994), *superceded on other grounds*, N.C. Gen. Stat. § 15A-2002 (1994), *cert denied*, 513 U.S. 1089, 115 S. Ct. 750, 130 L. Ed. 2d 650 (1995) (holding the admission of evidence that the defendant was near a bar "where a lot of homosexuals went" and was in a vehicle with "a gay man" who had "feminine

attributes[,]" with whom the defendant disappeared, during the course of the evening, "for a period of two to three hours" was not plain error, and stating, *in dicta*, the admission of the evidence was not "unfairly prejudicial[,]" "unduly inflammatory[,] or designed to exploit any prejudice against homosexuals"). Based on the foregoing, we conclude the trial court did not abuse its discretion by allowing Ford's testimony to show motive.

ii: John Ross

John Ross also testified at trial that while working as an installation technician for a home alarm system, he visited Defendant's house in October 2007; Defendant was considering having a home alarm system installed. Ross arrived at 8:00 a.m., and Randolph left for class fifteen minutes after Ross' arrival. Defendant was wearing a suit when Ross first arrived, but after Randolph left, Defendant changed into a sleeveless undershirt and a pair of shorts. Ross said Defendant began talking to him about women and sex – having "guy talk" – and Defendant said Ross had good features and could make a lot of money being a male escort. Defendant asked Ross about the size of his penis and whether Ross had ever allowed a man to perform oral sex on him. Ross became uncomfortable and said he had to

leave. Defendant shook Ross' hand, gripped Ross' wrist, and began pulling him into the house toward the bathroom. Defendant offered Ross money and said, "Just close your eyes and you won't know[;] [j]ust let me do what I got to do and I'll give you some money for it and you can go." Ross said Defendant was not struggling, but nevertheless had the grip and strength to pull Ross a few feet into the house. Ross said Defendant's grip was such that he "felt like at first he couldn't get his hand loose." Ross got away from Defendant's grip and left, leaving the wiring and paperwork inside the house.

The record indicates the trial court conducted a *voir dire* hearing in order to rule on the admission of the disputed testimony. The court stated, "I'm going to allow this evidence of John Ross as it bears upon and is relevant to whether or not the defendant had the physical ability to commit the crime charged, and it's limited to that purpose only."

At trial, the State relied on Ross' testimony to show that Defendant, despite his disability, could temporarily overpower, with one arm and without struggling, another man. The State contended the foregoing testimony by Ross was relevant to whether Defendant had the physical ability to kill Ms. Curtis.

We reiterate that the pertinent question with regard to Ross' testimony, is not whether evidence of Defendant's sexual orientation was properly admitted pursuant to N.C. Gen. Stat. § 1A-1, Rule 404(b). Rather, the pertinent question is whether the evidence was properly admitted for purposes of Rule 404(b) to rebut Defendant's evidence regarding his paralyzed left arm and to show Defendant's physical capability of killing Ms. Curtis, regardless of the gender or sexual orientation of Defendant or Ross. "[S]o long as evidence of defendant's prior acts makes the existence of any fact at issue, other than the character of the accused, more or less probable, that evidence is admissible under Rule 404(b)." *State v. Peterson*, 179 N.C. App. 437, 453, 634 S.E.2d 594, 608 (2006), *aff'd*, 361 N.C. 587, 652 S.E.2d 216 (2007) (citation omitted). We believe Ross' testimony was relevant to show capability and not unduly prejudicial. *See Ross*, 100 N.C. App. at 212, 395 S.E.2d at 151; *Robinson*, 336 N.C. at 107, 443 S.E.2d at 319. We conclude the trial court did not abuse its discretion by allowing Ross' testimony.[3]

[3]Defendant also argues that even if the testimony that Defendant pulled Ross into the house with one hand were properly admitted, the remainder of Ross' testimony, implicating Defendant's sexual orientation, should have been excluded. We do not believe the trial court erred by failing to exclude

II: Motion to Dismiss

In Defendant's second argument, he contends the trial court erred in denying his motion to dismiss because the State failed to offer substantial evidence that Defendant was the perpetrator of the offense. We disagree.

When reviewing a challenge to the denial of a defendant's motion to dismiss a charge on the basis of insufficiency of the evidence, this Court determines "whether the State presented substantial evidence in support of each element of the charged offense." *State v. Chapman*, 359 N.C. 328, 374, 611 S.E.2d 794, 827 (2005) (quotation omitted). "Substantial evidence is relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion." *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009) (quotation omitted). "In this determination, all evidence is considered in the light most favorable to the

---

portions of Ross' testimony. The testimony explained why Defendant was trying to pull Ross into the bathroom. *See State v. Agee*, 326 N.C. 542, 547-48, 391 S.E.2d 171, 174 (1990) ("Evidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or [if it] forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury[;]" moreover, "[s]uch evidence is admissible if it forms part of the history of the event or serves to enhance the natural development of the facts") (internal quotation omitted).

State, and the State receives the benefit of every reasonable inference supported by that evidence." *Id.* (quotation omitted). Additionally, a "substantial evidence inquiry examines the sufficiency of the evidence presented but not its weight," which remains a matter for the jury. *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005) (quotation omitted). Thus, "[i]f there is substantial evidence – whether direct, circumstantial, or both – to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied." *Id.* (quotation omitted).

"The elements of first-degree murder are: (1) the unlawful killing, (2) of another human being, (3) with malice, and (4) with premeditation and deliberation." *State v. Coble*, 351 N.C. 448, 449, 527 S.E.2d 45, 46 (2000) (citations omitted); N.C. Gen. Stat. § 14-17 (2009).

Defendant first challenges the sufficiency of the evidence that Defendant was, in fact, the perpetrator of the offense. The evidence in this case tends to show the following: Defendant said he returned home from church at 11:00 or 11:30 p.m. on 29 January 2008 and did not go anywhere else. Thorpe stated she returned from church to Defendant's house at 8:45 or

9:00 p.m. and did not go to bed until 12:00 or 12:30 a.m. Thorpe further stated Defendant was not home when Thorpe returned from church and did not come home before Thorpe went to bed, which contradicts Defendant's statement that he was home by 11:00 or 11:30 p.m. Newton and Newton's roommate corroborated Randolph's testimony that Randolph visited Newton's house at 10:30 p.m. on 29 January 2008, and Robertson stated that he and Randolph left Newton's house "around the same time" at approximately 1:30 a.m. on 30 January 2008. Records show that on 30 January 2008 at 1:28 a.m., the alarm system in the house was armed; this was approximately the same time Randolph stated he returned to Defendant's house to go to bed. Moreover, at approximately 2:30 a.m. on 30 January 2008, the alarm at Defendant's house was disarmed by someone using the master code. Randolph did not have the master code. Defendant's vehicle was seen on I-540 late on the night of 29 January 2008, and early in the morning of 30 January 2008, near the scene of the crime. Trooper Cooper reported seeing Defendant's vehicle at the scene of the crime at 1:53 a.m. on 30 January 2008. Investigator Cameron Lilyquist, during his investigation, timed the drive from the location where Ms. Curtis' body was found to Defendant's home, leaving at 1:53 a.m. and arriving at

Defendant's house at 2:23 a.m. This evidence is consistent with the State's theory that Defendant had time to return home between 1:53 a.m. on 30 January 2008, which was the time Defendant's vehicle was last seen on I-540, and 2:30 a.m. on 30 January 2008, when Defendant could have used the master code to disarm the alarm at his home. Furthermore, Defendant had scrapes and abrasions on his right hand and knee, which were fresh on 1 February 2008, when Defendant talked to the police. Defendant said he sustained the abrasions while moving a desk, but Randolph said he and Defendant moved the desk without incident or injury; Thorpe did not say Defendant was injured while moving the desk. In addition, DNA samples taken from Ms. Curtis' vehicle contained a mixture of DNA sources from two people, the predominant component from Ms. Curtis. Randolph and Mr. Curtis were excluded as possible contributors, but Defendant could not be ruled out and was considered a possible contributor. The probability that someone other than Defendant in the North Carolina African American population contributed the DNA discovered on Ms. Curtis' steering wheel was one in 147,000. We believe the foregoing evidence is sufficient, such that the question of whether Defendant was the perpetrator of the offense was a question for the jury. Therefore, we conclude

the trial court did not err in denying Defendant's motion to dismiss for insufficiency of the evidence.

Defendant also challenges the sufficiency of the evidence of Defendant's motive to kill and capability of killing Ms. Curtis. Although important, motive and capability are not essential elements of the crime of first-degree murder. *See, e.g.*, *Peterson*, 361 N.C. at 595, 652 S.E.2d at 223 ("While motive is often an important part of the State's evidence, motive is not an element of first-degree murder, nor is its absence a defense") (internal quotation omitted); *Coble*, 351 N.C. at 449, 527 S.E.2d at 46 ("The elements of first-degree murder are: (1) the unlawful killing, (2) of another human being, (3) with malice, and (4) with premeditation and deliberation"). Thus, these arguments must fail.

III: Prosecutor's Argument

In Defendant's third argument, he contends the trial court erred by failing to intervene when the prosecutor stated, "Is this not a predator selecting someone?" We disagree.

"The impropriety of the argument must be gross indeed in order for this Court to hold that a trial judge abused his discretion in not recognizing and correcting *ex mero motu* an argument which defense counsel apparently did not believe was

prejudicial when he heard it." *State v. Miller*, 357 N.C. 583, 589, 588 S.E.2d 857, 862 (2003), *cert. denied*, 542 U.S. 941, 124 S. Ct. 2914, 159 L. Ed. 2d 819 (2004) (quotation omitted). "[T]o establish such an abuse, defendant must show that the prosecutor's comments so infected the trial with unfairness that they rendered the conviction fundamentally unfair." *State v. Lloyd*, 354 N.C. 76, 116, 552 S.E.2d 596, 624 (2001).

After careful review of the transcript in the present case, we conclude that the prosecutor's argument was not so grossly improper as to require the trial court to intervene *ex mero motu*. *See State v. Trull*, 349 N.C. 428, 454, 509 S.E.2d 178, 195 (1998), *cert denied*, 528 U.S. 835, 120 S. Ct. 95, 145 L. Ed. 2d 80 (1999) (holding a prosecutor's reference to the defendant as a "predator" was not reversible error); *see also State v. Reeves*, 337 N.C. 700, 733, 448 S.E.2d 802, 817 (1994), *cert. denied*, 514 U.S. 1114, 131 L. Ed. 2d 860, 115 S. Ct. 1971 (1995) (holding it was not reversible error for the court not to intervene *ex mero motu* when the prosecutor referred to the defendant as a "predator").

IV: Officer's Comments

In Defendant's fourth argument, he contends Defendant's constitutional rights were violated when two officers testified

Defendant asked for and consulted with an attorney when questioned by police. We disagree.

Although Defendant argues the admission of testimony regarding Defendant's invocation of the right to consult with an attorney violated his Fifth and Fourteenth Amendment rights and should be reviewed for plain error, Defendant did not raise the constitutional issue at trial.[4] Generally, "[c]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal." *State v. Williams*, 355 N.C. 501, 528, 565 S.E.2d 609, 625 (2002), *cert. denied*, 537 U.S. 1125, 123 S. Ct. 894, 154 L. Ed. 2d 808 (2003) (citations omitted). However, because the constitutional right at issue involves the admissibility of evidence, we will review for plain error. *See State v. Mobley*, 200 N.C. App. 570, 572, 684 S.E.2d 508, 510 (2009), *disc. review denied*, 363 N.C. 809, 692 S.E.2d

[4]Defendant generally objected to the admission of the testimony of Investigator Lilyquist regarding Defendant's request to speak to his attorney; however, a general objection does not suffice to preserve a constitutional question. Counsel must specifically state the basis for his objection to the admission of the evidence. *State v. Benson*, 323 N.C. 318, 322, 372 S.E.2d 517, 519 (1988) (quotation omitted). Moreover, the same evidence was admitted without objection during Detective Robert Campen's testimony. "Where evidence is admitted over objection, and the same evidence has been previously admitted or is later admitted without objection, the benefit of the objection is lost." *State v. Whitley*, 311 N.C. 656, 661, 319 S.E.2d 584, 588 (1984).

393 (2010) (stating that "the North Carolina Rules of Appellate Procedure allow review for 'plain error' in criminal cases even where the error is not preserved") (citation omitted); N.C. R. App. P. 10(a)(4) (2009); *see also State v. Garcell*, 363 N.C. 10, 35, 678 S.E.2d 618, 634, *cert. denied*, 130 S. Ct. 510, 175 L. Ed. 2d 362 (2009) ("Plain error analysis applies to evidentiary matters and jury instructions") (citation omitted).

Under plain error review, a defendant "has the burden of showing that the error constituted plain error, that is, (i) that a different result probably would have been reached but for the error or (ii) that the error was so fundamental as to result in a miscarriage of justice or denial of a fair trial." *State v. Bishop*, 346 N.C. 365, 385, 488 S.E.2d 769, 779 (1997) (citations omitted).

Investigator Lilyquist stated at trial that on two occasions during the 1 February 2008 interview with Defendant, Defendant requested to step out to speak with an attorney. Defendant objected, but did not specify the basis of the objection. On cross-examination, Defendant asked Investigator Lilyquist, "the attorney that was there was actually Steve Randolph's attorney, wasn't it?" Investigator Lilyquist responded affirmatively. Detective Robert Campen also

testified, without objection by Defendant, that Defendant asked to stop the 1 February 2008 interview with the police so that Defendant could speak with an attorney.

Under a plain error standard of review, Defendant has the burden of showing the admission of the evidence prejudiced his trial. *Bishop*, 346 N.C. at 388, 488 S.E.2d at 781. Defendant argues the evidence that Defendant wanted to speak to an attorney implied Defendant's guilt. Assuming *arguendo* the admission of the statements was error, in light of Defendant's cross-examination revealing the lawyer in question was actually Randolph's lawyer, we believe Defendant has failed to show that he was prejudiced by the admission of the statements. The admission of the statements does not constitute plain error.

V: Expert Opinion

In Defendant's fifth argument, he contends Dr. Maryanne Gaffney-Fraft's testimony that the victim's arms were "most likely" pinned to the ground when she was stabbed was speculative and its admission was plain error. We disagree.

N.C. Gen. Stat. § 8C-1, Rule 702(a) (2009) provides that "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by

knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion." "Expert medical opinion has been allowed on a wide range of facts, the existence or non-existence of which is ultimately to be determined by the trier of fact." *State v. Wilkerson*, 295 N.C. 559, 568, 247 S.E.2d 905, 910 (1978) (citation omitted). Admissibility of expert opinion depends on whether the witness is in a better position to have an opinion than is the trier of fact. *State v. Saunders*, 317 N.C. 308, 314, 345 S.E.2d 212, 216 (1986) (quotation omitted). However, "where an expert is simply speculating as to the cause of an injury – having no medical ground upon which to base his opinion – he is no better qualified than the jury to have an opinion." *State v. Bowen*, 139 N.C. App. 18, 32, 533 S.E.2d 248, 257 (2000).

In the present case, Dr. Gaffney-Kraft, an Associate Chief Medical Examiner for the State of North Carolina, who is certified in anatomical pathology, clinical pathology and forensic pathology, gave the following testimony:

> In Ms. Curtis' case, I have a large amount of sharp force injuries to her neck, her face, her chest, and just minimum or very small minor wounds to her hands. In my opinion, a way this would have occurred is if Ms. Curtis' arms were pinned down beside her, and she was not able to get those arms up to block. Because otherwise I would

> expect those arms to be up blocking these wounds, especially on the chest. You have 14 stab wounds of the chest, your arms are coming up blocking those wounds. Why are they not coming up blocking those wounds? In my opinion it is – it is most likely that they were pinned down beside her, and that's why we're not getting as many blocking wounds that we should on the arms for all those stab wounds on her chest, her neck and her face, also.

Dr. Gaffney-Kraft's opinion as to how Ms. Curtis sustained her wounds was based on her examination of the minimal wounds on Ms. Curtis' hands juxtaposed to the large number of wounds to Ms. Curtis' chest, not upon mere speculation. As the pathologist who performed the autopsy, Dr. Gaffney-Kraft was in a position to assist the jury in understanding the nature of Ms. Curtis' wounds. We believe Dr. Gaffney-Kraft's expert testimony was evidence properly admitted pursuant to N.C. Gen. Stat. § 8C-1, Rule 702. *See Wilkerson*, 295 N.C. at 564, 247 S.E.2d at 908 (holding a physician's testimony "that the bruises [the physician] observed on the child were not 'the typical bruising pattern that is normally sustained by children in [their] normal day-to-day life[,]'" and that the child was a "[b]attered child[,]" was admissible).

Furthermore, Defendant did not object to the foregoing testimony at trial. Under a plain error standard of review,

Defendant has the burden of showing the admission of the evidence prejudiced his trial. *Bishop*, 346 N.C. at 388, 488 S.E.2d at 781. We believe Defendant has failed to prove the admission of the foregoing testimony prejudiced his trial. Dr. Gaffney-Kraft's testimony that Ms. Curtis' arms were likely "pinned down beside her" did not prejudice, but aided, Defendant's theory that because of his disability in his left hand and arm he would have been unable to restrain and kill Ms. Curtis.

VI: Cumulative Error

In Defendant's sixth argument, he contends that if no single error at Defendant's trial was sufficiently prejudicial to warrant a new trial, the cumulative effect of the errors, taken as a whole, deprived Defendant of a fair trial. We disagree.

Defendant cites *State v. Canady*, 355 N.C. 242, 254, 559 S.E.2d 762, 768 (2002), for the proposition that the cumulative effect of the errors "taken as a whole[] deprived [D]efendant of his due process right to a fair trial free from prejudicial error." In *Canady*, our Supreme Court stated that "[w]e agree with [the] defendant that the trial court's rulings on at least four specific issues were erroneous[,]" and "defendant's trial

was riddled with errors[.]" *Id.* at 246-54, 559 S.E.2d at 764-68.

We have concluded the trial court did not err by admitting the Rule 404(b) testimony of Ross and Ford, and we have further concluded the trial court did not err by denying Defendant's motion to dismiss for insufficiency of the evidence. Defendant's remaining arguments on appeal stem from the admission of evidence to which Defendant did not object at trial. We have concluded that the trial court did not err by failing to intervene *ex mero motu* during the prosecutor's argument, and we have further concluded the remaining alleged errors do not constitute plain error. As such, we see only dissimilarities between this case and *Canady*. We conclude Defendant received a fair trial, free from prejudicial error.

VII: Sufficiency of the Indictment

In Defendant's seventh and final argument on appeal, he contends the indictment was insufficient because it did not allege all of the elements of the offense. Defendant does not elaborate upon which elements he contends were not sufficiently alleged in the indictment, and states, "Defendant raises this issue for preservation purposes." Short form indictments pursuant to N.C. Gen. Stat. § 15-144 (2009) have been deemed

sufficient. *See State v. Braxton*, 352 N.C. 158, 174, 531 S.E.2d 428, 437 (2000), *cert denied*, 531 U.S. 1130, 121 S. Ct. 890, 148 L. Ed. 2d 797 (2001). We find this argument without merit.

For the foregoing reasons, we conclude Defendant had a fair trial, free from prejudicial error.

NO ERROR.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).