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NO. COA11-354
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 08 CRS 208908
08 CRS 208910

LAWRENCE ALDOUS BLACK

Appeal by Defendant from final judgment and sentence entered 27 August 2010 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 13 October 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General Gary R. Govert, for the State.

Glover & Petersen, P.A., by James R. Glover, for Defendant-appellant.

HUNTER, JR., Robert N., Judge.

Lawrence Aldous Black ("Defendant") appeals from a jury verdict finding him guilty of robbery with a firearm and felony murder in the first degree. On appeal, Defendant argues the trial court committed reversible error by denying Defendant's motion to suppress his post-arrest statements and by denying him

effective assistance of counsel. After careful review, we dismiss both claims.

I. Factual & Procedural Background

On 10 March 2008, a Mecklenburg County Grand Jury indicted Defendant for robbery and felony murder in the first degree. Defendant was tried during the 23 August 2010 Criminal Term of the Mecklenburg County Superior Court, the Honorable Robert C. Ervin presiding.

William Saddler, a witness for the State, testified that on 16 February 2008, he saw Defendant approach the driver's side of a white car with a handgun pointed at the car. According to Mr. Saddler, Defendant reached inside the car and removed the keys from the ignition while repeatedly asking the driver to hand over his wallet. Mr. Saddler testified that after the driver refused to give Defendant the wallet, Defendant reached inside the car and shot the driver.

Officer Pedro Ache responded to a call for service regarding the incident. He investigated the scene and canvassed the neighborhood to determine the names of potential suspects. Defendant was identified as a suspect, and Officer Ache met with him at the Cornelius Police Department conference room for questioning on 21 February 2008. During this initial

interrogation, Defendant was not placed under arrest. He stated he was at the scene of the shooting but maintained he did not shoot the driver. After making this initial statement, Defendant left the police station.

Hours later, Cornelius police arrested Defendant and brought him back to the station. He was read his *Miranda* rights from a standard Cornelius Police Department form. Before he made another statement (the "Second Statement") to the police, Defendant initialed the form in spaces indicating that he understood each of the rights stated and signed the form in the space indicating he was willing to provide a statement.

After an interview lasting several hours, an officer typed up a condensed version of Defendant's Second Statement. In the statement, Defendant admitted to approaching the driver's side of the white car with a handgun in his back pocket, opening the door, and asking the driver for his money. Defendant admitted that, after the driver removed the keys from the ignition, Defendant took the keys from the driver's hand and threw them on the car's floorboard. He admitted to hitting the driver in the face with his handgun upon the driver's refusal to give him money, after which, Defendant claimed, the gun accidentally went off. Defendant claimed he saw no blood and that he did not know

whether the bullet had hit the driver. He stated that he then picked up a twenty-dollar bill off the road and walked away from the scene.

Before trial, Defendant moved to suppress the Second Statement based on the alleged insufficiency of the *Miranda* forms the police presented to Defendant. After holding a hearing, including a *voir dire* examination of Officer Ache, the trial court denied Defendant's motion. At trial, the State admitted Defendant's Second Statement into evidence without objection along with the form from which Officer Ache read Defendant his *Miranda* rights. Additionally, the State admitted, without objection, a compact disc containing an audio and video recording of the process of obtaining Defendant's Second Statement. The disc was played for the jury.

The jury found Defendant guilty of robbery with a firearm and felony murder in the first degree. Judge Ervin sentenced Defendant to a presumptive term of life imprisonment without parole. Defendant entered timely notice of appeal on 27 August 2010.

II. Jurisdiction

As Defendant appeals from the final judgment of a superior court, an appeal lies of right with this Court pursuant to N.C. Gen. Stat. §7A-27(b) (2009).

III. Analysis

A. Defendant's Motion to Suppress

Defendant contends the trial court committed reversible error in denying his pretrial motion to suppress the Second Statement. He argues the police obtained the Second Statement during custodial interrogation that was not preceded by a sufficient warning of rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 (1966). Specifically, Defendant claims that he was inadequately advised that an attorney would be appointed to him prior to any questioning. However, we do not address the merits of Defendant's claim.

Defendant failed to object at trial when the State introduced Defendant's Second Statement into evidence. By failing to lodge an objection, Defendant did not preserve for appellate review the trial court's denial of his pre-trial motion to suppress the confession under N.C. R. App. P. 10(a)(1). See *State v. Oglesby*, 361 N.C. 550, 554-55, 648 S.E.2d 819, 821 (2007) (finding "a trial court's evidentiary ruling on a pretrial motion is not sufficient to preserve the

issue of admissibility for appeal unless a defendant renews the objection during trial.”) (emphasis in original). In criminal cases, however, a defendant may still appeal an issue that was not preserved by objection “when the judicial action questioned is specifically and distinctly contended to amount to plain error.” N.C. R. App. P. 10(a)(4). The defendant must, however, assert plain error in his or her brief in order to allow for an otherwise non-preserved issue to be reviewed by this Court. *State v. Harrington*, 171 N.C. App. 17, 31-32, 614 S.E.2d 337, 349 (2005). Here, Defendant failed to assert plain error in his brief and has waived review of the denial of his motion to suppress. Accordingly, we dismiss the claim.

B. Ineffective Assistance of Counsel

Defendant next contends he received ineffective assistance of counsel at trial amounting to a violation of his state and federal Constitutional rights. He argues that his trial counsel’s failure to object at trial to the State’s introduction of the Second Statement into evidence resulted in the failure to preserve for appellate review the denial of his pre-trial motion to suppress. However, we again do not reach the merits of Defendant’s claim.

In general, a court should consider claims of ineffective assistance of counsel through motions for appropriate relief and not on direct appeal. *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001). A motion for appropriate relief is preferable because "the State must rely on information provided by defendant to trial counsel" when defending against claims of ineffective assistance of counsel. *Id.* at 554, 557 S.E.2d at 547 (citation omitted). "[B]ecause of the nature of [ineffective assistance of counsel] claims, defendants likely will not be in a position to adequately develop many [of these] claims on direct appeal." *State v. Fair*, 354 N.C. 131, 167, 557 S.E.2d 500, 525 (2001).

When a reviewing court determines a defendant has prematurely asserted a claim of ineffective assistance of counsel on direct appeal, the court "shall dismiss those claims without prejudice to the defendant's rights to reassert them during a subsequent [motion for appropriate relief] proceeding." *Stroud*, 147 N.C. App. at 554, 557 S.E.2d at 547 (citation omitted). In determining whether a defendant has adequately raised a claim of ineffective assistance of counsel, this Court has held itself bound to "reviewing this assignment of error only on the record before us, without the benefit of

'information provided by defendant to trial counsel, as well as defendant's thoughts, concerns, and demeanor[,] that could be provided in a full evidentiary hearing on a motion for appropriate relief." *Id.* (citation omitted) (alteration in original).

Here, further investigation of evidentiary matters is necessary because trial counsel's lack of objection upon the State's introduction of Defendant's Second Statement, on its own, does not reveal "sufficient information regarding trial counsel's strategy." *State v. Loftis*, 185 N.C. App 190, 203, 649 S.E.2d 1, 10 (2007); *see also State v. Mohamed*, ___ N.C. App. ___, ___, 696 S.E.2d 724, 733 (2010) ("In this case, the record reveals that certain evidentiary issues need further development before [d]efendant may adequately raise and the courts may adequately consider this claim[.]"). Therefore, it is proper to dismiss Defendant's ineffective assistance of counsel claim without prejudice to Defendant's right to reassert it during a subsequent motion for appropriate relief proceeding.

IV. Conclusion

For the foregoing reasons, we dismiss Defendant's appeal without prejudice.

Dismissed.

Judges BEASLEY and THIGPEN concur.

Report per Rule 30(e).