IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-803

Filed 05 September 2023

Columbus County, Nos. 20CRS408, 20CRS50740

STATE OF NORTH CAROLINA

v.

TUCKER MCKENZIE RECTOR, Defendant.

Appeal by defendant from judgment entered 1 October 2021 by Judge James G. Bell in Columbus County Superior Court. Heard in the Court of Appeals 23 May 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberly D. Potter, for the State.

Appellate Defender, Glenn Gerding and Assistant Appellate Defender, Kathryn L. VandenBerg for the Defendant.

DILLON, Judge.

Defendant Tucker McKenzie Rector was convicted of first-degree murder and robbery with a dangerous weapon in connection with the death of an 82-year-old man who had been living next door. Defendant appeals.

I. Background

Defendant lived in a small work shed owned by his grandfather, Sammie Jacobs, and Earl Davis lived next door by himself. Defendant performed odd jobs for Mr. Davis in and around his home. The evidence at trial tended to show the following:

On 16 March 2020, Mr. Davis went missing. Police discovered blood and body tissue in a shed behind Mr. Davis's back door. Defendant offered to give fingerprints and DNA as long as he was not considered a suspect, which an investigating police sergeant found suspicious. A detective investigating the matter asked Defendant to speak to him in the patrol car. Defendant denied any involvement. Mr. Jacobs gave the officers permission to search the shed where Defendant stayed. Blood was found on a sheet and a pair of boots. The detective handcuffed Defendant to take him back to the office for an interview. On the way to the police station, Defendant directed law enforcement to Mr. Davis's body and made incriminating statements. Defendant did so voluntarily and not in response to any interrogation.

The detective drove Defendant to the Sheriff's office and placed him in an interview room. The detective read Defendant *Miranda* warnings, and Defendant signed a waiver sheet. He was interviewed for 40 minutes. The detective testified:

> We kind of went over the whole what we had done prior to getting to the interview because we want – went through steps to understand that, you know, he took me there, this is where he showed me the body was, and this is where he took the body to.

During the interview, Defendant said Mr. Davis fell and then said he shot Mr. Davis. The detective testified that Defendant showed no signs of impairment. Mr. Jacobs,

though, later testified that Defendant "was so inebriated . . . he wasn't making any sense of anything" during the interview.

Prior to trial, Defendant informed the judge that he was "going to be admitting to the killing." At trial, Defendant admitted to killing Mr. Davis, and his counsel admitted that Defendant killed Mr. Davis. An autopsy showed that Mr. Davis died of a gunshot wound to the head, had possible neck compression, superficial bruises and scrapes which probably occurred after death, and spinal column blunt force injuries that may have occurred in a struggle before death or in moving the body just after death. Mr. Davis's handgun, shotgun, and empty Valium bottle were found in the shed where Defendant was living. Defendant admitted, "I just done a lot of things in my life with anger . . . that's what got me here was just that flip decision, that anger, that flipped switch" during a jail call on 12 May 2020. On 15 March 2020, Defendant was confirmed to be home around 9:00 p.m. by his grandmother.

Defendant testified to the following: On the weekend of March 14, he took meth, heroin, crack, and Xanax. He used meth Friday, Saturday, and Sunday and his high usually lasted 24 hours. He used heroin on Saturday, and that high usually lasted six to eight hours. He smoked crack on Sunday, and that high lasted about 30 minutes. He claimed he came down from his high in jail and had no memory of the interview. He admitted to killing Mr. Davis but did not remember doing it. He admitted to taking Mr. Davis's truck but did not remember where he was driving. He admitted to taking Mr. Davis's valium and ingesting the pills. He said he "must have

taken" the shotgun but did not remember going in the house.

Defendant was indicted for robbery with a dangerous weapon and first-degree murder. He moved to suppress the "discussion and related exhibits with the Detective at the gravesite and everything else subsequent to what he talked about." The trial court denied his motion and his renewed motion, finding:

> 1. That the Defendant was in custody at the time he led [the Detective] to the body of [Mr. Davis].
>
> 2. That the State did not illicit [sic] any response to custodial interrogation through [the detective].
>
> 3. That the body and all derivative evidence from its discovery would have been inevitably discovered based on the interview of the Defendant after waiving his rights under *Miranda*.

Defendant moved to dismiss the charges against him, but his motion was denied. Defendant admitted to killing Mr. Davis but argued that impairment from drugs prevented him from forming the specific intent to commit the offenses. He requested a jury instruction on voluntary intoxication. The trial court gave a voluntary intoxication instruction for the first-degree murder charge which used the word "drugged." Defendant asked for an explanatory instruction to clear up misleading language, which the trial court denied. Prior to trial, Defendant filed a motion challenging the mandatory life-without-parole sentence. Defendant renewed the motion after receiving his conviction, but the trial court did not address it.

Defendant was found guilty of first-degree murder and robbery with a

dangerous weapon. He was sentenced to life in prison without parole for the first-degree murder conviction and a minimum of 64 months and maximum of 83 months in prison for the robbery with a dangerous weapon conviction. Defendant appeals.

II. Analysis

Defendant makes three arguments on appeal, which we address in turn.

A. Motion to Suppress Statements under *Miranda*

Defendant argues the trial court erred by denying his motion to suppress statements he made while handcuffed because they were obtained in violation of his Fifth Amendment right to remain silent and his Sixth Amendment right to counsel.

We review the denial of a motion to suppress to determine whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law. *State v. Biber*, 365 N.C. 162, 167-168, 712 S.E.2d 874, 878 (2011). The voluntariness of a defendant's waiver of his *Miranda* rights are conclusions of law reviewed *de novo*. *State v. Knight*, 369 N.C. 640, 646, 799 S.E.2d 603, 608 (2017).

The Fifth Amendment guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The privilege against self-incrimination is "fulfilled only when the person is guaranteed the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will.'" *Miranda v. Arizona*, 384 U.S. 436, 460 (1966). Our Supreme Court has held:

> The prosecution is prohibited from using any statements resulting from a custodial interrogation of a defendant unless, prior to questioning, the defendant had been advised of his right to remain silent; that any statement may be introduced as evidence against him; that he has the right to have counsel present during questioning; and that, if he cannot afford an attorney, one will be appointed for him.

State v. Simpson, 314 N.C. 359, 367, 334 S.E.2d 53, 58-59 (1985). Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. *Miranda* applies "whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 293 (1980).

We conclude that any error by the trial court admitting Defendant's pretrial statements was harmless beyond a reasonable doubt, as Defendant consented to his counsel admitting during the trial to the jury that he killed the victim and later testified that he killed the victim.

Even if Defendant did not waive any objection by his trial admissions, we conclude the trial court did not err in admitting Defendant's pre-trial confessions. Regarding Defendant's pre-trial confessions, the trial court found that (1) Defendant was in custody at the time he led the detective to Mr. Davis's body, (2) the State did not elicit any response to custodial interrogation through the detective, and (3) the body and all derivative evidence from its discovery would have been inevitably

discovered based on the interview of Defendant after waiving his *Miranda* rights.

Defendant argues that his statements about the location of the body as he was being transported to the police station prior to receiving any *Miranda* warnings were made in response to the detective's statement that the victim's family needed to know where the body was hidden. Defendant argues that the Detective's statement rendered his statement about the body's location involuntary.

Assuming, *arguendo,* Defendant is correct that his statements to police made during the transport to the police station were involuntary (and, therefore, in violation of *Miranda*), this deficiency was cured by the fact that Defendant later confessed to the killing at the police station during his formal interrogation *after* receiving *Miranda* warnings. *See Or v. Elstad*, 470 U.S. 298, 315-16 (1985) (statements made by a defendant to police prior to being taken to the police station and prior to receiving *Miranda* warnings did not taint his subsequent waiver at the police station after being read his rights).

We next address Defendant's statements made after being informed of his *Miranda* rights.

"[A] defendant may waive effectuation of these rights by a voluntary, knowing, and intelligent waiver. Whether a waiver is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused." *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59.

> A court's waiver inquiry has two distinct dimensions. First, a court must determine whether the waiver was 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.' Second, a court must determine that the waiver was knowing and intelligent – that is, that it was 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'

State v. Knight, 369 N.C. 640, 644, 799 S.E.2d 603, 606 (2017). Whether a waiver is knowingly and intelligently made, is also based on the following factors:

> The defendant's familiarity with the criminal justice system, length of interrogation, and amount of time without sleep are merely a few of many factors to be considered. Other considerations include whether defendant was in custody, whether her *Miranda* rights were violated, whether she was held incommunicado, whether there were threats of violence, whether promises were made to obtain the confession, the age and mental condition of defendant, and whether defendant had been deprived of food.

State v. Kemmerlin, 356 N.C. 446, 458, 573 S.E.2d 870, 880-881 (2002).

Here, Defendant signed a waiver before his police interrogation and shared information he previously shared with the detective. Although the statements Defendant previously shared with the detective during the transport were made prior to receiving *Miranda* warnings, the trial court found that the statements shared after Defendant waived his *Miranda* rights were obtained lawfully.

1. Voluntariness of Waiver

A waiver is made voluntarily if "it was the product of a free and deliberate

choice rather than intimidation, coercion, or deception." *See State v. Knight*, 369 N.C. 640, 644, 799 S.E.2d 603, 606 (2017).

At the time of the police interrogation, Defendant signed the waiver without intimidation, coercion, or deception by police. He knew he was going to be interrogated as the detective had shared this with him prior to his signing of the waiver. Defendant was also read his *Miranda* rights before he signed the waiver. Thus, having all the information set before him, Defendant made the deliberate choice to sign this waiver. Since he voluntarily waived his *Miranda* rights, statements he made after signing this waiver were lawfully obtained.

2. Knowing and Intelligent Waiver

Additionally, Defendant made this waiver with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *See Knight*, 369 N.C. at 644, 799 S.E.2d at 606. The detective read Defendant his *Miranda* rights before Defendant signed the waiver. Thus, Defendant knew that what he shared after signing the waiver could potentially be used against him.

Defendant's only argument that he did not knowingly and intelligently sign the waiver was due to his possible intoxication at the time.

A defendant's mental condition is a factor in evaluating whether a defendant knowingly waived his *Miranda* rights. *State v. Kemmerlin*, 356 N.C. 446, 458, 573 S.E.2d 870, 881 (2002). However, there are seven other factors to evaluate and "[t]he presence or absence of any one of these factors is not determinative." *Id*. Whether a

waiver is knowingly and intelligently made, is also based on the following factors:

> (1) a defendant's familiarity with the criminal justice system, (2) the length of a defendant's interrogation, (3) the amount of time a defendant was without sleep, (4) whether a defendant was held incommunicado, (5) whether threats of violence were made against a defendant, (6) whether promises were made to defendant to obtain a statement, (7) whether a defendant was deprived of food, and (8) a defendant's age and mental condition.

Kemmerlin, 356 N.C. at 458, 573 S.E.2d at 881.

Defendant testified that he did drugs the weekend of Mr. Davis's death and specified how long each drug would have caused him to be high. Based on his own testimony, he would no longer have been impaired during the police interrogation. Additionally, the length of the interrogation was a reasonable 40 minutes for a murder investigation. Defendant was not held for a long period of time nor were threats of violence made against him. Promises were not made to Defendant in order to obtain a statement from him and he was not deprived of food. Lastly, Defendant, though young, was not a teenager, but rather was 23 at the time of the interrogation.

We conclude that Defendant made statements voluntarily, knowingly, and intelligently. As a result, these statements did not violate his *Miranda* rights.

Even so, we note Defendant did not timely file his motion to suppress. When the State provides a defendant with at least 20 working days of notice of its intent to use pre-trial statements made by him at trial, the defendant must move to suppress that evidence pre-trial. N.C. Gen. Stat. § 15A-975 (2021).

Here, the State filed and served its discovery disclosure on 26 June 2020, which stated that it intended to use all statements made by Defendant. The trial began on 27 September 2021, and Defendant did not move to suppress his statements pre-trial. Instead, Defendant's counsel informed the trial court during his opening statement that Defendant would be confessing to killing Mr. Davis.

Accordingly, we hold that admission of Defendant's confession did not constitute reversible error.

B. Voluntary Intoxication Jury Instruction

Defendant next argues the jury instructions prejudiced him because there was no voluntary intoxication instruction for the charge of robbery with a dangerous weapon and the voluntary intoxication charge for first-degree murder was misleading. We disagree for the following reasons.

A defendant is entitled to instructions on voluntary intoxication when there is substantial evidence that the defendant was so intoxicated that he or she could not form the requisite intent to commit a crime. *State v. Mash*, 323 N.C. 339, 346, 372 S.E.2d 532, 536 (1988). This Court should correct the jury instruction only if it prejudiced the defendant. N.C. Gen. Stat. § 15A-1442(4)(d) (2021). Thus, the defendant must show that "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached." N.C. Gen. Stat. § 15A-1443(a) (2021).

A jury instruction issue is preserved for appellate review when a party requests

an instruction, the judge expressly denies the request, and further objection would be useless. *State v. Hooper*, 382 N.C. 612, 625, 879 S.E.2d 549, 557 (2022). An unpreserved instruction error is reviewed for plain error. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012).

In the instant case, Defendant did not preserve the issue regarding the voluntary intoxication instruction for the robbery charge. It would have been preserved if Defendant requested an instruction, the judge denied the request, and further objection would be useless. *State v. Hooper*, 382 N.C. 612, 625, 879 S.E.2d 549, 557 (2022). However, the instruction given to the jury was not objected to at trial. Thus, it is subject to plain error review.

To constitute plain error, "a defendant must demonstrate that a fundamental error occurred at trial." *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. And that "the error had a probable impact on the jury's finding that the defendant was guilty." *Id.*

In this case, the lack of a voluntary intoxication instruction for the robbery with a dangerous weapon charge did not affect the outcome. The evidence tended to show that Mr. Davis's guns were in Defendant's shed. Thus, the evidence, reasonably construed, tended to show the Defendant had entered Mr. Davis's house to steal the guns and thus, the State had sufficient evidence to find Defendant guilty of robbery with a dangerous weapon.

Additionally, the trial court did not err, much less plainly err, by not altering the voluntary intoxication instruction for the first-degree murder charge because the

instruction did not prejudice Defendant. There was sufficient evidence of premeditation and deliberation as Mr. Davis's guns and blood were found in the shed where Defendant resided, Defendant led police to Mr. Davis's body, and Defendant admitted to killing Mr. Davis. Thus, the evidence, reasonably construed, tended to show the Defendant had committed first-degree murder and the State had sufficient evidence to find Defendant guilty of first-degree murder.

Accordingly, we hold both that the trial court did not plainly err by not including a voluntary intoxication instruction for the charge of robbery with a dangerous weapon nor by not altering the jury instruction for first-degree murder.

C. Cruel and Unusual Punishment

Defendant finally argues that his sentence to life in prison without parole violates the Eighth Amendment's prohibition against cruel and unusual punishment because he was 23 when he committed the crime. We disagree.

The Eighth Amendment provides that cruel and unusual punishments shall not be inflicted. U.S. Const. amend. VIII. It is applicable to the states through the Fourteenth Amendment. *Roper v. Simmons*, 543 U.S. 551, 555 (2005). Age is an influencing factor in sentencing when an offender is under 18:

> States may categorically prohibit life without parole for all offenders under 18. Or states may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or states may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth. States may also establish rigorous

> proportionality or other substantive appellate review of life-without-parole sentences. All of those options, and others, remain available to the states.

Jones v. Mississippi, 141 S. Ct. 1307, 1323 (2021). In fact, a defendant under the age of 18 may not be sentenced to life-without-parole for a non-homicide crime. *Graham v. Florida*, 560 U.S. 48, 50 (2010). "Community consensus, while entitled to great weight, is not itself determinative of whether a punishment is cruel and unusual" and "the task of interpreting the Eighth Amendment remains the responsibility of the U.S. Supreme Court." *Id.* The Court considers "the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question" in addition to "whether the challenged sentencing practice serves legitimate penological goals." *Id.*

In the case at bar, Defendant received a mandatory life-without-parole sentence which is cruel and unusual punishment for an 18-year-old if it was for a non-homicide crime. However, Defendant is 23 and did not commit a non-homicide crime so the trial court was not required to consider his age when sentencing Defendant.

Accordingly, we hold that Defendant's life-without-parole sentence does not constitute a cruel and unusual punishment under the Eighth Amendment.

III. Conclusion

We conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Chief Judge STROUD and Judge CARPENTER concur.

Report per Rule 30(e).