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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-277

Filed 5 March 2024

Bladen County, No. 17 CRS 051779

STATE OF NORTH CAROLINA

v.

GABRIEL JAMES MCDOWELL, Defendant.

Appeal by Defendant from judgment entered 12 August 2022 by Judge Douglas B. Sasser in Bladen County Superior Court. Heard in the Court of Appeals 18 October 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Caden W. Hayes, for the State.

Marilyn G. Ozer for Defendant.

GRIFFIN, Judge.

Defendant Gabriel James McDowell appeals from the trial court's judgment entered upon a jury's verdict finding him guilty of first-degree murder. Defendant contends he is entitled to a new trial because the trial court erred by allowing the State to admit evidence of: (1) a video interview of an inmate who had spoken with Defendant for corroboration; and (2) Defendant's confession obtained through

unconstitutional custodial placement among adults. We hold Defendant received a fair trial, free from prejudicial error.

I. Factual and Procedural Background

This case arises from the murder of Charles Leon Leach. Evidence at trial tended to show Leach's girlfriend, Ms. Bryant, arrived at Leach's home on the evening of 6 December 2017, expecting to prepare dinner there. She found it difficult to open the front door because a large television was blocking the entryway. Bryant worked her way inside, where she noticed that fresh wood had been arranged in the fireplace but not lit. She then went into Leach's bedroom and found his body on the bed, covered with a blanket.

Leach's home showed signs of a struggle. Blood marks on the floor appeared as if someone had been dragged across the kitchen and hallway, into the bedroom. Blood stains were scattered around the kitchen, bedroom, front door, and on logs near the fireplace. Leach suffered cuts to his neck, multiple stab wounds to his back, and blunt force trauma to the back of his head.

Defendant's friend, Seneca Spaulding, lived next-door to Leach with his uncle, Wilbur McDuffle. While sitting inside his truck on the evening of December 6, McDuffle saw Defendant enter McDuffle's home wearing blue sweatpants then leave sometime later wearing only shorts. Spaulding discovered a pair of bloodied blue sweatpants in his bedroom when he returned home that evening. Forensic analysis later showed the blood on the sweatpants matched Leach's DNA.

When officers arrived at the scene, they collected the sweatpants from Spaulding's room. Captain Johnson of the Bladen County Sheriff's Office found Defendant, then age sixteen, outside of McDuffle's house. Captain Johnson, Defendant, and Defendant's mother spoke inside of Captain Johnson's patrol car. Defendant told Captain Johnson he had gone inside Leach's home, but Leach was already deceased and covered with a blanket when he went inside. Defendant said that he changed into shorts and then went to church but did not report the murder. Captain Johnson asked Defendant and his parents to follow him to the Sheriff's Office.

Deputies interviewed Defendant three times at the Sheriff's Office and each time Defendant's story gradually changed. The first interview took place that night. Defendant said, when he went to Leach's house that day, he saw a man sitting in Leach's truck and another man running out of the house. Leach was dying on his bed when Defendant entered the house. The next morning, Defendant returned to the Sheriff's Office, at which time he told deputies the two men were actively assaulting Leach when he entered Leach's home, and that the two men forced him to help them dispose of Leach's body. The third interview took place two weeks later on 20 December 2017. Defendant again told the officers the two men forced him to help them dispose of Leach's body. Defendant explained that the men had beaten Leach with a fire log, moved him from room to room, then slashed Leach's throat in the

bedroom. Defendant identified the two men to deputies via their street names and Facebook profiles.

Officers arrested Defendant and the other men for the murder of Leach and placed Defendant in the Columbus County jail. There Defendant told a different version of events to an inmate named Curtis Hollingsworth. Initially, Defendant maintained the story that two other men had beaten Leach, and he was forced to help them dispose of the body. Defendant eventually told Hollingsworth that he had gone into Leach's home that day to steal from Leach, and Leach had caught him. Defendant and Leach got "into a little tussle," during which Defendant beat Leach with a log and cut him with a knife. Defendant then tried, unsuccessfully, to clean up the scene. He admitted that he had named the other two men because he did not like them. Hollingsworth relayed this information to the Sheriff's Office after Defendant told him that he intended to kill his own mother and grandmother if he got out of jail.

On 8 January 2018, a grand jury indicted Defendant for first-degree murder. On 12 March 2022, Defendant's charge of first-degree murder came on for jury trial in Bladen County Superior Court. During trial, the State called twelve witnesses and introduced 290 exhibits into evidence. Among the witnesses, the State called Hollingsworth to testify to what Defendant had told him while the two inmates were in jail. The State then introduced a video of a prior conversation between Captain Johnson and Hollingsworth to corroborate his testimony on the stand. Defendant

failed to object to Hollingsworth's testimony, but he did object to the introduction of the video. Following a *voir dire* viewing of the video, the trial court overruled Defendant's objection and admitted the video into evidence. The court gave the jury a limiting instruction immediately before and after playing the video, and again during jury instructions.

The jury found Defendant guilty of first-degree murder. The trial court conducted a sentencing hearing, in which it considered Defendant's juvenile status alongside mitigating and aggravating factors, including the severity of the crime, Defendant's home life, and Defendant's conduct after the crime occurred. The court then entered judgment on the jury's verdict and sentenced Defendant to life imprisonment with the possibility of parole.

Defendant gave timely notice of appeal in open court.

II. Analysis

Each of Defendant's arguments arises from the results of his custodial placement alongside adult inmates at the Columbus County jail. Defendant argues the trial court erred by admitting: (1) Hollingsworth's video conversation because it was not corroborative of other evidence; and (2) Defendant's confession because it was the result of unconstitutional treatment of a minor in custody.

A. Hollingsworth's Video Testimony

During trial, the State presented Hollingsworth's video conversation as corroborative evidence. Defendant contends the trial court erred by admitting

Hollingsworth's video into evidence because it was "not corroborative, but added facts to which Hollingsworth had not testified to under oath."

"The standard of review for this Court assessing evidentiary rulings is abuse of discretion." *State v. Boston*, 165 N.C. App. 214, 218, 598 S.E.2d 163, 166 (2004) (citing *State v. Meekins*, 326 N.C. 689, 696, 392 S.E.2d 346, 350 (1990)). "An abuse of discretion occurs when a ruling is 'manifestly unsupported by reason, which is to say it is so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Taylor*, 362 N.C. 514, 538, 669 S.E.2d 239, 260 (2008) (citation omitted). A witness's prior statements are evidentiary, and thus "[t]he trial court has wide latitude in deciding when a prior consistent statement can be admitted for corroborative . . . purposes." *State v. Call*, 349 N.C. 382, 410, 508 S.E.2d 496, 513 (1998).

"Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain the testimony of another witness." *State v. Rogers*, 299 N.C. 597, 601, 264 S.E.2d 89, 92 (1980). The admissibility of prior statements as corroborative evidence turns on their relationship to the content of statements made during trial, depending upon whether they confirm those statements, contradict them, or present new information:

> In order to be corroborative and therefore properly admissible, the prior statement of the witness need not merely relate to specific facts brought out in the witness's testimony at trial, so long as the prior statement in fact tends to add weight or credibility to such testimony. . . .

> However, the witness's prior statements as to facts not referred to in his trial testimony and not tending to add weight or credibility to it are not admissible as corroborative evidence. Additionally, the witness's prior contradictory statements may not be admitted under the guise of corroborating his testimony.
>
> In other words, where testimony which is offered to corroborate the testimony of another witness does so substantially, it is not rendered incompetent by the fact that there is some variation.

State v. Lloyd, 354 N.C. 76, 103–04, 552 S.E.2d 596, 617 (2001) (internal citations, quotation marks, and editing marks removed).

"[I]t is well established that . . . corroborative evidence may contain new or additional facts when it tends to strengthen and add credibility to the testimony which it corroborates." *State v. Farmer*, 333 N.C. 172, 192, 424 S.E.2d 120, 131 (1993) (citations omitted). As long as the content of the prior statements is substantially corroborative, "'variations affect only the weight of the evidence which is for the jury to determine.'" *Lloyd*, 354 N.C. at 104, 552 S.E.2d at 617 (quoting *State v. Benson*, 331 N.C. 537, 552, 417 S.E.2d 756, 765 (1992)).

Here, Hollingsworth testified in-person that Defendant said he was in Leach's house trying to steal something when Leach came home and caught him. Defendant and Leach got into a "tussle," during which Defendant cut Leach's throat with a knife and beat him with a log. Defendant told Hollingsworth the fight began in the living room, ended in Leach's bedroom, and that he had hidden his bloodied clothes in Spaulding's bedroom next-door. The State also had Hollingsworth testify as to

statements Defendant made about framing the other two men.

In the video, Hollingsworth told Captain Johnson a substantially similar story accompanied by additional, contextual facts. Notably, Hollingsworth said that Defendant had stolen cocaine from Leach in the past. He described that Defendant had gone into Leach's home the day before the murder to steal items to pawn, and Leach had caught him. When it happened again the next day, December 6, Leach and Defendant fought and Leach was killed. Hollingsworth gave a more elaborate description of Defendant's actions against Leach in the video, adding more brutality to their fight and that Defendant had no trouble beating Leach because Leach was small. Hollingsworth also told Captain Johnson that Defendant regretted the crime but would do it again.

The trial court did not err in admitting Hollingsworth's video conversation as corroborative evidence over Defendant's objection, because its contents were primarily the same as his testimony at trial, adding weight and credibility to his testimony. In the video, Hollingsworth told Captain Johnson the same series of events explained at trial—that Defendant admitted to murdering Leach, intended to steal from Leach when he entered Leach's home, and beat and cut Leach when he got caught. Defendant's prior attempt to steal from Leach and his prior theft of cocaine from Leach added credibility and weight to Hollingsworth's testimony that Defendant intended to steal from Leach on the day Leach was murdered. The additional facts presented in the video were neither immaterial nor contradictory to Hollingsworth's

testimony and did not add any significantly inculpatory evidence that was not already before the jury. The depravity of Defendant's mental state regarding the events and the brutality of the fight were apparent from the description of Leach's home. Hollingsworth's video conversation was properly admitted into evidence for corroborative purposes.

B. Defendant's Confession

Defendant argues, alternatively, that Hollingsworth's in-person testimony should have been excluded from trial because it contained Defendant's confession to the crime, obtained through unconstitutional means. Defendant contends that his "confession was the functional equivalent of an interrogation as it was the result of actions of the sheriff's deputies operating the jail whose repeated violations of statutes requiring sight and sound separation facilitated the prohibited interactions between [Defendant] and the group of adult inmates."

Defendant concedes he failed to object to the admission of Hollingsworth's testimony during trial and requests that we review the trial court's failure to intervene on its own for plain error. "[P]lain error review is available in criminal appeals for challenges to jury instructions and evidentiary issues[.]" *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 196, 657 S.E.2d 361, 364 (2008) (citations omitted). "Before deciding that an error by the trial court amounts to 'plain error,' [this Court] must be convinced that absent the error the jury probably would have reached a different verdict." *State v. Walker*, 316 N.C. 33, 39, 340 S.E.2d

80, 83 (1986) (citation omitted).

Defendant contends that his placement among adults and the resulting testimony were unconstitutional on two grounds. First, that constitutional and statutory law requires a juvenile to be housed separately from adults. Second, that allowing Hollingsworth to speak with Defendant was an impermissible police-sanctioned interrogation of a defendant post-*Miranda*. We cannot agree that either alleged error would have caused the jury to reach a different verdict than they did.

Defendant cites to a history of the Supreme Court of the United States's case law echoing how a juvenile's youth belies a lack of maturity, leading to a higher level of susceptibility and vulnerability that is not characteristic of an adult's judgment. *See, e.g., Miller v. Alabama*, 567 U.S. 460, 471–72 (2012). Defendant asserts the Juvenile Justice and Delinquency Prevention Act requires that states, in order to receive federal funding, must develop plans which "provide that [] juveniles alleged to be or found to be delinquent . . . will not be detained or confined in any institution in which they have sight or sound contact with adult inmates[.]" 34 U.S.C. § 11133(12)(A) (2021).

However, presuming the JJDPA applies in this case, the terms of the act remove Defendant's circumstances from the purview of the act. Under the JJDPA, juveniles are not adult inmates, and adult inmate is defined as "an individual who [] has reached the age of full criminal responsibility under applicable State law; and [] has been arrested and is in custody for or awaiting trial on a criminal charge, or is

convicted of a criminal offense[.]" 34 U.S.C. § 11103 (2017). In December 2017, when Defendant was arrested and placed in custody on a criminal charge, the age of majority for criminal defendants charged with a B-1 felony under applicable North Carolina law was sixteen. *See* N.C. Gen. Stat. §§ 7B-1501(7), 7B-1604 (2017). Defendant was sixteen years old. Defendant was, therefore, not a juvenile subject to the provisions of the JJDPA when he was arrested and placed in Columbus County jail among adults in December 2017.

In an effort to safeguard the right against self-incrimination, under *Miranda v. Arizona*, and the Fifth and Sixth Amendments to the U.S. Constitution, a criminal defendant must be informed of their right to counsel prior to any custodial interrogations, and, once represented by counsel, may not be interrogated without counsel present. *See State v. Golphin*, 352 N.C. 364, 406, 533 S.E.2d 168, 199 (2000); *State v. Detter*, 298 N.C. 604, 620–21, 260 S.E.2d 567, 580 (1979). To violate this principle, an elicitation of information from a defendant must constitute an interrogation *and* be custodial. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

"The term 'interrogation' is not limited to express questioning by law enforcement officers, but also includes 'any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.'" *Golphin*, 352 N.C. at 406, 533 S.E.2d at 199 (citation omitted). An interrogation may occur when an individual not ordinarily associated with the State is directed to speak with the defendant on the State's behalf as an

agent of the State. *State v. Taylor*, 332 N.C. 372, 381–82, 420 S.E.2d 414, 419–20 (1992).

However, no interrogation occurs when that individual voluntarily speaks with the defendant on their own and then relays information gained to the State. *Id.* In *State v. Taylor*, the defendant's cellmate spoke with the defendant and then requested an opportunity to share what he had learned with the State. *Id.* The cellmate repeated this process multiple times, and each time the State accepted his request to relay information on the defendant. *Id.* The cellmate was never directed to speak with the defendant, never promised or given anything in return for his information, and was asked to sign an acknowledgement that he was not acting on the State's behalf. *Id.* Our Supreme Court held that "all evidence tended to show that [the cellmate] was not an agent of the State." *Id.* at 383, 420 S.E.2d at 420.

This case is similar to *Taylor*. Defendant spoke to Hollingsworth on his own volition while socializing in the communal, general population area of the jail. Defendant has shown no evidence that Captain Johnson, or any other deputy, directly asked Hollingsworth to begin conversations with or to continue questioning Defendant. Hollingsworth requested to speak with Captain Johnson multiple times, but the evidence does not show Captain Johnson ever requested to speak with Hollingsworth. In the video published to the jury, Captain Johnson does tell Hollingsworth that he would speak with Hollingsworth's attorney to "see what we can do for you," but he does not guarantee anything in exchange for the information.

We hold the evidence tends to show that Hollingsworth was not an agent of the state, and therefore, Defendant was not subjected to a custodial interrogation in violation of his constitutional rights. *See id.*

It is undisputed Defendant may have been less mature than his adult co-inmates, but Defendant has failed to present any authority showing his placement was unconstitutional or in violation of a statutory mandate. The trial court did not err, much less commit plain error.

C. Ineffective Assistance of Counsel

Defendant additionally presents an argument for ineffective assistance of counsel but asserts that the cold record is insufficient for resolution of this argument on direct review. Defendant requests this Court to dismiss his claim without prejudice, to be brought in a subsequent motion for appropriate relief. *See State v. Fair*, 354 N.C. 131, 167, 557 S.E.2d 500, 525 (2001) ("[S]hould the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant's right to reassert them during a subsequent MAR proceeding."). We hold the cold record is sufficient for our review and deny Defendant's claim for ineffective assistance of counsel.

"An IAC claim must establish both that the professional assistance [the] defendant received was unreasonable and that the trial would have had a different outcome in the absence of such assistance." *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984)). Defendant's IAC claim turns on his counsel's failure to

object to the alleged constitutional errors discussed above. Because we hold that the trial court did not err, it is unlikely the jury would have returned a different verdict had counsel successfully objected and the evidence been excluded. Defendant's IAC claim is without merit.

III. Conclusion

For the foregoing reasons, we hold Defendant received a fair trial, free from error and with effective assistance of counsel. There is no error in the jury's verdict or in the judgment entered thereon.

NO ERROR.

Chief Judge DILLON and Judge TYSON concur.

Report per Rule 30(e).