Third District Court of Appeal

State of Florida

Opinion filed October 2, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1461
Lower Tribunal No. 15-22546

Lamont Tavius Lubin,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mark Blumstein, Judge.

Law Office of Roderick D. Vereen, Esq., P.A., and Roderick D. Vereen, for appellant.

Ashley Moody, Attorney General, and Joanne Diez, Assistant Attorney General, for appellee.

Before EMAS, C.J., and FERNANDEZ and MILLER, JJ.

EMAS, C.J.

Lamont Tavius Lubin appeals from a conviction and sentence for attempted second-degree murder. He raises two issues, neither of which is meritorious.

Lubin first contends that the trial court erred in denying Lubin's motion for judgment of acquittal. Upon our de novo review, Pagan v. State, 830 So. 2d 792, 803 (Fla. 2002); Giralt v. State, 935 So. 2d 599, 601 (Fla. 3d DCA 2006), and viewing the evidence in a light most favorable to the State, we hold that the State presented sufficient evidence to sustain a conviction and that a rational trier of fact could find, beyond a reasonable doubt, that Lubin committed the crime of attempted second-degree murder with a firearm. See Pagan, 830 So. 2d at 803.

Lubin also contends that the trial court erred in admitting Williams[1] rule evidence of Lubin's prior crimes, wrongs or acts upon the victim. See § 90.404(2)(a), Fla. Stat. (2018) (providing: "Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity").

The State timely filed its notice of intent to offer this evidence (see section 90.404(d)1.) The trial court held a hearing on the State's notice, but did not issue a definitive ruling, thus requiring Lubin to make a contemporaneous objection when

[1] Williams v. State, 110 So. 2d 654 (Fla. 1959).

the State presented such evidence during trial. See § 90.104(1), Fla. Stat. (2018) (providing: "If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.") Lubin failed to make a contemporaneous objection to this evidence at trial, and thus failed to preserve the issue for appeal.[2] See Johnson v. State, 969 So. 2d 938 (Fla. 2007) (noting that a claim of error in the admission of evidence is not preserved where the grounds for reversal argued on appeal are not the same as those raised in the objection below); Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982) (holding that "in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below").

[2] We also find without merit Lubin's ancillary claim that the trial court erred in failing to provide a contemporaneous limiting instruction to the jury when the Williams rule evidence was admitted. There is no error because no request for such a contemporaneous limiting instruction was made. See Robertson v. State, 829 So. 2d 901 (Fla. 2002) (holding that when Williams rule evidence is admitted the trial court shall, if requested, contemporaneously charge the jury on the limited purpose for which the evidence is received and is to be considered); § 90.404(2)(d)2, Fla. Stat. (2018) (providing: "When the [Williams rule] evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.") (emphasis added). Of note, and consistent with that statute, the trial court, in its final charge to the jury, gave an instruction on the limited use of the Williams rule evidence. See Fla. Std. J. Inst. (Crim.) 3.8(a).

Further, even if the issue had been preserved, we conclude that the trial court did not abuse its discretion in admitting this evidence. See Brookins v. State, 228 So. 3d 31, 37 n.6 (Fla. 2017) (noting that a trial court's ruling on the admission of collateral crimes evidence is reviewed for an abuse of discretion); Durousseau v. State, 55 So. 3d 543 (Fla. 2010) (noting that the test for admissibility of Williams rule evidence is relevancy; holding that trial court did not abuse its discretion in admitting, in the guilt phase of a capital murder trial, collateral crimes evidence that defendant had previously committed two other murders, where court determined the evidence was relevant, weighed the probative value against the danger of unfair prejudice, and ensured that such evidence did not become an impermissible feature of the trial). See also Dennis v. State, 817 So. 2d 741 (Fla. 2002) (holding, in a murder prosecution, that collateral evidence of prior incidents in which the defendant had stalked, threatened, and assaulted the victim was properly admitted as relevant to establish the defendant's motive or intent); Simmons v. State, 790 So. 2d 1177 (Fla. 3d DCA 2001) (holding that evidence of the defendant's prior violent acts upon his girlfriend were relevant and admissible to establish his intent to commit the charged crimes of aggravated battery, aggravated assault and armed kidnapping upon his girlfriend); Burgal v. State, 740 So. 2d 82 (Fla. 3d DCA 1999) (holding that prior incidents of domestic violence by the defendant against the victim were properly admitted to prove motive, intent, and premeditation in prosecution for

attempted first-degree murder); Brown v. State, 611 So. 2d 540 (Fla. 3d DCA 1992) (holding that evidence the defendant had a rocky relationship with the victim and had threatened to kill her if he caught her with another man was relevant to establish motive in a prosecution for battery and attempted second-degree murder).

Affirmed.