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NO. COA 05-801

NORTH CAROLINA COURT OF APPEALS

Filed: 20 June 2006

STATE OF NORTH CAROLINA

v.
BRANDI GISH,
Defendant.

Onslow County
No. 03 CRS 60393

Defendant appeals from judgment entered 20 January 2005 by Judge Jay D. Hockenbury in the Superior Court in Onslow County. Heard in the Court of Appeals 9 February 2006.

Attorney General Roy Cooper, by Assistant Attorney General Gregory P. Roney, for the State.

Sue Genrich Berry, for defendant-appellant.

HUDSON, Judge.

On 25 January 2005, a jury convicted defendant of conspiracy to commit felony robbery with a dangerous weapon and attempted robbery with a dangerous weapon. The trial court sentenced defendant to an active term of 51 to 71 months. Defendant appeals. We conclude that there was no error.

The evidence tends to show that on 15 December 2003, at 11:35 a.m., defendant entered the Handy Mart convenience store in Holly Ridge and asked the clerk, Deborah Silance, for driving directions. Silance reviewed a map with defendant and discussed driving

directions with her. Defendant bought a drink and left the store. The store's surveillance camera recorded the interaction between defendant and Silance. At 11:54 a.m., the surveillance camera recorded defendant's boyfriend, Raphael Gonzalez, and an unrelated member of defendant's household, Mathew Avery, entering the store with a handgun and ordering Silance to the ground. Avery and Gonzalez were unable to open the cash register before new customers approached the store. They ordered Silance to help the customers as if nothing had happened. Holly Ridge Police Sergeant James Otto arrived at the store after being summoned by the store's silent hold-up panic alarm. Otto detained Gonzalez as Gonzalez and Avery exited the store. Avery ran to a nearby wooded area. Defendant and Patrick Connolly, another unrelated member of defendant's household, were waiting near the store in Connolly's car and drove after Avery, who entered the backseat of the car and quickly removed his outer layer of clothing. Police approached the car and asked Connolly to drive to the store to answer questions. Connolly let Avery out of the car and drove to the store with defendant. Silance suffered a heart attack immediately following the attempted robbery and was hospitalized.

At trial, Connolly testified that after defendant entered the Handy Mart and returned to the car, she described the location of the store's surveillance cameras to Connolly, Gonzalez and Avery. Connolly testified that he, defendant, Avery and Gonzalez planned the robbery while still in Connolly's car. Connolly moved into the household with defendant as a teenager after he refused to follow

the rules in his parents' home. He has a low IQ and at trial his mother, Melissa Connolly, testified about his mental disabilities and prescription medication.

Defendant argues that the trial court erred by admitting improper character testimony from Melissa Connolly and that this error prejudiced defendant. In particular, defendant objects to Ms. Connolly's testimony that her son has difficulty getting his thoughts across and that he gets confused when talking about time frames, distances, and similar concepts. Defendant asserts that the State called Ms. Connolly in order to "shore up the believability" of her son's trial testimony, "to explain away any weaknesses in his trial testimony," by testifying about his cognitive difficulties. Defendant contends that this testimony should have been excluded pursuant to rules 404(a) and 608(b) of the North Carolina rules of evidence. N.C. Gen. Stat. 8C-1, Rules 404 (a) and 608(b) (2004).

N.C. Gen. Stat. § 8C-1, Rule 404(a), provides that "[e]vidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith," except as provided in Rules 607, 608, and 609. *Id.* Rule 608(b) provides that extrinsic evidence of specific instances of conduct of a witness is not admissible for the purpose of attacking or supporting the witness's credibility, other than convictions of crimes as provided in Rule 609. *Id.* We first note that defendant did not properly preserve this alleged error for appeal. To preserve the right to assign error on appeal, the

defendant must make an appropriate and timely objection, and the objection must clearly present the alleged error to the trial court. N.C. Gen. Stat. § 15A-1446(a) (2004); N.C. Gen. Stat § 8C-1, Rule 103 (2004); N.C. R. App. P. 10(b)(1) (2004). "A general objection, if overruled, is ordinarily no good, unless, on the face of the evidence, there is no purpose whatever for which it could have been admissible." *State v. Shamsid-Deen*, 324 N.C. 437, 444, 379 S.E.2d 842, 846 (1989).

Here, during Ms. Connolly's testimony, defendant made the following general objection: "I'm going to object to the line of questioning. I'm not sure exactly what this is for." Defendant did not specify any grounds for this objection and the trial court overruled it. On appeal, defendant has not argued that "there is no purpose whatever for which [the evidence] could have been admissible." *Shamsid-Deen* at 444, 379 S.E.2d at 846. Although our courts recognize an objection to a specified line of questioning, N.C. Gen. Stat. § 15A-1446(d)(10) (2004), defendant has failed to specify the line of questioning and failed to specify the grounds. See *State v. Hunter*, 290 N.C. 556, 573, 227 S.E.2d 535, 545 (1976) (holding that defendant failed to object "to a specified line of questioning so as to bring himself within the scope of the rule by asserting, for example, that the line of questions involves testimony irrelevant for stated reason"). We conclude that defendant has not properly preserved this issue for appellate review.

Moreover, we conclude that even if defendant had properly

preserved his objection, his arguments lack merit. Character refers to a generalized description of a person's disposition or a general trait, such as honesty, temperance, or peacefulness: "Is a man honest; is he good natured; is he of a violent temper; is he modest and retiring, or impudent and forward; these all constitute traits of character." *Bottoms v. Kent*, 48 N.C. 161, 167 (1855). Ms. Connolly testified regarding factual matters such as her son's IQ, ability to communicate, and use of prescription medicine, not "specific instances of conduct by characteristics," as asserted by defendant. Additionally, even if Ms. Connolly's testimony had included character evidence, and even if it had been improperly admitted, we conclude that defendant did not meet her burden of proving prejudice. We are not persuaded that there is a reasonable possibility that had the contested testimony been excluded that a different result would have been reached at trial. N.C. Gen. Stat. § 15A-1443(a) (2004).

No error.

Judges TYSON and GEER concur.

Report per Rule 30(e).