

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-1692

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

STATE OF NORTH CAROLINA

v.

Brunswick County  
Nos. 07 CRS 54456, 54459

JAMES DEAN MARTIN

Appeal by Defendant from judgment entered 17 April 2009 by Judge D. Jack Hooks, Jr., in Brunswick County Superior Court. Heard in the Court of Appeals 18 August 2010.

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

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Daniel Shatz, for Defendant-Appellant.*

ERVIN, Judge.

Defendant James Dean Martin appeals from judgments sentencing him to life imprisonment without parole in the custody of the North Carolina Department of Correction based on a jury verdict convicting him of first degree murder and to a consecutive sentence of a minimum of 25 months and a maximum of 39 months imprisonment in the custody of the North Carolina Department of Correction based upon jury verdicts convicting him of robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. After careful consideration of Defendant's challenges to the trial court's judgments in light of the record and the applicable law, we

conclude that Defendant received a fair trial that was free from prejudicial error and that the trial court's judgments should remain undisturbed.

### I. Factual Background

#### A. Substantive Facts

In July of 2007, Defendant James Dean Martin lived with his girlfriend, Whitney Jenkins, and two other friends, Joshua Caudill and his girlfriend, Amber Wood, in a house located on Northwest 10<sup>th</sup> Street in Oak Island. Ms. Jenkins had previously worked at a restaurant owned by Phillip Cook and knew that Mr. Cook carried money in a brown leather briefcase when he left the restaurant each night.

Having previously proposed that the group rob Mr. Cook in order to buy heroin and pay rent, Ms. Jenkins reiterated the idea to her housemates on the night of 8 July 2007. At that point, the group decided that Defendant and Mr. Caudill would ambush Mr. Cook when he arrived at his home and that Ms. Jenkins and Ms. Wood would wait near Mr. Cook's restaurant to alert Defendant and Mr. Caudill when Mr. Cook left the premises.

At 9:30 p.m. to 9:45 p.m., Ms. Wood dropped Defendant and Mr. Caudill off near Mr. Cook's home. Defendant and Mr. Caudill carried wooden bedposts. Subsequently, Ms. Wood and Ms. Jenkins observed Mr. Cook carry a bag of linens to his car, reenter the restaurant, emerge fifteen or twenty minutes later with his briefcase, and drive away. Ms. Wood alerted Mr. Caudill of Mr. Cook's departure, and then drove with Ms. Jenkins to a location

near Mr. Cook's home for the purpose of picking up Defendant and Mr. Caudill.

After Ms. Wood and Ms. Jenkins had waited about five minutes, Defendant called Ms. Wood. In response to Defendant's call, Ms. Wood retrieved Defendant and Mr. Caudill, who were still carrying bedposts and had Mr. Cook's briefcase in their possession. Mr. Caudill mentioned that "they knocked [Mr. Cook] out." Upon returning to their residence, Ms. Wood and Defendant split more than five hundred dollars between the members of the group.

On 9 July 2007, Robert Stogner went to Mr. Cook's home to check on him. Although Mr. Stogner had planned to meet Mr. Cook at Mr. Cook's restaurant, Mr. Cook had not appeared as expected. According to Mr. Stogner, Mr. Cook invariably took the restaurant's table linens, which he would wash, and a briefcase, in which he kept the restaurant receipts for subsequent deposit, with him when he left the restaurant each night. Upon arriving at Mr. Cook's residence, Mr. Stogner found Mr. Cook's body lying face down on a laundry bag on the front porch. Mr. Stogner was sure that Mr. Cook was dead because his body had turned "kind of purple" and "there was blood coming from his nose." After discovering the body, Mr. Stogner returned to the restaurant, called 911, and met the police at Mr. Cook's house.

Detective Kristy Cox of the Oak Island Police Department responded to Mr. Stogner's 911 call. After arriving at Mr. Cook's house, Detective Cox confirmed that Mr. Cook was dead. In addition, Detective Cox concluded that Mr. Cook had sustained a

fractured skull given the presence of blood emanating from his nose and mouth. Detective Cox also noticed a bruise on Mr. Cook's back, a fact suggesting that he had sustained a blow from a blunt object, and other abrasions. Finally, Detective Cox learned that Mr. Cook's briefcase was missing.

A few days later, Ms. Jenkins saw a news report stating that Mr. Cook had died. At that point, the group left Oak Island, with Ms. Jenkins and Defendant traveling to Florida and Ms. Wood and Mr. Caudill traveling to Winston-Salem before joining Ms. Jenkins and Defendant in Florida. However, the entire group returned to Oak Island on 17 July 2007, reaching the Northwest 10<sup>th</sup> Street residence at about 2:00 p.m. On that day, the group snorted crystal meth repeatedly, with their drug ingestion beginning on the ride from Florida to Oak Island and continuing after their return to the Northwest 10<sup>th</sup> Street residence.

During the early morning hours of 18 July 2007, officers of the Oak Island Police Department responded to a 911 call placed by Mr. Caudill from the Northwest 10<sup>th</sup> Street residence. When he called 911, Mr. Caudill reported that he had been assaulted by Ms. Wood's father because Mr. Caudill and Ms. Wood had stolen crystal meth, a computer, and an assault rifle from Ms. Wood's father's roommate. At around 5:45 a.m. that morning, Ms. Wood called 911 in order to report that someone was breaking into the house that the group occupied.

When law enforcement officers responded to Ms. Wood's call, Defendant and Ms. Wood were outside the Northwest 10<sup>th</sup> Street house

"acting out of control." The law enforcement officers who initially came to the Northwest 10<sup>th</sup> Street residence had all four occupants sit on the porch. While they were on the porch, the members of the group were huddled together, shaking, and claiming that people were coming through the woods, watching them, and photographing them. In addition, the members of the group exhibited an exaggerated startle response, fidgeted with their clothes, were wringing their hands, and making inappropriate and nonsensical comments. At the time of his arrival at the residence, Sergeant Loren Lewis of the Oak Island Police Department observed that Defendant had a blister on his lip and an ashy substance under his nose, both of which were signs of drug use. Based upon these observations, Detective Lewis concluded that the group was under the influence of methamphetamine, a drug which can cause hallucinations and delusions.

A protective sweep of the Northwest 10<sup>th</sup> Street residence resulted in the discovery of a crystalline powder in a plate situated on a speaker in the living room. Defendant identified the substance as crystal methamphetamine. All four members of the group admitted having used the crystal methamphetamine; however, none of them acknowledged owning it. After the discovery of the crystalline powder, Sergeant Lewis advised the members of the group of their *Miranda* rights and persuaded them to execute a consent-to-search form. A subsequent search of the residence conducted pursuant to a search warrant revealed the presence of about 30 grams of methamphetamine under a couch. However, no items that

could be connected to the murder of Mr. Cook or to Mr. Cook's residence were discovered during this search.

At the request of Sergeant Lewis, Detective Tony Burke of the Oak Island Police Department came to the Northwest 10<sup>th</sup> Street residence and advised the occupants of their *Miranda* rights. Detective Burke had been involved in the investigation into Mr. Cook's death and had come to consider Defendant and the other members of the group "person[s] of interest" in connection with that investigation. After Detective Burke's arrival, all four members of the group were transferred to the Oak Island police station, with Detective Burke transporting Defendant.

At the time that he was at the Northwest 10<sup>th</sup> Street residence and during the trip to the Oak Island Police Department, Detective Burke refrained from broaching the subject of Mr. Cook's death with Defendant. After Defendant was fingerprinted and processed at the Oak Island Police Department, Detective Burke transported him to the Brunswick County Jail, which is located in Bolivia, about a 20 minute drive from Oak Island. During the trip from Oak Island to Bolivia, Detective Burke activated a recording device that had been installed in his car. In the course of their trip to Bolivia, Detective Burke and Defendant discussed Defendant's drug use. When Detective Burke asked Defendant why the group had called 911 that morning, Defendant stated that he thought that "the police were trying to get [us] to call 911 so that [they] could investigate the murder." When Detective Burke asked what he meant by that statement, Defendant replied that Mr. Caudill and Ms. Wood had

convinced him that the intruder was the ghost of Mr. Cook. In response to Defendant's inquiry about when bond would be set, Detective Burke said that bond would be set by the magistrate after they reached Bolivia.

Detective Burke and Defendant reached the Brunswick County jail shortly after 11:00 a.m. At that point, Detective Burke obtained the assistance of Lieutenant David Crocker of the Brunswick County Sheriff's Department in interviewing the members of the group. Lieutenant Crocker initially interviewed Defendant for about 44 minutes beginning at 11:55 a.m. Lieutenant Crocker advised Defendant of his *Miranda* rights at the beginning of this interview. Defendant did not admit to having had any involvement in the murder or robbery of Mr. Cook during this interview. After his first interview with Defendant, Lieutenant Crocker interviewed Ms. Jenkins for about ten minutes, during which time Ms. Jenkins denied having been involved in the robbery and murder of Mr. Cook. Although Defendant's initial interview was recorded using a hidden camera, the audio equipment did not capture the contents of the interview. As a result, Defendant was interviewed for an additional 35 minutes beginning at some point shortly after 1:00 p.m. Although Defendant reiterated his denial of any involvement in Mr. Cook's murder during this second interview, he implicated Mr. Caudill in Mr. Cook's murder. After Defendant's second interview, Lieutenant Caudill interviewed Ms. Wood for less than five minutes. Shortly thereafter, Lieutenant Crocker interviewed

Mr. Caudill for about 49 minutes. During this interview, Mr. Caudill implicated Defendant in the robbery and murder of Mr. Cook.

At 2:45 p.m., Defendant was returned to the interview room, in which Mr. Caudill was still present. Lieutenant Crocker advised Defendant of his *Miranda* rights once again and informed him that Mr. Caudill had told the investigating officers of Defendant's involvement in the robbery and murder of Mr. Cook. Defendant indicated that he wished to "stay and get it worked out." After Defendant agreed to cooperate, Lieutenant Crocker questioned him for an additional three minutes, during which time Defendant admitted to having hit Mr. Cook once with a post and accused Mr. Caudill of hitting Mr. Cook once or twice with a similar object. Defendant also stated that he and Mr. Caudill had stolen \$560.00 from Mr. Cook's briefcase. After Lieutenant Crocker's third interview with Defendant, Ms. Jenkins was interviewed a second time for eleven minutes beginning at 3:22 p.m. Once again, Ms. Jenkins denied any involvement in the crimes that were the subject of Lieutenant Crocker's investigation. According to Detective Burke, Defendant was not taken before a magistrate until approximately 4:00 p.m. that day, some seven hours following his arrest and after he confessed to his involvement in the robbery and murder of Mr. Cook.

#### B. Procedural History

Warrants for arrest charging Defendant with murdering Mr. Cook, robbing Mr. Cook with a dangerous weapon, and conspiring with Mr. Caudill to rob and murder Mr. Cook were issued on 18 July 2007.

On 5 November 2007, the Brunswick County grand jury returned bills of indictment charging Defendant with murder, robbery with a dangerous weapon, and conspiracy to commit robbery. On 17 March 2009, Defendant filed a motion seeking to have the statements he had made to investigating officers suppressed on the basis of alleged violations of his rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §§ 19, 23, and 24 of the North Carolina Constitution.

The cases against Defendant came on for trial before the trial court and a jury at the 13 April 2009 session of the Brunswick County Superior Court. On 14 April 2009, the trial court entered an order denying Defendant's suppression motion. On 16 April 2009, Defendant made a second, oral motion to suppress his statements to investigating officers predicated on the length of time between his arrest for methamphetamine possession and the time that he was taken before a magistrate in connection with that charge. The following morning, after Defendant submitted a written memorandum of law in support of his second suppression motion, the trial court denied Defendant's second suppression motion.

On 17 April 2009, the jury returned verdicts convicting Defendant of first degree murder on the basis of lying in wait and the felony murder rule, robbery with a dangerous weapon, and conspiracy to commit robbery. After determining that Defendant had no prior record points and should be sentenced as a Level I offender, the trial court consolidated Defendant's convictions for robbery with a dangerous weapon and conspiracy to commit robbery

with a dangerous weapon for judgment and entered judgments imprisoning Defendant for life without parole based on Defendant's first degree murder conviction and to a consecutive term of a minimum of 25 months and a maximum of 39 months imprisonment based on Defendant's convictions for robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon, both sentences to be served in the custody of the North Carolina Department of Correction. Defendant noted an appeal to this Court from the trial court's judgments.

## II. Legal Analysis

### A. Denial of Second Suppression Motion

On appeal, Defendant argues that the trial court erred by denying Defendant's second motion to suppress, which was predicated on Detective Burke's testimony concerning the timing of Defendant's initial appearance before a magistrate. In light of Detective Burke's admission that Defendant was not taken before a magistrate until approximately 4:00 p.m. on 18 July 2007, Defendant argues that the trial court's decision to deny his second suppression motion violated the statutory requirement that an individual placed under arrest be taken "before a judicial official without unnecessary delay." N.C. Gen. Stat. § 15A-501(2); *see also*, N.C.

Gen. Stat. § 15A-511(a)(1).<sup>1</sup> We conclude that the trial court correctly denied Defendant's second suppression motion.

"Our review of a trial court's denial of a motion to suppress is strictly limited to a determination of whether [the trial court's] findings are supported by competent evidence, and in turn, whether the findings support the trial court's ultimate conclusion." *State v. Allison*, 148 N.C. App. 702, 704, 559 S.E.2d 828, 829 (2002) (citing *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)). "[T]he trial court's conclusions of law must be legally correct, reflecting a correct application of applicable legal principles to the facts found." *State v. Golphin*, 352 N.C. 364, 409, 533 S.E.2d 168, 201 (2000) (quoting *State v. Fernandez*, 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997)),

---

<sup>1</sup> In his brief, Defendant also appears to argue that the federal *McNabb-Mallory* rule, *Corley v. United States*, \_\_\_ U.S. \_\_\_, \_\_\_, 179 L. Ed. 2d 443, 450, 129 S. Ct. 1558, 1562 (2009); *Mallory v. United States*, 354 U.S. 449, 454, 1 L. Ed. 2d 1479, 1483-1482, 77 S. Ct. 1356, 1360 (1957); *McNabb v. United States*, 318 U.S. 332, 346, 87 L. Ed. 819, 827, 63 S. Ct. 608, 616 (1943), is a component of federal common law which is "binding on the states through the supremacy clause," *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449, 515 S.E.2d 675 (1999), and, therefore, constitutes a constitutionally-based reason for suppressing the evidence in question pursuant to N.C. Gen. Stat. § 15A-974(1). We do not, however, believe that the principle enunciated in *Virmani* operates to constitutionalize federal criminal procedure rules, such as the *McNabb-Mallory* rule, that rest on federal statutes and the United States Supreme Court's supervisory authority over the lower federal courts. *Id.*, 350 N.C. at 470, 515 S.E.2d at 689-90 (stating that the United States Supreme Court does not have and has disclaimed having any supervisory authority over state courts); see also, *State v. Reynolds*, 298 N.C. 380, 399, 259 S.E.2d 843, 854 (1979) (noting "decisions of the United States Supreme Court to the effect that the *McNabb-Mallory* Rule is not binding on state courts"), *cert. denied*, 446 U.S. 941, 64 L. Ed. 2d 795 (1980). As a result, we will refrain from giving independent consideration to any claim that Defendant may be making based on the *McNabb-Mallory* rule.

*cert. denied*, 532 U.S. 931, 149 L. Ed. 2d 305, 121 S. Ct. 1379 (2001) . As a result, the trial court's "conclusions of law . . . are reviewed *de novo*." *State v. Haislip*, 362 N.C. 499, 500, 666 S.E.2d 757, 758 (2008) (citing *State v. Hyatt*, 355 N.C. 642, 653, 566 S.E.2d 61, 69 (2002), *cert. denied*, 537 U.S. 1133, 154 L. Ed. 2d 823, 123 S. Ct. 916 (2003)). The ultimate inquiry that must be undertaken in connection with appellate review of a trial court order granting or denying a suppression motion is determining "whether the ruling of the trial court was correct . . . and whether the ultimate ruling was supported by the evidence." *State v. Austin*, 320 N.C. 276, 290, 357 S.E.2d 641, 650 (internal citation omitted), *cert. denied*, 484 U.S. 916, 98 L. Ed. 2d 224, 108 S. Ct. 267 (1987).

"[E]vidence will not be suppressed [pursuant to N.C. Gen. Stat. § 15A-974(2)] unless it has been obtained *as a consequence* of the officer's unlawful conduct. . . . The evidence must be such that it would not have been obtained *but for* the unlawful conduct of the investigating officer." *State v. Richardson*, 295 N.C. 309, 323, 245 S.E.2d 754, 763 (1978) (emphases in original). "[N.C. Gen. Stat. §] 15A-974(2) provides that evidence 'obtained as a result' of a substantial violation of the provisions of Chapter 15A must be suppressed upon timely motion, and that the use of the term 'result' in the statute indicated that a causal relationship between a violation of the statute and the acquisition of the evidence sought to be suppressed must exist." *State v. Hunter*, 305 N.C. 106, 113, 286 S.E.2d 535, 539 (1982). In determining whether

an alleged violation of Chapter 15A of the General Statutes is "substantial," the General Assembly has instructed courts to consider "[t]he importance of the particular interest violated," "[t]he extent of the deviation from lawful conduct," "[t]he extent to which the violation was willful," and "[t]he extent to which exclusion will tend to deter future violations of this Chapter." N.C. Gen. Stat. § 15A-974(2).

After noting Detective Burke's redirect testimony that "the defendant was not taken before a magistrate for the offense of possession of methamphetamine until approximately 4 p.m., on the day of arrest," the trial court found as fact in its oral order denying Defendant's second suppression motion that:

. . . . after being interviewed approximately at 11:55 a.m., and thereafter at 1 p.m., at 2:45 p.m., the defendant was brought in for an additional interview with Detective Crocker; I believe Detective Burke was again present. That at that time, the defendant was readvised or reminded of his right to remain silent and asked if he wished to stay in the room and get this ironed out or, 'Do you want to leave?' The defendant asked what was meant by leaving; was informed by Detective Crocker he meant that the defendant would go back to his cell.

The defendant indicated-I can't find the exact words because I left the transcript somewhere-that he wished to stay and discuss matters. The interview thereafter lasted until 2:49 p.m. And during this, the defendant made certain statements which could be deemed as admissions.

That the Court has previously ruled that the defendant was aware of, understood, properly advised of his rights, and those rights were not stayed or those advisements of his rights were not stale. The interview, as

I indicated, lasted-this 2:45 interview lasted until 2:49.

That the Court finds that the defendant, having been taken into custody at approximately 9 a.m., was in custody for six hours or perhaps minutes less by the time the 2:45 interview concluded. While he had made inquiry on the-during his transportation from Oak Island to the sheriff's department at approximately 10:45 a.m., regarding bond, there is otherwise no indication at any time that he asked to cease discussions with law enforcement officials; that he asked for an attorney; that he was tired, asking to sleep-

. . . .

The Court finds at no point did he indicate during any of these interviews that he was tired and did not understand the proceedings; that he did not wish to talk with law-enforcement officials.

That the Court has before it the assertion of counsel that the defendant, had he made bond-that had he been taken before a magistrate would have made a bond and would thereafter not have made a statement.

The Court also notes and finds that the original arrest of this defendant was for the charge of possession of controlled substance, methamphetamine. The defendant additionally at that point was apparently a suspect for the crimes before this Court: first-degree murder, armed robbery, conspiracy to commit robbery with a dangerous weapon.

That during the 10:45 a.m. transportation between Oak Island and Bolivia, some general conversation in which Detective Burke indicated he would like to know more about the events which led to the death of Mr. Cook occurred. That during each of the subsequent interviews the defendant was more pointed when specifically asked regarding any knowledge or involvement he may have had regarding the death of Mr. Cook.

Based upon these findings of fact, none of which have been challenged as lacking adequate evidentiary support, the trial court concluded as a matter of law:

1. That the defendant was carried before a magistrate without undue delay, having considered the charges for which he was then under arrest, as well as the necessary ongoing investigation of an even more significant charge, that being first-degree murder.

The Court concludes that the defendant's interest in and right to being taken before a magistrate for the setting of bond without undue delay was not violated, and that even should the right to have been taken before the magistrate without undue delay ha[ve] been deviated from to some extent, this deviation was, in the scheme of these events, extremely slight.

. . . .

After having considered the case law cited, as well as the statutory authority, the Court concludes that the statements made were not the result of any delay of this defendant having been taken before the magistrate.

The Court further concludes that his motion to suppress the statements, to strike the testimony and evidence regarding those statements and for a mistrial should be denied.

As a result, the trial court "ordered that the defendant's motion to suppress, motion to strike the testimony and evidence, and motion for a mistrial are denied."

According to N.C. Gen. Stat. § 15A-501(2), a "law-enforcement officer" "[u]pon the arrest of a person," "[m]ust, with respect to any person arrested without a warrant and, for purpose of setting bail, with respect to any person arrested upon a warrant or order for arrest, take the person arrested before a judicial official

without unnecessary delay." Similarly, N.C. Gen. Stat. § 15A-511(a)(1) provides that "[a] law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in [N.C. Gen. Stat. §] 15A-501." According to Defendant, the inculpatory statements that he made to Lieutenant Crocker stemmed from a substantial violation of N.C. Gen. Stat. § 15A-501(2) and N.C. Gen. Stat. § 15A-511(a)(1) given that, had he been taken before a magistrate in a timely manner, he would not have made the inculpatory statements that were admitted against him at trial. For that reason, Defendant contends that these inculpatory statements should have been suppressed pursuant to N.C. Gen. Stat. § 15A-974(2).

The fundamental problem with Defendant's argument is that the Supreme Court has rejected similar challenges to the admission of inculpatory statements in a number of earlier cases. In *State v. Littlejohn*, 340 N.C. 750, 459 S.E.2d 629 (1995), the Supreme Court upheld the admissibility of a defendant's confession despite the fact that he had not been taken before a magistrate until thirteen hours after his arrest. *Id.* at 758, 459 S.E.2d at 633-34. Since the defendant in that case had been advised of his *Miranda* rights prior to the beginning of his interrogation by investigating officers and since the information contained in the *Miranda* warnings administered to Defendant was identical to the information which he would have been provided at the time of his initial appearance before a magistrate, the Supreme Court found that

Defendant was not harmed by the failure of the investigating officers to take him before a judicial official in a more expeditious manner. *Id.* Similarly, in *State v. Chapman*, 343 N.C. 495, 471 S.E.2d 354 (1996), the defendant was taken into custody at 9:30 a.m. and interrogated for the majority of the period between the time he was taken into custody and the time that he was taken before a magistrate at 8:00 p.m. *Id.* at 499, 471 S.E.2d at 356. In rejecting Defendant's challenge to the admissibility of the statements that he made during this interval, the Supreme Court stated that "[t]he officers had the right to conduct these interrogations, and it did not cause an unnecessary delay for them to do so." *Id.* Finally, in a situation in which a defendant was not advised of his *Miranda* rights until three and a half hours after his arrest and was not taken before a magistrate for more than another fifteen hours, the Supreme Court held that no substantial violation of Chapter 15A had occurred given "the number of crimes to which defendant confessed and the amount of time necessary to record the details of the crimes, along with investigators' accommodation of defendant's request to sleep." *State v. Wallace*, 351 N.C. 481, 518, 528 S.E.2d 326, 349, *cert. denied*, 531 U.S. 1018, 148 L. Ed. 2d 498, 121 S. Ct. 581 (2000). We believe that the facts of these cases are controlling in this instance.

In his brief, Defendant distinguishes *Littlejohn*, *Chapman*, and *Wallace* on the basis that the defendants in those cases had been arrested with, rather than without, a warrant. In attempting to

establish the importance of this distinction, Defendant references his Fourth and Fourteenth Amendment right to a judicial determination of probable cause promptly following his arrest without a warrant as set out in *Gerstein v. Pugh*, 420 U.S. 103, 124-25, 43 L. Ed. 2d 54, 71-72, 95 S. Ct. 854, 868-69 (1975) (stating that a state "must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest"); see also, *County of Riverside v. McLaughlin*, 500 U.S. 44, 53, 114 L. Ed. 2d 49, 60, 111 S. Ct. 1661, 1668 (1991).

Defendant's Fourth and Fourteenth Amendment argument is not persuasive for a number of reasons. First, since Defendant did not advance this Fourth and Fourteenth Amendment claim before the trial court, it has not been properly preserved for our consideration on appeal. *State v. Wilkerson*, 363 N.C. 382, 421, 683 S.E.2d 174, 198 (2009) (stating that, "[b]ecause defendant did not raise this constitutional issue at trial, he has failed to preserve it for appellate review and it is waived") (citing *State v. Chapman*, 359 N.C. 328, 366, 611 S.E.2d 794, 822 (2005)), *cert. denied*, \_\_\_ U.S. \_\_\_, 176 L. Ed. 2d 734, 130 S. Ct. 2104 (2010). Secondly, even if we were to reach the merits of Defendant's Fourth and Fourteenth Amendment Claim, we would not find it meritorious. *Gerstein* and *McLaughlin* generally allow the detention of an individual arrested without a warrant for up to 48 hours before the resulting delay violates the Fourth and Fourteenth Amendments. *McLaughlin*, 500

U.S. at 56, 114 L. Ed. 2d at 63, 111 S. Ct. at 1670. As a result of the fact that Defendant was detained for substantially less than 48 hours before being taken before a magistrate, we do not believe that this detention resulted in any violation of Defendant's rights under the Fourth and Fourteenth Amendments.<sup>2</sup> Thus, we do not find Defendant's effort to distinguish *Littlejohn*, *Chapman*, and *Wallace* persuasive.

Defendant was arrested for possession of methamphetamine at around 9:00 a.m. on 18 July 2007. Subsequently, he was taken to the Oak Island Police Department for fingerprinting and other processing, then transported to the Brunswick County jail, where he and the other three members of the group were continuously questioned. Defendant made an inculpatory statement at 2:45 p.m. that afternoon. Slightly more than an hour later, Defendant was taken before a magistrate. As was the case in *Littlejohn*, investigating officers had advised Defendant of his *Miranda* rights on several occasions between the time that he was taken into custody and the time that he made the inculpatory statements at issue here. In addition, the length of time over which Defendant was interrogated was less than that held insufficient to require

---

<sup>2</sup> Although Defendant argues, in reliance on *McLaughlin*, that delays of less than 48 hours can be impermissible if they result from "gathering additional evidence," the language upon which Defendant relies actually refers to "delays for the purpose of gathering additional evidence to justify the arrest." *McLaughlin*, 500 U.S. at 56, 114 L. Ed. 2d at 63, 111 S. Ct. at 1670. Nothing in the record suggests that the delay in taking Defendant before a magistrate resulted from any attempt to gather evidence to support a methamphetamine possession charge which resulted in his detention beginning at around 9:00 a.m. on 18 July 2007.

suppression in *Chapman* and *Wallace*. Finally, the record does not establish the validity of Defendant's contention that, had he been taken before a magistrate at an earlier time, he would have been able to make bond and leave police custody. Thus, Defendant's inculpatory statements were made while he was "lawfully in custody and could be interrogated in regard to other crimes." *Chapman*, 343 N.C. at 499, 471 S.E.2d at 356. As a result, in light of the principles enunciated in *Littlejohn*, *Chapman*, and *Wallace*, we conclude that the inculpatory statements at issue here did not result from a "substantial violation" of the provisions of Chapter 15A of the General Statutes, so that the trial court did not err by denying Defendant's suppression motion.

B. Admission of Dr. Garrett's Testimony

At trial, the State called Dr. Charles Garrett to testify about Mr. Cook's injuries and the cause of Mr. Cook's death. Dr. Garrett testified that he reviewed an autopsy report prepared by Dr. Douglas Kelly, an additional medical examiner's report prepared by a Dr. Hiltz, and photographs taken at the crime scene and at the autopsy. Although Dr. Garrett did not perform and was not present for Mr. Cook's autopsy, he testified that Mr. Cook died from "damage to the brain and hemorrhage on the brain from the skull fracture." According to Dr. Kelly's report, "[a]fter this injury was sustained, over a period of time the brain massively swelled within the skull, and this caused secondary hemorrhages in the upper brain stem and the back part of the brain which was the immediate cause of death." Although Mr. Cook "took some minutes to

hours to die from it," Dr. Kelly believed that Mr. Cook "was immediately unconscious when he received this blow."

Despite the fact that Dr. Garrett did not perform and was not present at Mr. Cook's autopsy, the State made no attempt to explain Dr. Kelly's absence. In addition, Defendant made no objection to the presentation of Dr. Garrett's testimony and did not cross-examine Dr. Garrett about any issue relating to the cause of Mr. Cook's death. For that reason, given that Defendant waived his right to contest the admissibility of Dr. Garrett's testimony on appeal by failing to lodge an objection at trial, N.C.R. App. P. 10(a)(1) (stating that, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context" and "obtain a ruling upon the party's request, objection, or motion"), he contends that the trial court committed plain error by allowing Dr. Garrett to testify about the cause of Mr. Cook's death because the admission of Dr. Garrett's testimony violated Defendant's constitutional right to confront the witnesses against him guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

An appellate court is required to conduct plain error review cautiously and should find the existence of plain error in only the most exceptional cases. As a general proposition, plain error exists when:

after reviewing the entire record, it can be said the claimed error is a *fundamental* error,

something so basic, so prejudicial, so lacking in its elements that justice cannot have been done, or where [the error] is grave error which amounts to a denial of a fundamental right of the accused, or the error has resulted in a miscarriage of justice or in the denial to appellant of a fair trial or where the error is such as to seriously affect the fairness, integrity or public reputation of judicial proceedings.

*State v. Augustine*, 359 N.C. 709, 717, 616 S.E.2d 515, 523 (2005) (citing *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (internal quotation marks omitted, emphasis and alteration in original), *cert. denied*, 548 U.S. 925, 165 L. Ed. 2d 988, 126 S. Ct. 2980 (2006)). As such, a convicted criminal defendant is entitled to appellate relief on the grounds of plain error "only if the error was so fundamental that, absent the error, the jury probably would have reached a different result." *State v. Jones*, 355 N.C. 117, 125, 558 S.E.2d 97, 103 (2002) (citing *State v. Collins*, 334 N.C. 54, 62, 431 S.E.2d 188, 193 (1993)).

"[W]hen the State seeks to introduce forensic analyses, '[a]bsent a showing that the analysts [are] unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them,' such evidence is inadmissible." *State v. Locklear*, 363 N.C. 438, 452, 681 S.E.2d 293, 305 (2009) (quoting *Melendez-Diaz v. Massachusetts*, \_\_\_ U.S. \_\_\_, 174 L. Ed. 2d 314, 322, 129 S. Ct. 2527, 2532 (2009)). For that reason, the Supreme Court held in *Locklear* that it was error to permit a forensic pathologist to testify that, "according to the autopsy report prepared by [another forensic pathologist], the cause of [victim's] death was blunt force injuries to the chest and head" and that a "forensic dental

analysis . . . included in the autopsy report" "positively identified the body as that of" the alleged victim. *Id.* at 451, 681 S.E.2d at 304. However, given that "[t]he State presented copious evidence that defendant killed [victim], including defendant's confessions to the crime," the Supreme Court concluded that "the erroneously admitted evidence regarding [victim's] cause of death and the identification of her would not have influenced the jury's verdict" and that the trial court's error was harmless beyond a reasonable doubt. *Id.* at 453, 681 S.E.2d at 305.

In this instance, Dr. Garrett testified that he reviewed Dr. Kelly's autopsy report, an additional medical examiner's report, and photographs taken at the crime scene and at the autopsy in preparation for his trial testimony. In light of this set of facts, the State contends that Dr. Garrett's testimony was admissible under the logic of this Court's decision in *State v. Mobley*, \_\_ N.C. App. \_\_, 684 S.E.2d 508, 512 (2009) (upholding admission of expert testimony that included a reference to an expert report prepared by another person who did not testify at Defendant's trial since "[t]he underlying report, which would be testimonial on its own, is used as a basis for the opinion of an expert who independently reviewed and confirmed the results"), *disc. review denied*, 363 N.C. 809, 692 S.E.2d 393 (2010). At bottom, the State argues that, even though Dr. Garrett did not perform and was not present for Mr. Cook's autopsy, he formed his own independent opinion concerning the nature of Mr. Cook's injuries and the cause of Mr. Cook's death by reviewing a number of

different items of information, including Dr. Kelly's report. However, we need not reach this issue in order to determine the validity of Defendant's claim because we conclude that, even if the trial court erred by admitting Dr. Garrett's testimony, any such error did not result in sufficient prejudice to support a finding of plain error.

The undisputed evidence establishes that Defendant and Mr. Caudill struck Mr. Cook's head a number of times with bed posts. In addition, numerous witnesses testified concerning the condition of Mr. Cook's body at the time that it was found, the signs that Mr. Cook had sustained blunt force trauma to the head, and the lack of any additional evidence explaining how Mr. Cook could have died from any cause other than the head injuries inflicted by Defendant and Mr. Caudill. Defendant made no effort to challenge the State's contention that Mr. Cook died from the injuries inflicted by Defendant and Mr. Caudill at any point during the course of the trial. Simply put, the record does not reflect that there was the slightest bit of controversy about the cause of Mr. Cook's death in the trial court. Although Defendant argues that, without Dr. Garrett's testimony concerning the cause of Mr. Cook's death, the evidence would have been insufficient to support Defendant's murder conviction, we do not believe that Defendant's argument rests on a correct understanding of the plain error doctrine, which focuses on matters relating to the issues that are genuinely in dispute among the parties and, therefore, could have affected the outcome. As a result, we find that, even if the trial court erroneously admitted

Dr. Garrett's testimony concerning the cause of Mr. Cook's death, its error did not result in the type and level of prejudice necessary to permit an award of relief under the plain error doctrine.

III. Conclusion

As a result, we conclude that the trial court did not err by denying Defendant's motion to suppress his pretrial statement and did not commit plain error by allowing Dr. Garrett to testify concerning the cause of Mr. Cook's death. Thus, given that Defendant has not shown prejudicial error in the proceedings that led to the entry of the trial court's judgments, we find no basis for affording Defendant relief on appeal.

NO ERROR.

Judges MCGEE and STROUD concur.

Report per Rule 30(e).