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NO. COA14-501  
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
Nos. 12 CRS 201355-61

JAMONTE DION BAKER

Appeal by defendant from judgments entered 7 November 2013 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 22 October 2014.

*Attorney General Roy Cooper, by Special Deputy Attorney General Dahr Joseph Tanoury, for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Kathleen M. Joyce, for defendant-appellant.*

CALABRIA, Judge.

Jamonte Dion Baker appeals from judgments entered upon jury verdicts finding him guilty of five counts of robbery with a dangerous weapon, one count of conspiracy to commit robbery with a dangerous weapon, and one count of possession of a firearm by a felon. We find no prejudicial error.

I. Background

On 19 December 2011, defendant and Cumar Howard ("Howard") were driving in a Chevy Malibu ("the Malibu") when they approached five men who were eating lunch. Defendant exited the Malibu brandishing a firearm. Howard then also exited the vehicle displaying a firearm. Together, defendant and Howard robbed the five men, taking their wallets, IDs, and credit cards.

One of the robbery victims, Jesus Salinas, Jr. ("Salinas"), called 911 to report the robbery. He then called his credit card company in order to cancel his stolen cards. The company informed Salinas that one of his cards had been used recently.

Detective Michael B. Peacock ("Det. Peacock") of the Charlotte-Mecklenburg Police Department ("CMPD") investigated the robbery. Det. Peacock determined that Salinas's stolen card was used to pay a Duke Energy electric bill for an individual named Ne Terra Taylor ("Taylor"). On 22 December 2011, Det. Peacock and Detective Todd Stutts ("Det. Stutts") went to Taylor's apartment to investigate, but no one was home. Det. Peacock and Det. Stutts then searched the apartment complex for the Malibu. The detectives discovered a vehicle which matched

the victims' description of the Malibu a few buildings away from Taylor's apartment.

On 26 December 2011, the detectives returned to the apartment and spoke to Taylor. During their conversation, defendant came to the apartment. Det. Stutts questioned defendant regarding the Duke Energy bill, and defendant admitted that he had paid the bill via telephone using a credit card provided to him by an individual named "T.J." Det. Stutts went to the neighborhood where defendant claimed T.J. lived, but were unable to find anyone who knew of someone by that name.

Peacock assembled several photographic lineups which included defendant's picture, and he had CMPD Officer Adrian Washington ("Officer Washington") administer the lineups to the robbery victims. Three of the victims identified defendant as one of the men who had robbed them. Consequently, defendant was arrested and indicted for five counts of robbery with a dangerous weapon, one count of conspiracy to commit robbery with a dangerous weapon, possession of a firearm by a felon, and attaining the status of an habitual felon.

Beginning 4 November 2013, defendant was tried by a jury in Mecklenburg County Superior Court. At trial, the State introduced a recording of a law enforcement interrogation of

defendant. Portions of the recording were redacted, because they referenced other crimes which were not related to the offenses being tried. However, defendant objected to a portion of the interview that was not redacted and referenced charges for credit card fraud that were not the subject of the trial. As a result, the trial court gave the jury a limiting instruction regarding the credit card offenses. Defendant did not object to the remainder of the recording.

Defendant testified on his own behalf. During his direct examination, defendant admitted that he had three previous felony convictions. On cross-examination, the State also raised three additional felony convictions, in addition to multiple misdemeanor convictions that were not raised during defendant's direct examination. It was later determined that defense counsel mistakenly believed that disclosure of those misdemeanor convictions was inadmissible pursuant to N.C. Gen. Stat. § 8C-1, Rule 609 (2013).

On 7 November 2013, the jury returned verdicts finding defendant guilty of all of the substantive offenses. The State did not proceed with the habitual felon status offense due to an issue with the indictment for that offense. The trial court sentenced defendant to a total minimum of 240 months to a total

maximum of 321 months in the North Carolina Division of Adult Correction. Defendant appeals.

II. Evidence of Other Criminal Acts

Defendant argues that the trial court committed plain error by allowing into evidence irrelevant references to other potential crimes perpetrated by defendant, both during defendant's interview with law enforcement and during the testimony of Det. Peacock and Det. Stutts. We disagree.

As an initial matter, we note that, at trial, defendant objected only to the portion of his law enforcement interview that referenced charges of credit card fraud. However, defendant's argument on appeal challenges different evidence: the portions of the interview and testimony from law enforcement in which there were references to a spree of robberies committed by defendant and Howard, as well as insinuations that defendant had stolen the Malibu. No objections were made to that evidence at trial. As a result, defendant acknowledges that our review of this issue is for plain error.

For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice — that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover,

because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

*State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (internal citations, quotations, and brackets omitted).

In the instant case, even assuming, *arguendo*, that the challenged evidence was inadmissible, defendant has failed to establish that this evidence "had a probable impact on the jury's finding that the defendant was guilty." *Id.* At trial, the State presented evidence that three of the robbery victims identified defendant as one of the perpetrators. Moreover, defendant admitted that he used one of the victim's credit cards shortly after the robbery. In light of this evidence, the admission of the challenged evidence could not rise to the level of plain error. This argument is overruled.

### III. Ineffective Assistance of Counsel

Defendant argues that he received ineffective assistance of counsel when his attorney failed to question him during direct examination regarding his prior Class 2 misdemeanor convictions because defense counsel mistakenly believed that those convictions were beyond the scope of Rule 609. We disagree.

To prevail on a claim of ineffective assistance of counsel, a defendant must

first show that his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense. Deficient performance may be established by showing that counsel's representation fell below an objective standard of reasonableness. Generally, to establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

*State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006)  
(citations and quotation marks omitted).

In the instant case, defense counsel's misunderstanding regarding the scope of Rule 609 did not create "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* Defendant had already admitted to three prior felony convictions on direct examination. Defendant fails to adequately explain how, in light of these prior felony convictions, his admission on cross-examination to additional misdemeanor convictions would further harm his credibility. Moreover, as previously noted, three victims identified defendant as one of the perpetrators and defendant admitted to using some of the proceeds of the robbery within minutes after the robbery occurred. Thus, defendant has failed to establish that he received ineffective

assistance of counsel meriting relief. This argument is overruled.

IV. Conclusion

Defendant failed to establish that the admission at trial of evidence of other, unrelated crimes rose to the level of plain error. In addition, defendant failed to establish that he was prejudiced by his counsel's misunderstanding of N.C. Gen. Stat. § 8C-1, Rule 609 (2013). Defendant received a fair trial, free from prejudicial error.

No prejudicial error.

Judges STEELMAN and McCULLOUGH concur.

Report per Rule 30(e).