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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-964

Filed: 17 May 2016

Pitt County, No. 13 CRS 056785

STATE OF NORTH CAROLINA

v.

KEDRON DEVON LYONS

Appeal by defendant from judgment entered 25 February 2015 by Judge Marvin K. Blount, III in Pitt County Superior Court. Heard in the Court of Appeals 24 February 2016.

Attorney General Roy Cooper, by Special Deputy Attorney General Patrick S. Wooten, for the State.

Richard Croutharmel, for defendant.

DIETZ, Judge.

A grand jury indicted Kedron Lyons for malicious conduct by a prisoner after he threw a cup of urine at a correctional officer through the tray door of his cell in the Pitt County jail.

At trial, the State called a correctional officer who testified that Lyons was housed in the “special management unit,” which was designed for undisciplined inmates known to be management problems at the facility. Lyons objected to this

STATE V. LYONS

Opinion of the Court

testimony on the ground that it was “prejudicial.” The trial court overruled the objection. The jury later convicted Lyons.

On appeal, Lyons argues that the trial court violated Rule 404 of the North Carolina Rules of Evidence by admitting the challenged testimony because it was introduced solely to demonstrate his propensity to commit a crime. As explained below, Lyons failed to preserve his challenge under Rule 404 because he objected to the testimony solely on the ground that it was “prejudicial,” which is insufficient to preserve a Rule 404 challenge under this Court’s precedent. Lyons properly preserved a challenge under Rule 403 but he does not advance that argument on appeal. And, even if we were to address that issue, we would hold that the trial court did not abuse its discretion in admitting the challenged testimony under Rule 403. Accordingly, we find no error in the trial court’s judgment.

Facts and Procedural History

On 9 June 2014, a grand jury indicted Defendant Kedron Lyons for throwing a cup of urine at a correctional officer through the tray door of his cell at the Pitt County jail. At trial, a correctional officer at the jail testified that Lyons was housed in the special management unit. Lyons objected when the State asked the officer what the special management unit is used for, stating only “objection.” The court instructed the prosecutor to restate the question. The State then asked “what is the special management unit used for?” Lyons objected again, stating “prejudicial.” The trial

STATE V. LYONS

Opinion of the Court

court overruled the objection and the officer testified that the unit was “for detainees who have disciplinary problems, who are known management problems to the facility. They are ones that can’t be placed in general population or minimum security population, and they usually have to be observed four times an hour, and a regular basis [*sic*].”

The jury found Lyons guilty of felony malicious conduct by a prisoner, and the trial court sentenced him to 26 to 41 months in prison running consecutively to his current sentence. Lyons timely appealed.

Analysis

On appeal, Lyons argues that the trial court violated Rule 404 of the North Carolina Rules of Evidence by admitting evidence that Lyons was housed in the special management unit, which was used for prisoners with disciplinary problems. Lyons argues that the only purpose of that testimony was to suggest that Lyons had disciplinary problems, which in turn suggested a propensity to commit the alleged act in violation of Rule 404. As explained below, this argument is not preserved for appellate review.

“In order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.” *State*

STATE V. LYONS

Opinion of the Court

v. Howard, 228 N.C. App. 103, 106, 742 S.E.2d 858, 860 (2013) *aff'd*, 367 N.C. 320, 754 S.E.2d 417 (2014) (per curiam); N.C. R. App. P. 10(a)(1).

Here, Lyons objected to the challenged testimony only on the basis of Rule 403 of the Rules of Evidence, not Rule 404:

[Prosecutor]: Now, can you describe, not specifically to Mr. Lyons, but what is the special management unit used for?

[Witness]: It's housing for--

[Lyon's Counsel]: Objection.

The Court: Restate the question.

[Prosecutor]: What is the special management unit used for?

[Lyon's Counsel]: Prejudicial.

The Court: Overruled.

To preserve an objection on the basis of Rule 404, a defendant must inform the trial court that the objection is based on Rule 404 by referring to the rule, describing the challenged testimony as inadmissible character evidence, or otherwise signaling that the evidence is inadmissible for the reasons discussed in Rule 404. *See Howard*, 228 N.C. App. at 107, 742 S.E.2d. at 860. A defendant does not preserve an objection based on Rule 404 by simply stating that certain testimony is prejudicial. *Id.*

Here, Lyons did not contend that the evidence was inadmissible under Rule 404 at trial, or otherwise reference the grounds contained in that rule. He objected

STATE V. LYONS

Opinion of the Court

solely on the basis that the challenged testimony was “prejudicial.” Moreover, Lyons has not asserted plain error on appeal. Accordingly, Lyons’s argument under Rule 404 is not preserved for appellate review. N.C. R. App. P. 10(a)(4).

We note that Lyons properly preserved an objection to the challenged testimony based on Rule 403, which permits a trial court to exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice. N.C. R. Evid. 403. Lyons does not argue on appeal that this testimony is inadmissible under Rule 403, and thus any challenge under Rule 403 is abandoned. N.C. R. App. P. 28(b)(6). In any event, an argument based on Rule 403 would be meritless. The challenged testimony assisted the jury in understanding the procedure for feeding inmates housed in the special management unit and how correctional officers came into contact with inmates in that unit. The trial court did not abuse its discretion in determining that the probative value of that testimony was not substantially outweighed by the danger of unfair prejudice.

Conclusion

We find no error in the trial court’s judgment.

NO ERROR.

Judges CALABRIA and DILLON concur.

Report per Rule 30(e).