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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1364

Filed: 20 November 2018

Orange County, No. 14CRS051971

STATE OF NORTH CAROLINA

v.

TROY ARRINGTON, JR., Defendant.

Appeal by Defendant from judgment entered 16 March 2017 by Judge R. Allen Baddour, Jr., in Orange County Superior Court. Heard in the Court of Appeals 5 September 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Teresa M. Postell, for the State.

Lisa Miles for the Defendant.

DILLON, Judge.

Defendant Troy Arrington, Jr., appeals from the trial court's judgment entered upon a jury verdict finding him guilty of first-degree murder and robbery with a dangerous weapon. Defendant alleges that the trial court erred by allowing improper character testimony and improper expert testimony. After careful review, we hold Defendant received a fair trial free from prejudicial error.

I. Background

This case arises out of a robbery and murder which occurred on a sidewalk near the campus of the University of North Carolina at Chapel Hill. The evidence at trial tended to show as follows:

On the afternoon of 23 July 2014, Feng Liu, a University professor, went out for a walk. Minutes later, Professor Liu was discovered lying on the ground with a large head wound. Defendant and an accomplice were in close proximity of the location where Professor Liu was discovered. Professor Liu died the following morning from his injuries, including skull and neck bone fractures, caused by a blunt force trauma to his head. Investigators found a rock containing traces of Professor Liu's DNA near the location where his body had been discovered.

A few hours after Professor Liu was discovered on the ground, Defendant ordered items for delivery to himself using credit cards belonging to Professor Liu. Defendant was subsequently taken into custody. While in custody, Defendant bragged to another inmate that he had hit a professor on the back of the head with a rock, stolen his wallet, and ordered items with the professor's credit cards. A detention officer subsequently caught Defendant mailing a letter to himself purportedly from Defendant's accomplice in an attempt to show that the accomplice had committed the assault on Professor Liu.

The jury found Defendant guilty of and first-degree murder and robbery with a dangerous weapon. Defendant timely appealed.

II. Analysis

Defendant argues that the trial court erred in allowing a witness to testify about a prior event where Defendant armed himself with a rock after being threatened and also in allowing an expert witness to provide certain testimony about Professor Liu's injuries. We address each argument in turn.

A. Admissibility of Evidence of Prior Act with a Rock

A witness called by the State testified to seeing Defendant, eight years prior to Professor Liu's death, leaving a courthouse holding a rock after being threatened by someone inside. Defendant objected; but the trial court allowed the evidence, telling the jury that the evidence could be considered only as to "intent, or that there existed in [Defendant's] mind a plan, scheme, system design." Defendant argues that this testimony constituted impermissible character evidence.

Generally, evidence of an individual's prior crimes, wrongs, or other acts is not admissible as "character evidence," to show the particular character of a person in an effort to prove that person acted in conformity with his or her character. N.C. Gen. Stat. § 8C-1, Rule 404(b) (2014). However, evidence of prior acts by a defendant similar in nature to the act for which he has been charged may be admissible for other purposes, including to prove the defendant's motive, intent, knowledge, or identity.

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See State v. Stager, 329 N.C. 278, 304, 406 S.E.2d 876, 891 (1991). “Near identical circumstances are not required; rather, the incidents need only share ‘some unusual facts’ that go to a purpose other than propensity for the evidence to be admissible.” *State v. Beckelheimer*, 366 N.C. 127, 132, 726 S.E.2d 156, 160 (2012).

Here, the testimony from the State’s witness tended to show that Defendant contemplated using a weapon – a rock – similar to that used on Professor Liu. This evidence was allowed by the trial court for the limited purpose of showing that Defendant had the intent to, once again, use a rock as a weapon.

Our Supreme Court instructs that “the appellant must show error positive and tangible, that has affected [his or her] rights substantially and not merely theoretically, and that [absent the error] a different result would have likely ensued.” *State v. Cross*, 284 N.C. 174, 178, 200 S.E.2d 27, 30 (1973) (internal citations omitted). Therefore, assuming *arguendo* that the trial court erred by admitting the testimony, we conclude that its admission was not prejudicial to Defendant’s case.

Here, the sum of the evidence presented at trial amounted to overwhelming evidence of Defendant’s guilt: Defendant was at the crime scene as Professor Liu lay dying. Defendant was in possession of Professor Liu’s wallet shortly after the attack. Defendant purchased items with Professor Liu’s credit cards shortly after the attack. Defendant confessed to another inmate. And Defendant was caught trying to mail a letter to shift blame away from himself. Given this overwhelming evidence, we

cannot say that there is a reasonable possibility that Defendant would not have been convicted had the jury not heard the testimony about Defendant's contemplated use of a rock to defend himself eight years prior to the assault on Professor Liu.

B. Admissibility of Evidence Regarding Victim's Death

Defendant also argues that the trial court erred in denying his motion to preclude the testimony of a neurologist, contending that the testimony was irrelevant, duplicative, and unfairly prejudicial. The neurologist testified about the life-saving measures attempted on Professor Liu. For the reasons below, we conclude that the trial court did not err in allowing the neurologist's testimony.

Defendant contends that the neurologist's testimony was irrelevant, in that the repetitive testimony of medical procedures, life-saving measures, and use of autopsy photos had no tendency to make any fact of consequence more or less probable. Defendant contends that the sole question before the jury was whether Defendant killed Professor Liu with premeditation and deliberation and that there was no dispute that the crime had been committed.

All evidence is relevant if it has any tendency to make the existence of any fact of consequence more or less probable than it would be without the evidence. N.C. Gen. Stat. § 8C-1, Rule 401 (2014). Evidence, for example, is relevant if it tends to shed light upon the circumstances surrounding a killing. *Stager*, 329 N.C. at 322, 406 S.E.2d at 901.

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We find that the neurologist's testimony was relevant because the testimony "shed light" on the charged crime of murder. Further, this testimony addressed the victim's cause of death, evidencing elements of this crime. We, therefore, conclude that the neurologist's testimony was relevant.

Defendant further contends that the testimony of the neurologist was duplicative and prejudicial. Prior to the neurologist's testimony, the State elicited testimony from a separate medical examiner as to the nature of Professor Liu's injuries and the cause of his death. Defendant contends that the neurologist's testimony added unnecessary emotional impact.

We note that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." N.C. Gen. Stat. § 8C-1, Rule 403 (2014). We conclude, however, that the trial court did not commit reversible error in allowing the neurologist's testimony. Although points of the neurologist's testimony certainly served similar purposes as the medical testimony admitted earlier in the trial, the neurologist also discussed the choices he made in examining Professor Liu's injuries prior to death and how the trauma ultimately allowed him to conclude that Professor Liu could not be saved. The neurologist's testimony assisted the jury in fully understanding the facts and circumstances surrounding Professor Liu's death to meet the State's burden to show

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beyond a reasonable doubt that the trauma inflicted by the rock was the cause of Professor Liu's death.

Further, we conclude that the use of five previously admitted photographs of Professor Liu's injuries during the neurologist's testimony did not unduly reiterate illustrative evidence already presented. The trial court did not commit reversible error in allowing the State to use the photographs to aid the neurologist's explanation of his thought process when faced with the severity of Professor Liu's injuries.

III. Conclusion

After careful consideration of the arguments put forth by Defendant, we conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).