IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1184

Filed: 18 June 2019

Columbus County, No. 15CRS051173

STATE OF NORTH CAROLINA

v.

NATHAN ELISHA TYLER, JR., Defendant.

Appeal by Defendant from judgment entered 5 February 2018 by Judge Robert F. Floyd in Columbus County Superior Court. Heard in the Court of Appeals 8 May 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General M. Lynne Weaver, for the State.

Mark Montgomery for the Defendant.

DILLON, Judge.

Defendant Nathan Elisha Tyler, Jr., appeals from the trial court's judgment entering a jury verdict finding him guilty of first-degree murder, first-degree kidnapping, and armed robbery with a dangerous weapon. Defendant contends that the trial court erred in admitting certain evidence or, in the alternative, by not

providing a limiting instruction for the evidence *sua sponte*. After careful review, we conclude that the trial court committed no plain error.

I. Background

This case arises from the alleged kidnapping and murder of Alicia Deans in a robbery-gone-bad in Columbus County. The State's evidence tended to show that Defendant schemed with Kayla Turner and her boyfriend Marvin Williams to steal Ms. Deans' car temporarily to use in the perpetration of an unrelated crime. Specifically, the State's evidence tended to show as follows:

Ms. Deans used to date Defendant's son, Elisha. On 28 April 2015, Ms. Deans went to Defendant's home at the request of Ms. Turner, under the belief that she would be able to visit with her ex-boyfriend. Sometime after Ms. Deans arrived, Defendant explained that his son was not there but that he would pick his son up and bring him back to visit with Ms. Deans. Defendant left alone in Ms. Deans' car.

Instead of picking up his son, Defendant picked up Mr. Williams and dropped him off at Defendant's home. Mr. Williams then went inside and pretended to rob both Ms. Deans and Ms. Turner, holding them at gunpoint. Defendant cleaned out the trunk of Ms. Deans' car, then returned to his house, went inside, and joined Mr. Williams in the robbery. Defendant and Mr. Williams forced Ms. Turner and Ms. Deans into the car, placing Ms. Deans in the trunk. Defendant drove the car to the

edge of a field as it abutted the woods, took Ms. Deans into the woods, and shot her. Sometime later, Defendant burned Ms. Deans' car.

Defendant was indicted and tried for first-degree murder, first-degree kidnapping, and robbery with a dangerous weapon. The jury found Defendant guilty of all charges. Defendant gave notice of appeal in open court.

II. Analysis

During the trial, the State offered into evidence the testimony of Ms. Turner, Mr. Williams, an officer who interviewed Defendant, and one of Defendant's cellmates. Defendant contends that the trial court erred in admitting portions of each witness's testimony because those portions were either irrelevant or amounted to improper character evidence. Because Defendant failed to properly preserve his objections for appellate review,[1] we review only for plain error. *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). Plain error requires a showing that the alleged error "tilted the scales" in favor of the defendant's conviction, and this Court "must be convinced that absent the alleged error, a jury probably would have reached a different verdict." *State v. Robinson*, 330 N.C. 1, 22, 409 S.E.2d 288, 300 (1991).

[1] Defendant objected to proposed testimony from Ms. Turner and Mr. Williams on *voir dire*, at which time his objections were overruled, but failed to renew his objections when the testimony was solicited at trial. *State v. Maccia*, 311 N.C. 222, 229, 316 S.E.2d 241, 245 (1984) ("[W]hen, as here, evidence is admitted over objection, and the same evidence has been previously admitted or is later admitted without objection, the benefit of the objection is lost."); *see also State v. Williams*, 370 N.C. 526, 809 S.E.2d 581 (2018). Defendant did not object to testimony from the lieutenant or his cellmate at all.

All evidence that has "any tendency to make a fact of consequence more or less probable" is relevant, N.C. Gen. Stat. § 8C-1, Rule 401 (2017), and all relevant evidence is generally admissible, N.C. Gen. Stat. § 8C-1, Rule 402 (2017). However, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith[,]" or to otherwise show a propensity for a character trait. N.C. Gen. Stat. § 8C-1, Rule 404(b) (2017). Nonetheless, Rule 404(b) functions as a "rule of inclusion," *State v. Coffey*, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990), which seeks to admit evidence "as long as it is relevant to any fact or issue other than the defendant's propensity to commit the crime[,]" *State v. White*, 340 N.C. 264, 284, 457 S.E.2d 841, 853 (1995). Finally, relevant evidence may yet still be excluded where its "probative value is substantially outweighed by the danger of unfair prejudice" to the defendant. N.C. Gen. Stat. § 8C-1, Rule 403 (2017).

A. Defendant's Motive

At trial, the State's theory was that Defendant asked Ms. Turner to bring Ms. Deans to his house so that they could steal Ms. Deans' car and then use it to kidnap and harm Candy Lee, Defendant's ex-girlfriend. To advance this theory, the State sought to present evidence that Ms. Lee had shot Defendant about a week prior to the kidnapping and murder of Ms. Deans. During *voir dire*, Defendant objected to the evidence as impermissible character evidence under Rule 404(b). The trial court

overruled Defendant's objection, ruling that the State's evidence was admissible to show Defendant's motive.[2] We conclude that the trial court did not err in this evidentiary ruling.

Our Supreme Court has long recognized the admissibility of a defendant's past conduct showing his or her motive as an admissible, non-propensity purpose under Rule 404(b):

> Evidence, not part of the crime charged but pertaining to the chain of events explaining the context, motive and set-up of the crime, is properly admitted if linked in time and circumstances with the charged crime, or [if it] forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury.

State v. Handy, 331 N.C. 515, 531-32, 419 S.E.2d 545, 554 (1992) (citation omitted).

Evidence at trial showed that approximately six days before Ms. Deans was kidnapped, Defendant suffered a gunshot injury and accused Ms. Lee of shooting him. Ms. Turner and Mr. Williams testified that Defendant believed Ms. Lee knew information "that could send [Defendant] to prison for life." In order to stop her from testifying against him in an unrelated matter, Defendant needed to obtain a car, kidnap Ms. Lee, and kill her. Further, Ms. Turner and Mr. Williams both testified that they went to Ms. Lee's house twice the day after the robbery in an attempt to kidnap her, but were thwarted by the presence of guests at Ms. Lee's home each time.

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[2] We briefly note again that, though he objected prior to trial during *voir dire*, Defendant failed to renew his objections when evidence concerning Ms. Lee was introduced at trial. Therefore, our standard of review is plain error. *Maccia*, 311 N.C. at 229, 316 S.E.2d at 245.

While this evidence does show that Defendant has a history of criminal action and, perhaps, a character for criminal behavior, it also tends to show Defendant's purpose for and motivation in luring Ms. Deans to his home with a lie, stealing her car, and then ultimately murdering her. We conclude that the trial court did not commit plain error by admitting Ms. Turner and Mr. Williams' testimony concerning Ms. Lee.

Alternatively, Defendant argues that the trial court should have provided a limiting instruction on its own accord to inform the jury that they could only consider the evidence for the limited purpose of establishing Defendant's motive. However, Defendant failed to ask for any such limiting instruction during the trial. And our Supreme Court has held that "[t]he admission of evidence which is competent for a restricted purpose will not be held error in the absence of a request by the defendant for limiting instructions." *State v. Jones*, 322 N.C. 406, 414, 368 S.E.2d 844, 848 (1988); *Coffey*, 326 N.C. at 286, 389 S.E.2d at 59. Therefore, the trial court was under no obligation to provide a limiting instruction absent his request.

B. Defendant's Prior Incarceration

The officer who investigated the death of Ms. Deans testified at trial. During the officer's testimony, the State played a video of the officer's interview with Defendant, in which Defendant admits that he knew about the robbery of Ms. Deans and the subsequent burning of her car. While explaining the video, the officer

testified that, at the time of the interview, Defendant was already in police custody in an unrelated matter.

Defendant contends that the officer's passing statement that Defendant was in custody for another crime was impermissible evidence of another crime or bad act under Rule 404(b). In support of this argument, Defendant likens the officer's statement to evidence of a non-testifying defendant's prior conviction. *See State v. Wilkerson*, 356 N.C. 418, 418, 571 S.E.2d 583 (2002) (holding that while a prior conviction may be used to impeach a testifying defendant's credibility under Rule 609, the "bare fact" that a defendant was convicted is inadmissible under Rule 404). We note that informing the jury that Defendant was in custody for an additional, unrelated matter appears to serve no justified purpose under Rule 404(b) and would otherwise tend to solely alert the jury to his propensity for criminal behavior.

However, assuming that the officer's statement was inadmissible, we cannot say that the statement constituted plain error in view of the remaining evidence before the jury. This other evidence showed that Defendant initially planned to kidnap and rob Ms. Deans in order to steal her car, which he could then use to kidnap and murder his ex-girlfriend. Ms. Turner testified that she was present when Defendant walked Ms. Deans into the woods, that she heard a gunshot, and Defendant returned to the car without Ms. Deans. Later, Ms. Turner phoned Defendant and asked what happened to Ms. Deans, to which Defendant replied that

it was "taken care of" and that "[Ms. Turner] knew what [he] did." We cannot say that the officer's indication that Defendant had committed another, unrelated offense "tilted the [jury's] scales" in favor of convicting Defendant.

C. Testimony of Defendant's Cellmate

The State also offered the testimony of a prisoner who shared a cell with Defendant following Defendant's arrest. This cellmate testified that Defendant not only admitted to having shot Ms. Deans, but that Defendant also requested the cellmate's assistance in recruiting someone to murder the officer investigating Defendant's case. Defendant argues that the cellmate's testimony was inadmissible, alleging only that the cellmate was a "jailhouse snitch" who "hoped to get a good deal from the prosecutor in exchange for his testimony."

We conclude that the cellmate's evidence was admissible as relevant evidence, and concerns regarding his credibility do not amount to unfair prejudice. The evidence had a tendency to show that Defendant was the perpetrator of the crime and that he continued to take related actions despite incarceration. Additionally, the cellmate's testimony rebuts Defendant's assertion that he was an innocent party coerced by Mr. Williams, a defense Defendant maintains on appeal. Any concerns with the cellmate's credibility and incentive to testify as a witness go *to the weight* of the testimony he presented, not its admissibility. *Kabasan v. Kabasan*, ___ N.C. App. ___, ___, 810 S.E.2d 691, 705 (2018) ("[T]he general rule is that weaknesses in a

party's evidence go to the weight of the evidence, rather than its admissibility."); *see also Scott v. Scott,* 336 N.C. 284, 291, 442 S.E.2d 493, 497 (1994) ("Questions of credibility and the weight to be accorded the evidence remain in the province of the finder of facts.").

D. Ineffective Assistance of Counsel

Lastly, Defendant brings a claim for ineffective assistance of counsel, arguing that his attorney's failure to (1) object to the admission of each witness's testimony and, thereafter, (2) request a limiting instruction with respect to the character evidence constituted ineffective assistance. We disagree.

A claim for ineffective assistance of counsel requires a showing by Defendant that, not only did his trial counsel's performance fall below an objective standard of reasonableness, but that, "but for counsel's errors, there would have been a different result in the proceedings." *State v. Braswell*, 312 N.C. 553, 563, 324 S.E.2d 241, 248 (1985) (citing *Strickland v. Washington*, 466 U.S. 668, 693-95 (1984)). Defendant cannot show that, absent his counsel's failure to act, there would have been a different result at trial. Each of the witness's testimonies was admissible under Rules 401, 403, and 404 as relevant evidence which tended to show Defendant's commission of or motive to commit the alleged crimes. Further, the evidence before the court was such that we cannot say that, if a limiting instruction had been given, it is reasonably probable that a different result would have occurred at trial.

III. Conclusion

We hold that the trial court did not commit plain error in admitting evidence of Defendant's prior interactions with Ms. Lee and his resulting motive to harm her, ultimately leading to the kidnapping and murder of Ms. Deans. Further, the trial court was under no obligation to intervene *sua sponte* and deliver a limiting instruction regarding this evidence. Additionally, the trial court did not err in admitting the testimony of the officer and Defendant's cellmate, as this evidence was relevant and not unfairly prejudicial.

NO ERROR.

Judges ZACHARY and BERGER concur.

Report per Rule 30(e).