IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-23

Filed: 1 October 2019

Onslow County, Nos. 16 CRS 54983-84

STATE OF NORTH CAROLINA

v.

STEVEN MATTHEW TYRER

Appeal by defendant from judgment entered 12 July 2018 by Judge Richard Kent Harrell in Onslow County Superior Court. Heard in the Court of Appeals 7 August 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Rebecca E. Lem, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi E. Reiner, for defendant-appellant.

ZACHARY, Judge.

Defendant Steven Matthew Tyrer appeals from judgment entered upon a jury verdict finding him guilty of larceny of a motor vehicle. The only issue on appeal is whether the trial court erred by admitting evidence of a prior bad act of Defendant, in violation of N.C. Gen. Stat. § 8C-1, Rule 404(b). Upon review, we find that Defendant received a fair trial, free from prejudicial error.

Background

Defendant worked for Trent Refinishing, a vendor that subcontracted with Stevenson Automotive, repairing minor dents and scratches on used vehicles to prepare them for sale. Employees had access to the vehicles at Stevenson Automotive during working hours, but were never permitted to take a vehicle overnight.

On 26 July 2016, Defendant's roommate and coworker, Donald Walters, discovered a white Hyundai Genesis parked in the driveway of their residence. The vehicle still had the "buyer's guide" sticker attached to it, and had no license plate. Defendant explained that Lance Fuchs, the owner of Trent Refinishing, had allowed him to take the car off the lot to be painted in the morning. Thereafter, Defendant did not return to work until 1 August 2016.

Two days after Defendant took the car home, Raymond Arrington, the owner of Arrington Auto Repair, discovered the white Hyundai Genesis parked in front of the garage door of his shop. Arrington's suspicions led him to call the police. The responding officers noted a Stevenson Automotive tag on the vehicle, as well as the buyer's guide. That same day, Fuchs noticed that his dealer plate, assigned by Stevenson Automotive, was missing.

On 31 July 2016, Walters learned that a vehicle had been stolen from the dealership. After hearing the vehicle's description, Walters reported that he had seen the vehicle parked in his driveway; he subsequently returned home and searched

Defendant's room. Walters found a Stevenson Automotive tag in Defendant's sock drawer, and promptly informed the police.

Defendant was arrested and indicted for misdemeanor larceny, misdemeanor possession of stolen goods, larceny of a motor vehicle, and possession of a stolen motor vehicle. On 9 July 2018, Defendant's case came on for hearing before the Honorable Richard Kent Harrell in Onslow County Superior Court. The jury found Defendant guilty of larceny of a motor vehicle and possession of a stolen motor vehicle, and not guilty of the remaining charges. Defendant gave notice of appeal in open court.

Discussion

Evidentiary Rule 404(b) provides that "[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." N.C. Gen. Stat. § 8C-1, Rule 404(b) (2017). The Rule reflects a longstanding concern regarding the uniquely prejudicial impact of character evidence. *See* Kenneth J. Melilli, *The Character Evidence Rule Revisited*, 1998 BYU L. REV. 1547, 1566-67 (1998). Nevertheless, character evidence may be admissible for purposes unrelated to a defendant's propensity to commit a crime, "*such as* proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." N.C. Gen. Stat. § 8C-1, Rule 404(b) (emphasis added). As evidenced by the words "such as," the list is neither exclusive nor exhaustive. *State v. Bagley*, 321 N.C. 201, 206, 362 S.E.2d 244, 247 (1987), *cert.*

denied, 485 U.S. 1036, 99 L. Ed. 2d 912 (1988). Whether "evidence is, or is not, within the coverage of Rule 404(b)" is a conclusion of law reviewed *de novo* on appeal. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012).

Upon determining that the evidence is being offered for non-propensity purposes, the trial court must then evaluate—pursuant to Rule 403—whether the probative value of the evidence is outweighed by its prejudicial nature. *See id.* The unsound admission of evidence in violation of Rule 404(b) "does not necessitate a new trial unless the erroneous admission was prejudicial." *State v. Wade*, 213 N.C. App. 481, 490, 714 S.E.2d 451, 457 (2011), *disc. review denied*, 366 N.C. 228, 726 S.E.2d 181 (2012); *see also Collins v. Lamb*, 215 N.C. 719, 720, 2 S.E.2d 863, 864 (1939) ("[T]he burden is on the appellant not only to show error but to enable the court to see that he was prejudiced or the verdict of the jury probably influenced thereby."). On appeal, this Court will "review the trial court's Rule 403 determination for abuse of discretion." *Beckelheimer*, 366 N.C. at 130, 726 S.E.2d at 159.

In the case at bar, Detective Jason Miller of the Jacksonville Police Department testified concerning a prior investigation of Defendant for larceny of a motor vehicle in December 2014. Detective Miller described his conversation with Defendant during that investigation:

> [T]he defendant explained that he borrowed the vehicle . . . from a neighbor; that he was going to bring it home that evening, however, he became intoxicated and was unable to return it and did not have the means to

> contact the neighbor he borrowed the vehicle from. I heard the defendant continue that, as a result, in the morning, he decided to detail the vehicle and intended to return it but the weather conditions were unsuitable for detailing the truck, so he left it at Stevenson Mazda, where he works.

Defendant's objection to this testimony was overruled.

On appeal, Defendant claims that Detective Miller's testimony constituted improper character evidence. However, Defendant must also "show that [the testimony] affected the jury's verdict in light of the evidence properly admitted." *State v. Groves*, 324 N.C. 360, 372, 378 S.E.2d 763, 771 (1989). *See generally* 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 11, at 37-38 n.144 (7th ed. 2011) (providing citations to numerous cases in which erroneous admissions of evidence of prior acts did not result in reversals of the defendants' convictions). Where there is no evidence that a defendant was prejudiced, this Court need not address the improper admission of character evidence. *Cf. Groves*, 324 N.C. at 372, 378 S.E.2d at 771 ("The defendant has failed to carry his burden of showing prejudice resulting from any possible violation of Rule 404(b).").

Here, the jury was presented with an abundance of evidence to support a guilty verdict. As noted above, (1) Defendant had access to the stolen car as part of his job; (2) Defendant was absent from work at the same time the car was stolen; (3) Defendant's roommate and coworker observed the stolen car at their residence; (4) the stolen car appeared at Arrington's shop with a buyer's guide sticker from

Stevenson Automotive still attached to the car; and (5) Defendant's roommate and coworker found evidence in their residence connecting Defendant to the stolen car. In addition, the State tendered a photograph of Defendant wearing a distinctive Pittsburgh Steelers baseball cap that was identical to a cap found in the trunk of the stolen car. Moreover, the missing dealer tag from Trent Refinishing reappeared in its usual location the day Defendant returned to work on 1 August 2016. In sum, the verdict did not hinge upon Detective Miller's testimony alone; the State presented the jury with considerable other evidence of Defendant's guilt.

Furthermore, we note that the trial court gave the jury a limiting instruction relating to Detective Miller's testimony. As a matter of principle, the judiciary must place its confidence in the jurors' ability to listen and follow the instructions given to them. *See Bruton v. United States*, 391 U.S. 123, 135, 20 L. Ed. 2d 476, 484 (1968) ("It is not unreasonable to conclude that in many such cases the jury can and will follow the trial judge's instructions to disregard such information."); *State v. Diehl*, 147 N.C. App. 646, 650, 557 S.E.2d 152, 155 (2001) ("Generally, when a trial court properly instructs jurors to disregard incompetent or objectionable evidence, any error in the admission of the evidence is cured."). The official comment to Evidentiary Rule 105 establishes "that evidence . . . inadmissible for one purpose may be admitted for other and proper purposes" after the court has instructed the jury accordingly. N.C. Gen. Stat. § 8C-1, Rule 105 cmt. Where a limiting instruction has been given as

to character evidence, the jury is thereby prohibited from considering "whether the defendant acted in conformity with any predisposed character traits." T.M. Ringer, Jr., *A Six Step Analysis of "Other Purposes" Evidence Pursuant to Rule 404(b) of the North Carolina Rules of Evidence*, 21 N.C. CENT. L.J. 1, 19 (1995).

In the instant case, the jury was instructed that the "evidence was received solely for the purpose of showing that there existed in the mind of the defendant a plan, scheme, system or design involving the crime charged in this case, and the absence of mistake." This instruction—in tandem with the ample evidence supporting a finding of Defendant's guilt—compels our conclusion that Defendant "has failed to show that, but for the admission of [Detective Miller's testimony of the prior act] . . . a different result would have been reached at trial." *Groves*, 324 N.C. at 372, 378 S.E.2d at 771.

Conclusion

Even assuming, *arguendo*, that the trial court erred by admitting improper character evidence, Defendant failed to establish any resulting prejudice.

NO ERROR.

Judges DILLON and BROOK concur.

Report per Rule 30(e).