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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-10

Filed 19 March 2024

Gaston County, No. 19CRS55442

STATE OF NORTH CAROLINA

v.

JAMES MICHAEL RICK, Defendant.

Appeal by defendant from judgment entered 27 April 2022 by Judge J. Thomas Davis in Superior Court, Gaston County. Heard in the Court of Appeals 8 August 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General John R. Green, Jr., for the State.*

*Sarah Holladay for defendant-appellant.*

STROUD, Judge.

Defendant appeals a judgment convicting him of first degree murder. We conclude there was no error.

**I. Background**

The evidence presented by the State at trial tended to show that Defendant and several of his acquaintances were regular users of various illegal drugs, and

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several were also dealers of these drugs. On 4 May 2019, Defendant drove to a McDonald's with Melinda and several acquaintances.<sup>1</sup> Defendant fell asleep in the truck and Melinda left while Defendant was napping. When Defendant awoke, he began looking for Melinda because he thought she had taken his money. In trying to locate Melinda, Defendant texted Holli, Melinda's friend, accused Holli of lying to protect Melinda, and threatened "if your [g\*\*d\*\*\*] ass don't call me right now I'm going to come up there and show you my [g\*\*d\*\*\*] ass[.]" Defendant then asked another friend, Kevin, to invite Melinda to Kevin's house; Defendant directed Kevin to not tell Melinda that Defendant would also be at the house. When Defendant arrived at Kevin's house, he asked Kevin where his roommate's crossbow was, went and got the crossbow, texted Holli he was going to kill Melinda, and asked for Holli's forgiveness for "what [he was] about to do[.]" Defendant was aware Kevin's roommate had a crossbow because Defendant had previously owned the same crossbow and sold it to the roommate. The roommate testified that Defendant was "pretty good" at shooting the crossbow as they had hunted together.

After getting the crossbow, Defendant continued to send texts to Holli stating his intentions to kill Melinda, including, "I don't want to harm nobody except that bitch so if any of your boys are with her God bless them." Defendant also wrote, "I just hope you two are not with her I promise you soon as I see her it's no question I'm

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<sup>1</sup> Pseudonyms are used for Defendant's acquaintances throughout the opinion.

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going to kill her and I'm going to take as many [m\*\*\*\*\*f\*\*\*\*\*s] weekly as I can before they gun me down I love you both. An old b.” The time of those messages was 10:29 p.m. The last text message from Defendant to Holli says, “God forgive me for what I'm about to do . . . I love you girl you mean a lot to me and I'm sorry and I apologize but if y'all can't accept my apology may God have risked mercy on our souls[;]” the time of that message was 11:27 p.m.

Melinda arrived at Kevin's home in a car with her friend, Jane. Defendant shot an arrow into the car, and it hit and killed Jane. Defendant then opened the driver's side door, directed Melinda to get out of the car, pushed Jane's body face-first onto the floorboard, and drove away in Jane's car. Defendant drove Jane's car, with Jane still in the car, until it ran out of gas. Defendant then used an umbrella to hold down the gas pedal and caused the car to go into a lake with Jane's body inside it.

At trial, Defendant testified on his own behalf that he noticed some deer in the yard when he arrived at Kevin's house so he got the crossbow and hoped to get a deer. Defendant claimed he eventually gave up but was still holding the crossbow when Jane's car arrived. Defendant stated he was holding the crossbow in one hand while directing Jane where to park with the other hand, but he stumbled and slipped, causing the crossbow to discharge and hitting Jane with the arrow.

Defendant was indicted for first degree murder. The jury found Defendant guilty of first degree murder. The trial court entered judgment sentencing Defendant to life imprisonment without parole. Defendant appeals.

## II. Lay Opinion Testimony

Defendant first contends that “the trial court plainly erred in allowing lay opinion testimony from a witness who had never fired the crossbow about whether it might have discharged accidentally.” (Capitalization altered.) We first note that Defendant does not clearly identify the testimony he claims was opinion testimony admitted in error. Assistant Chief Falls of the Belmont Police Department did not give an opinion that Defendant could not have accidentally fired the crossbow. Assistant Chief Falls testified he had sixteen years of personal experience in hunting with a crossbow. Assistant Chief Falls, without objection, testified to his personal experience using a crossbow; about how crossbows operate generally, using a “cocking rope;” and about the operation of a CenterPoint Crossbow, the type of bow Defendant used.

Even generously assuming it was error for Assistant Chief Falls to testify regarding the bow, Defendant has not come close to demonstrating plain error, which requires a demonstration 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) (citations, quotation

marks, and brackets omitted).

Here, Defendant sought out Melinda; arranged for Melinda to come to the house where Defendant was waiting for her; he sought and obtained the crossbow; he waited for Melinda as he texted Holli he was going to kill Melinda and requested “forgiveness[;]” and upon Melinda’s arrival, he shot at her, killing Jane instead. *See* N.C. Gen. Stat. § 14-17(a) (2021) (defining murder in the first degree); *see also State v. Sistler*, 218 N.C. App. 60, 68, 720 S.E.2d 809, 815 (2012) (“The elements required for conviction of first degree murder are (1) the unlawful killing of another human being; (2) with malice; and (3) with premeditation and deliberation.” (citation and quotation marks omitted)). Thereafter, Defendant fled in the car with Jane’s body and tried to hide her body by running the car into a lake. *See State v. King*, 343 N.C. 29, 38, 468 S.E.2d 232, 238 (1996) (“Evidence of a defendant’s flight following the commission of a crime may properly be considered by a jury as evidence of guilt or consciousness of guilt. . . . The relevant inquiry is whether there is evidence that defendant left the scene of the murder and took steps to avoid apprehension.” (citations, quotation marks, and brackets omitted)). Thus, Assistant Chief Falls’ testimony regarding the use of crossbows most likely had no potential “impact on the jury’s finding that the defendant was guilty.” *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334 (citation and quotation marks omitted). This argument is overruled.

### **III. Testimony Regarding Melinda’s Truthfulness**

Finally, Defendant, citing Rule of Evidence 405 regarding character evidence,

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contends the trial court erred in not allowing Sam, a friend of his and Melinda's, to testify regarding the truthfulness of Melinda, the "State's key witness." See N.C. Gen. Stat. § 8C-1, Rule 405(a) (2021) ("In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion."). At trial, when asked if he was familiar with Melinda's "reputation for truthfulness" in the community, Sam responded "yes[;]" when asked what Melinda's reputation for truthfulness was, Sam answered "not good." The defense attorney then asked:

Q: Is she honest?

(The witness shook his head from side to side)

Q: You have to speak up.

[PROSECUTOR]: Objection.

THE COURT: Sustained as to what - -

[PROSECUTOR]: Motion to strike.

THE COURT: Sustained as to the last question. You need to disregard that last question and any answer that the witness has given.

According to Defendant, in addition to hearing about Melinda's reputation for truthfulness, the jury should have also been able to consider Sam's *personal* opinion of Melinda's truthfulness. But that was not the question asked. The question called for a yes or no answer, and Sam shook his head, "no." The trial court instructed the jury to disregard "any answer that the witness has given."

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The State contends the question, “Is she honest?” was improperly worded, as it was a leading question and it was not requesting any “evidence in the form of reputation or opinion” as allowed by Rule of Evidence 608. Instead, the question was directed to Melinda’s credibility, which is a “matter for the jury alone.” *See State v. Solomon*, 340 N.C. 212, 221, 456 S.E.2d 778, 784 (1995) (citation omitted).

Defendant seems to rely only upon the indication that Sam “shook his head from side to side” as the evidence he claims was wrongfully stricken. Defendant argues that

[t]he jury was instructed to disregard [Sam’s] gesture indicating that in his opinion, [Melinda] was not an honest person. Under the facts of this case, where a sentence of life without parole turned on the credibility of a single witness, there is a reasonable possibility that the jury would have returned a different verdict had they been allowed to hear that people who knew her well did not believe that [Melinda] was a truthful and honest person.

In other words, Defendant contends the trial court erred by striking Sam’s indication of “no” by shaking his head and if the jury had been able to consider this gesture, it may have returned a different verdict.

Even if we assume the trial court erred in striking the question and Sam’s negative gesture, in light of the substantial evidence of Defendant’s own messages indicating his intentions to kill Melinda and the evidence from other witnesses of his actions to carry out that intention, Defendant has not demonstrated even a remote possibility the jury would have returned a different verdict if the jury had been

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allowed to consider Sam's shaking his head "no." Sam had already testified Melinda's reputation for truthfulness was "not good," which is favorable evidence for Defendant. To the extent that we can consider Sam's shaking his head, "no," as an offer of proof, Defendant has failed to demonstrate any prejudice from striking this gesture. This argument is overruled.

**IV. Conclusion**

We conclude there was no error.

NO ERROR.

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).