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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-839

Filed: 17 April 2018

Rowan County, Nos. 12 CRS 5113, 57359, 57501, 57503; 15 CRS 4570

STATE OF NORTH CAROLINA

v.

MAURICE ALEXANDER ROBINSON

Appeal by defendant from judgments entered 29 February 2016 by Judge Joseph N. Crosswhite in Rowan County Superior Court. Heard in the Court of Appeals 21 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Nicholaos G. Vlahos, for the State.

Rudolf Widenhouse, by M. Gordon Widenhouse, Jr., for defendant-appellant.

DAVIS, Judge.

Maurice Alexander Robinson ("Defendant") appeals from his convictions for first-degree murder, three counts of robbery with a dangerous weapon, and attaining the status of a habitual felon. After a thorough review of the record and applicable law, we conclude Defendant received a fair trial free from prejudicial error.

Factual and Procedural Background

The State presented evidence tending to establish the following facts: In November and December of 2012, Defendant committed three robberies with Kevin Canzator (his cousin), Ashley Bentley (his girlfriend), and Christopher Watson.[1] The facts regarding each robbery are summarized below:

I. The 22 November 2012 Robbery

On 22 November 2012, Defendant, Watson, Canzator, and Bentley met at Defendant's aunt's home to discuss robbing the Neighborhood Market in Salisbury, North Carolina. They planned for Defendant and Canzator to enter the convenience store, purchase candy, and exit. Once they left the store, Defendant would call Bentley and "tell her what they saw as to where -- how many people were in there, and to let [Watson] out so [he] could go in and rob the store." Defendant informed Watson that he had previously observed the store owner, Sultan Qasem, pull a wad of money from his back pocket to make change for store customers' purchases. He instructed Watson to take this wad of money from Qasem along with the money in the store's cash register.

That evening, Defendant, Canzator, and Watson drove to the apartment of Sean Roberts to borrow a revolver. The gun was loaded, and Defendant told Watson that "if [Watson] had to shoot the gun that there would be no shell casings because it

[1] Watson testified that he had been dealing drugs for Defendant and was indebted to him. Watson stated that Defendant had implied he would harm his daughter if Watson did not pay him back. Based on this threat, Watson testified, he committed the robberies with Defendant.

was a revolver." Defendant gave the revolver to Bentley with an express instruction to give it to Watson immediately before he went in to commit the robbery.

At approximately 8:45 p.m., Defendant and Canzator drove to the Neighborhood Market as planned. Defendant remained in the car while Canzator entered the store to "see if everything was clear." When Canzator returned, Defendant called Bentley and instructed her to give the revolver to Watson and tell him to commit the robbery.

Bentley gave Watson the revolver that Defendant had acquired from Roberts' apartment, and Watson entered the convenience store. He was dressed in a Halloween costume and gardening gloves. When he entered the store, he pointed the gun at Qasem and Billy Kunup, an employee. He ordered Qasem to hand over the money contained in the cash register and the wad of money in his back pocket. After Qasem complied, Watson left the convenience store and was driven away by Bentley.

Watson subsequently gave the money he had stolen from Qasem to Defendant. Defendant paid Bentley $20 for driving Watson to the crime scene and split the remainder of the money between himself, Watson, and Canzator. Defendant told Watson to burn the Halloween costume he had been wearing during the robbery, and Watson did as he was instructed.

II. The 5 December 2012 Robbery

On the evening of 5 December 2012, Defendant, Canzator, and Watson went to Roberts' apartment to retrieve the revolver they had used in the 22 November 2012 robbery. The three men then met up with Bentley and planned to steal money from the same Neighborhood Market for a second time by using the same tactics they had used in the first robbery. However, when Defendant and Bentley tried to enter the store to purchase candy, they realized that Qasem was keeping the store's door locked at night and only allowing certain customers to enter.

After realizing their previous plan would not work, Defendant instructed Canzator to act like he was coming into the store to make a purchase. He gave Watson the revolver and told him to sneak into the store after Canzator entered in order to commit the robbery. As Defendant gave Watson the gun, he instructed Watson "not to shoot anybody unless [he] had to, but that if they wouldn't give [him] the money or tried to call the cops that [he] had to do what [he] had to do, and not to just shoot them once, to empty the clip."

Canzator and Watson complied. Watson wore a mask and hoodie as he robbed Qasem at gun point. After Qasem surrendered the remaining money in the store's cash register, Watson and Canzator returned to Defendant, who was waiting with Bentley in a car nearby. Defendant split the money and cigarettes between the three men but voiced his frustration that this second robbery had resulted in the recovery of less money than the first robbery.

As they left the Neighborhood Market, Defendant told Bentley, Watson, and Canzator that he wanted to commit another robbery at a certain specified convenience store "in the country." As she began driving to this rural location, Bentley told Defendant that she did not think robbing a store in the country was a good idea because they "didn't know enough about the store; that [they] didn't know if there was a weapon in there or anything." Defendant became "extremely upset, [began] smacking the dashboard, and [started] yelling at her." He eventually "told her to just turn around [and] that he would get somebody else to do it." When Defendant and Bentley returned to their home, they argued and "it became physical."

III. The 10 December 2012 Robbery

On 10 December 2012, Defendant, Canzator, and Watson planned to commit a robbery at the Z&H Mart on Mooresville Road. Defendant drove to Roberts' apartment to obtain the revolver, and the three men drove to the convenience store. Once they arrived at the store, Watson got out of the car and waited nearby as Defendant and Canzator went inside the convenience store to signal him to enter with the revolver. Watson was wearing the same mask and hoodie that he had worn during the 5 December 2012 robbery.

Upon Defendant and Canzator signaling Watson to enter, Watson ran into the store and pointed the revolver at Hecham Abualeinan, the store owner. Abualeinan "shut[ ] the cash register and start[ed] yelling at [Watson]." Watson told Abualeinan

that he "[didn't] want to hurt anybody," and Abualeinan "pick[ed] up a metal bag rack and acted like he was going to throw it at [Watson]."

Watson fired a warning shot into the air, and Abualeinan started walking toward him. Watson "had [his] finger on the trigger and the gun went off, and Mr. Abualeinan fell on the floor." Watson laid the gun on the counter, unlocked the cash register, and removed all of the bills. He left the store and walked to a nearby driveway where Defendant and Canzator were waiting for him in the car. He "threw the money and the gun" on the backseat of the car and told the other men to "get out of there[.]" As they drove away from the crime scene, Watson informed Defendant and Canzator of what had occurred in the convenience store.

The three men drove to the home of a mechanic, Mike Miller, who was a friend of Defendant. According to Watson, Defendant told Miller that they had "just done a robbery[.]"[2] Defendant told Miller that the men needed to "burn some evidence," asked him to light a fire, and instructed Watson to take off his shoes and throw them into a fire that Miller had lit nearby.

* * *

Abualeinan was later pronounced dead from a gunshot wound to the head. Law enforcement officers obtained video surveillance from the 10 December 2012 robbery and subsequently published a press release identifying Watson as the

[2] Miller testified that Defendant never told him that they had committed a robbery.

gunman and Defendant and Canzator as two witnesses who had entered the store shortly before the shooting. Defendant, Canzator, Watson, and Bentley were interviewed at the Rowan County Sheriff's Office by Detective Christine Wood, Lieutenant Chad Moose, and Lieutenant Jason Owens.

During an interview at the Sheriff's Office, Defendant admitted that he and Canzator went to the Z&H Mart to purchase candy but stated that he had not seen a shooting occur and did not know anything about it. Lieutenant Owens showed him a photograph that had been taken of Defendant with Watson and Bentley, and Defendant admitted that he knew Watson but that he had merely been giving him a ride to "Rowan Cabarrus Community College for some kind of placement test for criminal justice." Eventually, Defendant told the officers that he and Canzator had "picked [Watson] up" from the Z&H Mart and that Watson had stated to them, "I just robbed the m[*****] f[*****] and shot the guy." He denied that Watson had given him any money from the robbery. Defendant signed a statement admitting that Watson had told him about robbing the Z&H Mart and shooting the store owner.

Defendant was subsequently indicted for first-degree murder, three counts of robbery with a dangerous weapon, and attaining the status of a habitual felon. A jury trial was held from 19 January 2016 to 29 February 2016 before the Honorable Joseph N. Crosswhite in Rowan County Superior Court. The State presented testimony from twenty witnesses, including Bentley, Watson, Canzator, Qasem,

Miller, Detective Wood, Lieutenant Moose, and Lieutenant Owens. Defendant presented testimony from Roberts, Dr. Ginger Calloway (a psychologist), Dr. George Corvin (a forensic psychologist), and Bill Dover (a private investigator). Defendant did not testify.

During direct examination, Bentley testified that Defendant had been physically and verbally abusive to her throughout their relationship. She stated, *inter alia*, that he had (1) pointed a gun at her head in 2006; (2) slapped her and shoved her after the 22 November 2012 robbery; and (3) been abusive on the evening of the 5 December 2012 robbery. Watson also testified as to the abuse in the relationship between Defendant and Bentley, stating that Defendant had told him that "he had come really close to shooting [Bentley] because . . . she didn't listen to him" after the 5 December 2012 robbery. Defendant objected to each of these statements, and the trial court overruled his objections.

On 29 February 2016, the jury found Defendant guilty of first-degree murder and three counts of robbery with a dangerous weapon. That same day, Defendant pled guilty to attaining the status of a habitual felon. The trial court consolidated the first-degree murder conviction with one of the robbery convictions and sentenced Defendant to life imprisonment without parole. Defendant was sentenced to two consecutive terms of 96 to 128 months imprisonment for the two remaining robbery

convictions and for the habitual felon conviction. Defendant gave oral notice of appeal in open court.

Analysis

Defendant's sole argument on appeal is that the trial court erred by admitting evidence of his abuse of Bentley during the course of their relationship pursuant to Rule 404(b) of the North Carolina Rules of Evidence. Rule 404(b) provides, in pertinent part, as follows:

> (b) **Other crimes, wrongs, or acts.** — Evidence 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. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident. . . .

N.C. R. Evid. 404(b). Our Supreme Court has held that

> when analyzing rulings applying Rules 404(b) and 403, we conduct distinct inquiries with different standards of review. When the trial court has made findings of fact and conclusions of law to support its 404(b) ruling . . . we look to whether the evidence supports the findings and whether the findings support the conclusions. We review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b). We then review the trial court's Rule 403 determination for abuse of discretion.

State v. Beckelheimer, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012).

Defendant challenged the admission of the State's evidence that (1) Defendant generally abused Bentley during the relationship; (2) Defendant held a gun to

Bentley's head in 2006; (3) Defendant was physically abusive toward Bentley after the 22 November 2012 robbery; and (4) Defendant was also physically abusive toward her after the 5 December 2012 robbery when she told him she did not want to participate in another robbery. The State contends that this testimony was used to help establish "the chain of circumstances leading up to the robberies" and "give the jury a complete picture of Defendant's participation in those crimes, and to show how Defendant shared a common purpose with and actively encouraged Watson, Canzator, and Bentley to commit the crimes through, *inter alia*, fear of Defendant."

Even assuming — without deciding — that the introduction of this testimony constituted error, Defendant cannot establish prejudice. Pursuant to N.C. Gen. Stat. § 15A-1443(a), "[a] defendant is prejudiced by evidentiary error when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." *State v. Wilkerson*, 363 N.C. 382, 415, 683 S.E.2d 174, 195 (2009) (citation and quotation marks omitted), *cert. denied*, 559 U.S. 1074, 176 L. Ed. 2d 734 (2010). "The burden of showing prejudice under subsection 15A-1443(a) is upon the defendant." *Id.* (citation, quotation marks, brackets, and ellipsis omitted).

Here, the State's evidence was overwhelming against Defendant as to his involvement in each of the robberies and the murder of Abualeinan. Canzator, Watson, and Bentley testified in specific detail about the robberies, including

Defendant's planning of the crimes, acquisition of the revolver, and status as the leader of the group in connection with the robberies. Watson testified that he owed a debt to Defendant because of his history of drug dealing and that he believed his family would be harmed if he did not comply with Defendant's demands. Watson also stated that Defendant had given him the revolver immediately before each robbery and had advised Watson to use the gun if anyone refused to comply with his demands for money or attempted to call the police. Furthermore, Miller confirmed that Defendant asked him to start a fire on the evening of 10 December 2012 so that he could "burn some rags" and Watson's shoes.

Although Defendant offered evidence from Roberts denying that he had personally provided Defendant with the revolver prior to the murders, Defendant presented no evidence that materially contradicted the State's overwhelming evidence of his guilt. Moreover, Defendant has not argued in his appellate brief that the jury would have reached a different verdict had the testimony concerning Defendant's abuse of Bentley been excluded. Having determined that Defendant has failed to show prejudice, we conclude that any error — even assuming such error existed — in allowing the challenged testimony was harmless. *See State v. Noble*, 226 N.C. App. 531, 540, 741 S.E.2d 473, 480-81, *disc. review denied*, 367 N.C. 251, 749 S.E.2d 853 (2013) ("Assuming without deciding that this testimony was inadmissible under Rule 404(b), we conclude that the error was harmless; considering

the other substantial evidence of defendant's guilt, there is no reasonable possibility that the jury would have reached a different verdict had this testimony about defendant's husband not been admitted.").

Conclusion

For the reasons stated above, we conclude Defendant received a fair trial free from prejudicial error.

NO PREJUDICIAL ERROR.

Judges STROUD and ARROWOOD concur.

Report per Rule 30(e).