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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1320

Filed: 18 September 2018

Pitt County, Nos. 12 CRS 52757–59, 52764

STATE OF NORTH CAROLINA

v.

WILLIE ODELL WHITEHEAD JR.

Appeal by defendant from judgments entered 26 September 2016 by Judge Marvin K. Blount III in Pitt County Superior Court. Heard in the Court of Appeals 7 June 2018.

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

Richard Croutharmel for defendant.

DIETZ, Judge.

Defendant Willie Odell Whitehead Jr. appeals his conviction on multiple counts of first-degree murder and a related robbery count, all involving an armed robbery of a convenience store that ended with the killing of three innocent people. Whitehead argues that the trial court erred by admitting evidence that he was

involved in another, unrelated robbery and murder several weeks before the convenience store murders.

As explained below, we reject Whitehead's argument because, even assuming the trial court erred, the error was harmless. In light of the overwhelming evidence of Whitehead's guilt, there is no reasonable possibility that, but for the admission of the challenged evidence, the jury would have reached a different result. Accordingly, we find no prejudicial error in the trial court's judgments.

Facts and Procedural History

In March 2012, Defendant Willie Odell Whitehead Jr. and a friend named Antwan Anthony began preparing to commit armed robbery. They first gave $1,500 in cash to an acquaintance, Zipporah Purvis, and took her to buy a green 1994 Chrysler Concorde. Whitehead and Anthony then took Purvis to a Walmart and selected a box of 9mm ammunition for Purvis to purchase.

Two days later, Whitehead, Anthony, and several others met for dinner and made plans to rob a drug dealer in Greenville. After dinner, Whitehead, Anthony, and two other men got into the Chrysler Concorde and drove to the parking lot of the drug dealer's apartment complex. The group waited for an opportunity to rob the drug dealer but ultimately abandoned their plan when the drug dealer did not get out of his car.

On their way home, Anthony told the group that he wanted to rob a convenience store. Whitehead drove the group to a nearby convenience store, but Anthony and the other men decided not to rob it because there were too many people inside.

Whitehead then drove the group to a Hustle Mart down the street. Anthony went inside with another man, Raekwon Blount. A third man, Xavier Shamble, initially stayed with Whitehead, explaining that he did not want to rob the store, but Whitehead told him to "just go in there, help them out, make it quick, be in and out." After Shamble joined the other men inside, Whitehead turned the car around and waited for them to exit.

When Shamble entered the Hustle Mart, he saw Anthony talking to two of the employees while Blount took money from the counter. Anthony told Shamble to retrieve the third employee from the back of the store. Shamble heard a gunshot while he was in the back of the store and returned to the counter, where he saw one of the employees on the floor, bleeding from his face. At the same time, Blount ran from the store and told Whitehead that Anthony shot someone. Whitehead told Blount to "go back and get them." Blount retrieved Shamble and as they returned to Whitehead they heard two more gunshots.

Finally, Anthony left the store and returned to the car. As Whitehead drove the group away from the Hustle Mart he asked Anthony, "you shot all of them?"

Anthony responded that he did and Whitehead shook his head. Whitehead then drove the group to his sister's house, where they changed into Whitehead's clothes and divided the stolen Hustle Mart money.

A customer arrived at the Hustle Mart after Whitehead and the others had fled, and discovered the three victims, Gaber Alawi, Machbel Almoganahi, and Nabil Almoganahi. Alawi was dead by the time emergency responders arrived. Machbel and Nabil Almoganahi were rushed to a nearby hospital but did not survive. All three victims had been shot in the head.

Law enforcement recovered surveillance video of the murders and portions were shown on local television news programs. Through tips, law enforcement identified Anthony as the shooter and matched shell casings at the scene to Anthony's 9mm firearm.

That same day, Whitehead met Zipporah Purvis—the woman who helped Whitehead and Anthony buy the getaway car and ammunition—and burned a bag containing clothes. While burning the bag of clothes, Whitehead told Purvis that anyone who knew something from the Hustle Mart robbery would be "dealt with." Law enforcement later recovered the burned bag and matched the burned remains to clothes worn by the suspects during the Hustle Mart murders.

The State charged Whitehead with three counts of first-degree murder and one count of robbery with a dangerous weapon. At trial, over Whitehead's objection, the

State presented evidence that Whitehead and Anthony were involved in an earlier robbery and murder, two weeks before the Hustle Mart murders, in which Whitehead and Anthony drove to a drug dealer's home and Anthony shot two victims in the head during that robbery.

The jury convicted Whitehead on all charges and the trial court sentenced him to life in prison without parole. Whitehead timely appealed.

Analysis

Whitehead argues that the trial court erroneously admitted evidence that he was involved in a separate robbery and murder several weeks before the Hustle Mart murders. Whitehead contends that this evidence was inadmissible under Rule 404(b) because it was not sufficiently similar to the Hustle Mart murders and served only to attack his character. We reject this argument because, even if the trial court erred, the error was harmless.

This Court may vacate a conviction or order a new trial if there "has been error in the admission or exclusion of evidence, to the prejudice of the defendant." N.C. Gen. Stat. § 15A-1442(4)(c). An evidentiary error "is not prejudicial unless there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at trial." *State v. Babich*, __ N.C. App. __, __, 797 S.E.2d 359, 364 (2017). "Where it does not appear that the erroneous admission of

evidence played a pivotal role in determining the outcome of the trial, the error is harmless." *State v. Mason*, 144 N.C. App. 20, 28, 550 S.E.2d 10, 16 (2001).

Here, the State presented evidence that Whitehead assisted in purchasing both the getaway vehicle and the 9mm bullets used to commit the Hustle Mart murders; that Whitehead planned to commit a robbery against a drug dealer over a dinner with the other perpetrators; that Whitehead knew the other perpetrators were armed; that after the group abandoned their plan to rob the drug dealer, they discussed robbing a convenience store; that Whitehead drove the group to the Hustle Mart, which the group chose because there appeared to be few people inside; that Whitehead waited in the getaway vehicle and, as the robbery and killings occurred, made comments to the other perpetrators indicating he was aware they were robbing the store while armed.

After the Hustle Mart murders, Whitehead drove the group to his sister's home and helped the group divide the proceeds of the robbery. Whitehead gave the other perpetrators a change of clothes and burned the clothes he and the other perpetrators wore during the robbery. Whitehead also hid the car used in the crime after learning that there was video surveillance footage that recorded the crime, and indicated that he would take other steps to conceal the crime from law enforcement.

Simply put, the State presented overwhelming evidence of Whitehead's guilt, both from other participants in the crime and from corroborating evidence and events.

In light of this evidence, Whitehead has not met his burden to show a reasonable possibility that, had the jury not heard the details of the earlier, unrelated robbery and murder, they would have acquitted him. *Babich*, __ N.C. App. at __, 797 S.E.2d at 364. Accordingly, we find no prejudicial error in the trial court's judgments.

Conclusion

We find no prejudicial error in the trial court's judgments.

NO PREJUDICIAL ERROR.

Judges TYSON and BERGER concur.

Report per Rule 30(e).