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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-368

Filed: 15 January 2019

Transylvania County, No. 16CRS050708-10; 16CRS050715

STATE OF NORTH CAROLINA

v.

CHRISTOPHER RASHAD MOONEY, Defendant.

Appeal by Defendant from judgments entered 7 December 2017 by Judge Jeff Carpenter in Transylvania County Superior Court. Heard in the Court of Appeals 27 November 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Deborah M. Greene, for the State.

Julie C. Boyer for the Defendant.

DILLON, Judge.

Defendant Christopher Rashad Mooney appeals judgments finding him guilty of four crimes: assault inflicting serious injury, interference with emergency communication, false imprisonment, and injury to personal property.

I. Background

Defendant was charged for the four crimes referenced above. He pleaded guilty to one of the crimes, assault inflicting serious injury, and the State voluntarily dismissed the remaining three charges. Based on the guilty plea and Defendant's criminal record, the district court sentenced Defendant to an active sentence of seventy-five (75) days. Defendant appealed the conviction to superior court for a trial *de novo*.

A jury trial on all four charges was held in superior court. The jury returned guilty verdicts as to all four charges. The charges were consolidated and Defendant received two sentences: seventy-five (75) days of imprisonment for assault inflicting serious injury and one-hundred fifty (150) days of imprisonment for the other three charges, which was suspended for eighteen (18) months of supervised probation.

Defendant timely appealed.

II. Analysis

On appeal, Defendant argues that the trial court erred in allowing the State to cross-examine him regarding prior allegations, charges, and conduct. More specifically, Defendant takes issue with the State's cross-examination regarding his alleged possession of marijuana after his arrest and alleged prior bad acts.

Defendant first contends that it was error for the trial court to overrule his objection, based on relevance, to the State's question regarding his alleged possession of marijuana after his arrest.

We review a trial court's ruling on the admissibility of evidence, a question of law, *de novo*. *Ratliff v. Huntley*, 27 N.C. 545, 547 (1845); *see State v. Barber*, 335 N.C. 120, 129, 436 S.E.2d 106, 111 (1993). However, our *de novo* review is limited to the same grounds on which the objection was based. *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934) (stating that "the law does not permit parties to swap horses between courts in order to get a better mount[.]"). If, on appeal, a party raises a new ground on which to base an objection, we review the objection based on that ground for plain error. *State v. Locklear*, 363 N.C. 438, 449, 681 S.E.2d 293, 303 (2009) ("To the extent defendant failed to object . . . or objected on grounds other than those now argued on appeal, he has waived his right to appellate review other than for plain error."). Plain error is error "so fundamental that it caused a miscarriage of justice" or, but for its occurrence, "the jury probably would have reached a different result[.]" *State v. Garcell*, 363 N.C. 10, 35-36, 678 S.E.2d 618, 634-35 (2009) (internal citations omitted).

Here, the State, on cross-examination, asked Defendant if he was searched and had marijuana on his person when he arrived at the jail after being apprehended. Defendant objected to this question, arguing that it was not relevant. The trial court overruled the objection. Defendant, however, does not base his argument on appeal on relevance. Rather, on appeal, Defendant cites to *State v. Williams* and argues that "*for purposes of impeachment*, a witness, including the defendant in a criminal case,

may *not* be cross-examined as to whether he has been indicted or is under indictment," "accused," or "arrested" for "a criminal offense unrelated to the case on trial[.]" *State v. Williams*, 279 N.C. 663, 672, 185 S.E.2d 174, 180 (1971) (emphasis in original). We note, though, the State made no mention in its questioning that Defendant was, in fact, indicted, accused, or arrested for his possession of marijuana. The State merely asked this question in direct contrast to Defendant's testimony on direct that he was never searched by the detective the night of his arrest. In any event, as Defendant failed to object on the ground he now argues, our review is limited to plain error. *Locklear*, 363 N.C. at 450-51, 681 S.E.2d at 303-04.

Based on the evidence presented at trial, we conclude that Defendant has failed to show plain error; assuming the trial court committed error, Defendant has failed to show that, but for the admission of this testimony, the jury would have reached a different verdict. *Garcell*, 363 N.C. at 35-36, 678 S.E.2d at 634-35.

Defendant also takes issue with the State's cross-examination regarding his prior bad acts; namely, Defendant's alleged driver's license suspension, charges of driving while impaired and resisting a public officer, and previous accidents and altercations with other victims. Defendant did not object to this line of questioning at trial, except as to relevance in one instance. Thus, we review for plain error. *Locklear*, 363 N.C. at 449, 681 S.E.2d at 303.

Again, Defendant cites to and relies on *State v. Williams* in support of his argument. *Williams*, 279 N.C. at 672, 185 S.E.2d at 180. However, also in *Williams* is the acknowledgement that "[i]t is permissible, for purposes of impeachment, to cross-examine a witness, including the defendant in a criminal case, by asking disparaging questions concerning collateral matters relating to his criminal and degrading conduct." *Williams*, 279 N.C. at 675, 185 S.E.2d at 181. The State's line of questioning about Defendant's suspended license, prior arrests, and alleged incidents with other victims falls within this permissible scope. Moreover, Defendant "opened this door" to these questions during his direct examination; therefore, he may not complain of the State continuing with these topics. *See State v. Weathers*, 322 N.C. 97, 101-02, 366 S.E.2d 471, 474 (1988) ("[W]hen a defendant in a criminal case offers evidence which raises an inference favorable to his case, the State has the right to explore, explain or rebut that evidence.").

As the State put on evidence in the form of testimony from the alleged victim and the detective that apprehended Defendant regarding the crimes at issue in this case, it is not likely that, but for the admission of the State's questions on cross-examination of Defendant, the jury would have reached a different result. *Garcell*, 363 N.C. at 35-36, 678 S.E.2d at 634-35. Therefore, assuming the trial court's actions constituted error, we conclude that these actions did not amount to plain error. *Id.*

III. Conclusion

The trial court did not commit plain error in allowing the State to cross-examine Defendant about prior allegations and charges that were not the subject of case at hand. As such, we affirm.

NO ERROR.

Judges Bryant and Zachary concur.

Report per Rule 30(e).