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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-593

Filed: 4 February 2020

Wilson County, No. 17CRS050087, 17CRS050074

STATE OF NORTH CAROLINA

v.

MATTHEW JOSEPH TAYLOR, Defendant.

Appeal by Defendant from judgment entered upon jury verdicts by Judge Walter H. Godwin, Jr., in Wilson County Superior Court. Heard in the Court of Appeals 8 January 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Kristine M. Ricketts, for the State.

Meghan Adelle Jones for the Defendant.

BROOK, Judge.

Matthew Joseph Taylor (“Defendant”) appeals from judgment entered 27 September 2018 upon jury verdicts finding him guilty of first-degree murder and second-degree burglary. Defendant contends that the trial court committed reversible error both in limiting Defendant’s cross-examination of two prosecution witnesses, violating Defendant’s rights under the Confrontation Clause of the U.S.

Constitution and the North Carolina Constitution, and in instructing the jury with regard to first-degree murder. For the reasons stated below, we disagree.

I. Background

Defendant was arrested 14 January 2017 for felony second-degree burglary and first-degree murder. Robert McDonald (“McDonald”), Elijah Woodie (“Woodie”), Ramond Atkinson (“Atkinson”), and two juveniles, T.C. and J.S.,¹ were arrested on or around 17 January 2017 for the same offenses.

A. Events of 11 to 12 January 2017

The evidence presented at trial tended to show the following facts. J.S. and Defendant had known each other for about one month when, on 11 January 2017, J.S. suggested they could rob a man she knew, Stephanick Jones (“Jones”). J.S. knew Jones to have money, televisions, and drugs in his apartment. That same day, Defendant drove J.S., Atkinson, Woodie, T.C., and McDonald in Defendant’s mother’s car to Jones’s house in Wilson, North Carolina, with J.S. providing directions. T.C. and Defendant knew each other through T.C.’s grandmother. Woodie was then living with Defendant and Defendant’s family. McDonald and Defendant knew each other from church, and they lived next door to each other. The group discussed that they would rob Jones, divide the proceeds, and that “nobody was supposed to get hurt.” Defendant brought a knife and gave it to T.C.; McDonald also had a knife.

¹ We refer to T.C. and J.S., juveniles at the time of the offense and trial, by their initials.

When the group arrived, J.S. went upstairs to Jones's apartment to ask him to let her inside, under the ruse that she had left her cellphone there the previous night. When Jones would not let her inside, she returned downstairs, and the whole group—Defendant, J.S., T.C., Atkinson, Woodie, and McDonald—went back upstairs to Jones's apartment. An argument ensued between Jones and the group regarding the cellphone. J.S. "came up with an excuse that [Jones] gave her a phone that was allegedly stolen and that police officers was after her and that she said she wasn't getting in trouble for [Jones] so he would have to figure out something as far as the phone was concerned." A woman was with Jones in the apartment, and Jones told the woman to bring him a gun.

Jones did not let them into his apartment, but he left with the group. Defendant, J.S., Woodie, and Atkinson got into Defendant's car, and Jones, McDonald, and T.C. got into Jones's car. Defendant and Jones drove their respective cars to a Salvation Army store so that the group could discuss the cellphone issue, and they parked in the lot. J.S. and Jones, in separate cars, argued over the telephone about J.S.'s "other cell phone." J.S. was speaking to Jones on Defendant's cellphone.

Sitting in Jones's car, McDonald told T.C. to stab Jones, but T.C. refused. T.C. got out of Jones's car, got into Defendant's car, and gave Defendant the knife. Defendant got into the backseat of Jones's car with Jones and McDonald, who was in the front passenger seat. Jones was in the driver seat of his car. J.S. left Defendant's

car, walked to Jones's car, opened his door to continue discussing the cellphone, and the two again began arguing. T.C. testified that J.S. said "something about opening the door and say [sic] let's shoot[.]" and McDonald and Defendant stabbed Jones. Although T.C., J.S., McDonald, and Atkinson all testified that both McDonald and Defendant stabbed Jones, the prosecution witnesses provided conflicting testimony regarding who stabbed Jones first. Defendant and McDonald stabbed Jones in the neck, chest, and abdomen. When Defendant and McDonald began stabbing Jones, J.S. ran back to Defendant's car, where Atkinson was now sitting in the driver seat. Atkinson drove Defendant's car away from the parking lot with Woodie, T.C., and J.S. Jones ran from his car into the Salvation Army, bleeding from and holding his neck. Defendant and McDonald tried to drive away in Jones's car. But, as Jones still had the key, they ultimately abandoned the car and ran behind the Salvation Army.

Atkinson picked up Defendant and McDonald at a Family Dollar store near the Salvation Army. T.C. testified that Defendant was "making fun of" Jones and "the whole situation" on the drive back from the Salvation Army, after stabbing Jones. The group then drove together in Defendant's car back to Jones's apartment to take his belongings because they knew he was at the hospital and his apartment would be empty. With no way into Jones's apartment, however, they drove back to Rocky Mount to Defendant's house, where Defendant and McDonald changed out of their bloody clothes and washed their knives.

Then the group took Atkinson and T.C. to their homes, and—in the early morning of 12 January 2017—Defendant, J.S., and McDonald returned to Jones’s apartment. On the way, they picked up Sabian Davis (“Davis”) and another youth with a gun. The youth with a gun shot in the glass patio door to get into the apartment. J.S. stayed in the car, but Defendant, McDonald, Davis, and the youth with a gun went into Jones’s apartment and returned to the car with a television, bags of clothes, and an Xbox video game console. They could not get into a locked bedroom where Jones kept money and drugs. The group then returned to Rocky Mount and divided the stolen items among themselves.

While the group was traveling back to Rocky Mount, Wilson Police Officer Daniel Johnson, having received a dispatch call reporting the robbery in progress, tried to pull over Defendant’s car. Defendant did not stop the car, but Officer Johnson recorded the license plate number and learned the car was registered to Defendant’s mother, Charlene Taylor.

Detective Justin Godwin with the Wilson Police Department interviewed Defendant on 12 January 2017. Defendant told Detective Godwin that he was with J.S., Woodie, T.C., McDonald, and Atkinson on 11 January 2017. He told Detective Godwin that he and J.S. had been communicating via Snapchat, a cellphone application that deletes messages automatically after they have been sent and received. Detective Godwin testified that Defendant told him he and J.S. were

discussing “[g]oing to Wilson, getting some items, some shoes . . . , a phone and then some money.” Detective Godwin asked Defendant “what he would call what they [were] going to do and he said a robbery.” In his interview with Detective Godwin, Defendant corroborated much of the testimony of all four accomplice eyewitnesses, including that Defendant drove the group in his mother’s car, that they planned to rob Jones and divide the proceeds, the altercation with Jones at Jones’s apartment, driving to Salvation Army, and getting into the backseat of Jones’s car. Defendant did not admit to stabbing Jones but instead told Detective Godwin that J.S. reached through Jones’s driver side window and stabbed him.

Jones later died of his injuries, and the autopsy report revealed that each injury Jones sustained was to the right side of his body.

B. Trial Proceedings

A trial was held before the Honorable Walter H. Godwin, Jr., during the 10 September 2018 criminal session of Superior Court in Wilson County. Along with several medical professionals, lay witnesses, and law enforcement officers, T.C., J.S., McDonald, and Atkinson testified for the State. During Defendant’s cross-examination of J.S., defense counsel sought to establish J.S.’s bias by questioning her regarding the maximum potential punishment she faced in juvenile court. The following exchange took place:

[DEFENSE COUNSEL]: Now let’s talk just a little bit.
You told us that you had a plea offer to accessory after the

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fact to first degree murder and part of that deal is that your case remains in juvenile court[,] correct?

[J.S.]: Yes.

[DEFENSE COUNSEL]: How old are you now?

[J.S.]: 17.

[DEFENSE COUNSEL]: 17 and a half[,] correct?

[J.S.]: Not really.

[DEFENSE COUNSEL]: Not really.

[J.S.]: My birthday's in June.

[DEFENSE COUNSEL]: Okay. Now you do know that you got away[,] correct?

[J.S.]: Yes.

[DEFENSE COUNSEL]: So you are aware that the maximum incarceration you could get is up to the age of 19 in juvenile court[,] correct?

[J.S.]: Yes.

[PROSECUTOR]: Objection, Your Honor. I don't believe that's a correct statement of the law.

THE COURT: Well, sustained.

[DEFENSE COUNSEL]: Your Honor –

THE COURT: You can ask her if she knows. Just rephrase the question.

[DEFENSE COUNSEL]: Okay. Isn't it true that you know that your case is not going to be transferred to adult court[,] correct?

[J.S.]: Yes.

[DEFENSE COUNSEL]: And you understand that the possible punishment is going to be—Well, Your Honor, if I may be heard actually outside the presence of the jury?

...

THE COURT: All right, Madam Court Reporter, let the record reflect that the jury has left the courtroom. Yes, sir, glad to hear you.

[DEFENSE COUNSEL]: Your Honor, after reading the juvenile code it is my understanding that if she were convicted of murder she could be kept in a juvenile detention center until she's 21 but if it's up to a Class C—excuse me—a Class A through C she could be kept until she's 19. I didn't anticipate, I can find that. It's statutory. And she said that she understood that.

[PROSECUTOR]: Your Honor, I think I can clear this up. It's just the way he asked the question, in juvenile court you can't be held past 19. There are certain circumstances you can be held to 21. On her case I believe he is correct, if he would just rephrase the question, to 19 as it relates to her exact plea.

THE COURT: I think probably the best way to do it is ask her does she understand what the maximum penalty in her particular case is for juvenile punishment. She can either answer it yes or no. If she answers it yes, then you can inquire on a follow-up question. If she says no, then there we are. You may know it. I don't know how she would come about knowing it unless she's been told by counsel. So I would just ask to rephrase the question, not to make

it a statement of what the maximum punishment is but inquire if she does know.

[DEFENSE COUNSEL]: All right. Thank you, sir.

...

[DEFENSE COUNSEL]: Miss [J.S.], I was asking you about your plea deal that you made with the State. You told us that you made a deal to stay in juvenile court, plead to accessory after the fact to first degree murder[,] correct?

[J.S.]: Yes.

[DEFENSE COUNSEL]: And are you aware of what the maximum incarceration, what's the maximum age of incarceration could you get for accessory after the fact to first degree murder, are you aware?

[J.S.]: No.

[DEFENSE COUNSEL]: You do have an attorney[,] correct?

[J.S.]: Yes.

Defendant sought also to establish Atkinson's bias by eliciting testimony from Atkinson regarding his plea agreement with the State and regarding charges for second-degree trespass, a Class 3 misdemeanor, and attempted larceny, a Class 2 misdemeanor, in Nash County, that had been dismissed the previous year. The following exchange transpired:

[DEFENSE COUNSEL]: Now, Mr. Atkinson, you made a deal with the State and had that plea entered in February of 2017; is that correct?

[ATKINSON:] Yes, sir.

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[DEFENSE COUNSEL]: So just weeks after this [the murder and robbery] you had a deal[,] right?

[ATKINSON:] Yes, sir.

[DEFENSE COUNSEL]: And the State's also dismissed another charge for you in Nash County since; is that right?

[PROSECUTOR]: Objection, Your Honor. That wasn't part of his deal. I have no idea.

The parties conducted a bench conference outside the presence of the jury, which proceeded as follows:

DEFENSE COUNSEL: Your Honor, Mr. Atkinson had an attempted larceny and second degree trespass dismissed in February of 2018. The reason I bring it up is under State versus Privette (phonetic), which I have copies of, I believe that it should be allowed because this was pending while—that matter was pending during the pendency of this matter. Now State versus Privette [sic] deals with a [sic] issue where somebody still has a pending case and it talks about the influence, the possible inference of, influence over a witness. Though the facts are slightly different in this one, resolved, we're talking about the same thing, we're talking about the State having influence over him possibly and he did get another dismissal from the State in an unrelated matter. I do concede it wasn't part of their deal necessarily but he's under the influence of this District Attorney's Office during the pendency of this matter and I believe that it's a proper inquiry because of that.

THE COURT: Well, was it a dismissal or any disposition of the case over in Nash County or a part of any plea arrangement so far as his case is concerned?

[PROSECUTOR]: Your Honor, this is the first I heard about it. . . . Apparently the victim showed up to District Court on the court date and said they wanted it dismissed. If we have the dismissals, we can actually determine if it

has anything to do with it. But, you know, we're talking about a second degree trespass which is Class 3 Misdemeanor and attempted larceny which I think would make it a Class 2 Misdemeanor.

THE COURT: So the cases were dismissed at the direction of the prosecuting witness.

[PROSECUTOR]: Well, that's what I'm told. I don't have the dismissals, Your Honor. I didn't know we were going—first off, I didn't know anything about it. Second, you know, if the Defense wants to get into that, I'd like to at least be able to look at what the dismissal says. . . . Your Honor, I will say as a regular matter in District Court we don't have a witness there and the court won't give us a continuance, if we take a dismissal, if the witness shows back up within that two year Statute of Limitations we can bring it back so I know that it is a typical practice in our office to train folks to dismiss it as opposed to just letting the court throw it out when it's done.

THE COURT: Court's going to find that the Nash County matter had nothing whatsoever to do with the plea bargain or the status of his case here in Wilson County and the question is to be, the objection is sustained and the Court's going to instruct the jury to disregard the last question of the Defense attorney. You may bring the jury in.

. . .

[DEFENSE COUNSEL]: If I just may say on the record, Your Honor, that, especially in light of what [the prosecutor] just said, that they could or might re prosecute it, I think it's about the influence that D.A.'s office may have on him.

THE COURT: How does the case in Nash County that has nothing to do with his agreement with the District Attorney's Office for his testimony here today relevant to a Nash County case that was dismissed sometime way back, how is that relevant, even though this case [*State v.*

Prevatte] may held [sic] that the district attorney may hold something over him because of that other pending case, I still like to determine the relevance of that.

[DEFENSE COUNSEL]: I believe it's relevant because State versus Privette [sic] is about the implied influence that a D.A.'s office has over somebody. It's not even about explicit influence and it's about a case that's pending and I do know that it can be distinguished because this one has a voluntary dismissal with it but especially since they regularly then re prosecute these that same D.A.'s office has possible influence over this young man's testimony. It's just another example of how they may have influence over him. I know it's not part of the deal. I'm aware it's not an explicit part of any deal and I'm not surprise [sic] [the prosecutor] doesn't know but Mr. Atkinson knows and that's what it comes down to I believe.

The court then permitted defense counsel to conduct a voir dire of Mr. Atkinson regarding the dismissed Nash County charges:

[DEFENSE COUNSEL]: Mr. Atkinson, did you have a case dismissed over in Nash County as well recently?

[ATKINSON:] Yes, sir, I did.

[DEFENSE COUNSEL]: This year?

[ATKINSON:] Yes, sir.

[DEFENSE COUNSEL]: And you want to make sure that you're not re prosecuted for that case; don't you?

[ATKINSON:] Yes.

[DEFENSE COUNSEL]: Okay. Nothing further.

At the conclusion of the voir dire, the prosecutor renewed his objection to the testimony, which the court sustained. Defense counsel resumed cross-examination:

[DEFENSE COUNSEL]: Q Mr. Atkinson, in regard to your deal, you were originally charged with attempted robbery with a dangerous weapon and first degree murder; is that correct?

[ATKINSON:] Yes, sir.

[DEFENSE COUNSEL]: And during the time that you were working through this with the D.A.'s office you had a lawyer[,] correct?

[ATKINSON:] Yes, sir.

[DEFENSE COUNSEL]: And you were aware that the minimum punishment you would get if you were convicted of first degree murder was life in prison without parole[,] correct?

[ATKINSON:] Yes.

At the close of the evidence, the trial court held a charge conference. Counsel for the State and the trial court discussed adding language regarding acting in concert to the pattern jury instructions, and defense counsel requested language regarding the felony murder charge and stated, "I don't have any position on anything else that we've talked about, except I will say as to the Defendant not testifying we were affirmatively requesting that and I know Your Honor already mentioned that one." Defense counsel, counsel for the State, and the trial court then reviewed the proposed jury instructions together, and Defendant did not object to the use of the language regarding the acting in concert doctrine. Further, Defendant did not object when court reconvened the next day after an overnight recess to review the proposed

jury instructions. In short, Defendant at no point objected to the proposed jury instructions.

The jury found Defendant guilty of felony second-degree burglary and first-degree murder on the basis of malice, premeditation, and deliberation and on the basis of the first-degree felony murder rule on 27 September 2018. The trial court sentenced Defendant on the same day to life without the possibility of parole on the first-degree murder conviction, and it imposed a consecutive sentence of 13 to 25 months in prison on the second-degree burglary conviction. Defendant noticed appeal in open court and filed written notice of appeal the same day.

II. Analysis

Defendant claims that the trial court's limitation of his cross-examination of both J.S. and Atkinson violated his Sixth Amendment right to confront the witnesses against him. Defendant also claims that the trial court's jury instructions confused the jury with regard to the acting in concert doctrine, and that the instructions permitted the jury to find Defendant guilty of first-degree murder without finding that Defendant possessed the required state of mind. We consider each claim in turn.

A. Limitation of Cross-Examination of State's Witnesses

Defendant contends that the trial court committed reversible error when it limited his cross-examination of J.S. and Atkinson, preventing a showing of their bias. For the reasons stated below, we disagree.

i. Preservation and Standard of Review

The standard of review in criminal cases depends on whether the error was preserved by timely objection at trial. *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012). Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure requires that,

[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.

N.C. R. App. P. 10(a)(1). Where a criminal defendant properly preserves a constitutional error for review and establishes error, that error is presumed prejudicial and the State bears the burden of proving that the error was “harmless beyond a reasonable doubt.” N.C. Gen. Stat. § 15A-1443(b) (2019). However, “constitutional questions not raised and passed on by the trial court will not ordinarily be considered on appeal.” *State v. Meadows*, 371 N.C. 742, 749, 821 S.E.2d 402, 407 (2018) (internal marks and citation omitted).

ii. J.S.

Defendant contends that the trial court did “[n]ot allow[] defense counsel to ‘freely interrogate’ J.S. as to her motives, bias, and interest[,]” and that such constraint was error. However, as the exchange between defense counsel and J.S. demonstrates, Defendant did not object to the alleged limitation of his cross-

examination of J.S. The State objected to Defendant's question regarding the maximum punishment she could receive, the trial court ruled that Defendant must rephrase the question to ask only for testimony within J.S.'s personal knowledge, and Defendant complied. Defendant never raised an objection under the Confrontation Clause or otherwise. Because we will not review "constitutional questions not raised and passed upon by the trial court[.]" we conclude that Defendant has waived this argument on appeal. *See Meadows*, 371 N.C. at 749, 821 S.E.2d at 407 (internal marks and citation omitted).

iii. Atkinson

Defendant sought to establish Atkinson's bias by cross-examining him about two Nash County misdemeanor charges that had been dismissed the previous year. The State objected to the testimony as irrelevant, and the trial court held a colloquy outside the presence of the jury to resolve the objection. Defense counsel cited *State v. Prevatte*, 346 N.C. 162, 484 S.E.2d 377 (1997),² in response to the State's objection to the cross-examination, arguing it supported Defendant's efforts to confront the witness about potential influence the State had over him. He further offered a copy of *Prevatte* to the trial court for its consideration. The trial court sustained the State's objection and disallowed the testimony.

² Our Supreme Court held in *Prevatte* that, where a criminal defendant sought to cross-examine the State's principal witness about charges under indictment in another county, the trial court's constraint of the defendant's cross-examination was not harmless error and warranted a new trial under the Confrontation Clause of the Sixth Amendment. *Id.* at 163-64, 484 S.E.2d at 378.

Defendant attempted to cross-examine Atkinson to establish Atkinson's bias and, through his reference to *Prevatte*, established that the basis for his request lay in the Sixth Amendment Confrontation Clause. Consequently, we conclude that the "specific grounds [for Defendant's requested ruling] were [] apparent from the context" of his objection response, that Defendant obtained a ruling on his request, and that Defendant therefore preserved this issue for appellate review. N.C. R. App. P. 10(a)(1). The questions then are whether the limitation of Defendant's cross-examination was error and, if so, if it was harmless beyond a reasonable doubt. *See Lawrence*, 365 N.C. at 512, 723 S.E.2d at 330.

Assuming without deciding that the trial court's limitation of Defendant's cross-examination was error, we turn to whether it was harmless. Even disregarding the testimony of J.S. and Atkinson, two additional eyewitnesses to the crime—T.C. and McDonald—testified that Defendant stabbed Jones multiple times and returned twice to Jones's apartment to steal his belongings. T.C. testified that Defendant was "making fun of" Jones and "the whole situation" on the drive back from the Salvation Army after stabbing Jones. Further, Defendant's own statements to Detective Godwin corroborated the vast majority of the testimony of all four accomplice eyewitnesses, including the testimony that Defendant drove the group in his mother's car, that they intended to rob Jones and divide the proceeds, that they argued with Jones at Jones's apartment, that they drove to Salvation Army, and that Defendant

got into the backseat of Jones's car. The State also introduced the testimony of the medical examiner who conducted the autopsy results; the evidence showed Jones sustained stab wounds to only the right side of his body, inconsistent with Defendant's claim that J.S. reached through Jones's driver side window and stabbed him. In short, the State introduced overwhelming evidence of Defendant's guilt and has met its burden of proving that any error in limiting Defendant's cross-examination of Atkinson was harmless beyond a reasonable doubt.

B. Jury Instructions

Defendant contends that the trial court erred because it "polluted its jury instructions with repeated and confusing references to the 'acting in concert' doctrine." For the reasons stated below, we disagree.

i. Standard of Review

In reviewing an improper jury instruction claim, "the proper standard of review depends upon the nature of a defendant's request for a jury instruction." *State v. Edwards*, 239 N.C. App. 391, 392, 768 S.E.2d 619, 620 (2015). We review jury instruction issues that involve a trial court's discretion for an abuse of discretion. *Id.* at 393, 768 S.E.2d at 621. However, some claims regarding jury instructions concern questions of law, which we review de novo. *Id.* at 393, 768 S.E.2d at 621. Where a criminal defendant does not preserve an alleged error by objection at trial, the conviction shall only be reviewed for plain error, and the defendant must "specifically

and distinctly contend[]” that plain error occurred. N.C. R. App. P. 10(a)(4). A conviction shall be reversed for plain error only if the defendant suffered prejudice; the “defendant must show that the instructions were erroneous and that absent the erroneous instructions, a jury probably would have returned a different verdict.” *State v. Goforth*, 170 N.C. App. 584, 587, 614 S.E.2d 313, 315 (2005).

ii. Application

Here, Defendant did not object to the jury instructions at any point during the charge conference or after having an overnight recess to review the proposed jury instructions. Nor did Defendant “specifically and distinctly contend[]” in his appellate brief that the trial court committed plain error. N.C. R. App. P. 10(a)(4). Therefore, Defendant did not preserve this issue for appellate review. *See State v. Hamilton*, 338 N.C. 193, 208, 449 S.E.2d 402, 411 (1994); *State v. Truesdale*, 340 N.C. 229, 233, 456 S.E.2d 299, 301 (1995). This claim is overruled.

III. Conclusion

Because Defendant did not raise a Confrontation Clause argument in the trial court related to the testimony of J.S., we conclude Defendant waived this argument. We further hold that the limitation of Defendant’s cross-examination of Atkinson was harmless beyond a reasonable doubt because the State presented overwhelming evidence of Defendant’s guilt, including Defendant’s own statements and the eyewitness testimony of three accomplices in addition to Atkinson. Finally, we hold

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that, because Defendant did not object to the jury instructions, he did not preserve this issue for appellate review. Because he also failed to raise plain error in his brief, that argument is overruled. Therefore, we hold that Defendant received a trial free from error.

NO ERROR.

Judges INMAN and ARROWOOD concur.

Report per Rule 30(e).