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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-657

Filed: 3 March 2020

Beaufort County, Nos. 18CRS371, 18CRS372, 18CRS373, 18CRS374, 18CRS50013,
18CRS50014

STATE OF NORTH CAROLINA

v.

SHAREEF TAMIR GRIFFIN and
NATHAN LAMAR RANDOLPH, Defendants.

Appeal by Defendants from judgments entered 10 January 2019 by Judge Cy
A. Grant, Sr. in Beaufort County Superior Court. Heard in the Court of Appeals 21
January 2019.

*Attorney General Joshua H. Stein, by Assistant Attorneys General Oliver G.
Wheeler and William A. Smith, for the State.*

Stephen G. Driggers for Defendant-Appellant Shareef Tamir Griffin.

Mark L. Hayes for Defendant-Appellant Nathan Lamar Randolph.

INMAN, Judge.

Shareef Tamir Griffin (“Griffin”) and Nathan Lamar Randolph (“Randolph,”
collectively, “Defendants”) appeal their convictions following jury verdicts finding
them each guilty of robbery with a dangerous weapon and possession of a firearm by

a felon, as well as their guilty pleas to attaining habitual felon status. Defendants argue that the trial court erroneously submitted into evidence irrelevant testimony that they were gang members. Griffin argues separately that the trial court erred in imposing attorney's fees without first providing him with notice and an opportunity to be heard. After careful review, we hold that Defendants have failed to demonstrate error as to evidence of gang membership and dismiss Griffin's additional argument for failure to follow our rules of appellate procedure.

I. FACTUAL AND PROCEDURAL BACKGROUND

Evidence introduced at trial tends to show the following:

Around midnight on 24 December 2017, Maurice Cratch ("Cratch") attended a Christmas Eve party at a local school in Beaufort County. Shawn Cradle ("Cradle"), Shawn Bryant ("Bryant"), and Defendants also attended the party.

Cratch had known Defendants since they were students in middle school. Cratch had known Cradle, who was related to Randolph, "for a long time" as well. Cratch did not interact with Defendants at the party. About a year earlier, Cratch had gotten into a fist fight with Randolph that resulted in his personal belongings being stolen by three of Randolph's associates.

Around 2:00 am, Cratch and Cradle left the party and were sitting in Cratch's Hyundai automobile in the parking lot; Cratch was in the front passenger's seat and Cradle was in the driver's seat. Randolph and Griffin approached the Hyundai on

foot. Standing at the front passenger's side window, Randolph looked past Cratch, and asked Cradle where he could find an acquaintance named "Dimp." Cradle told Randolph he did not know and handed his cell phone to Cratch to give to Randolph to call Dimp. During the exchange, Cratch dropped the phone by his 9-millimeter handgun, which was lying near his feet. Both Cratch and Cradle knew the gun was there. Randolph then opened the passenger door, pointed a handgun at Cratch, and asked, "Where you gun at?" Griffin, who was standing behind Randolph, had given him the gun pointed at Cratch. Cratch noticed that the gun Randolph was holding was similar to a chrome .25-caliber handgun, given to him by his mother, which had been stolen. Cratch suspected Griffin had stolen the handgun, but after reporting the gun stolen to the police in September, he was told that the paperwork for the gun could not be found, and abandoned efforts to recover it.

Cratch subsequently gave Randolph the 9-millimeter handgun¹ he had legally purchased a month earlier. Once Cratch gave Randolph the gun, Randolph and Griffin walked away and left Cratch and Cradle in the car. Cratch then made Cradle get out of the car, reasoning that, because he and Randolph were close friends, he was not sure if Cradle "had anything do with" what just transpired.

About two hours later, around 4:30 that morning, Cratch reported the robbery to the sheriff's office. Four days later, Cratch met with a sheriff's investigator and

¹ Neither of the guns were recovered.

recounted his confrontation with Defendants. That same day, Cratch picked Defendants out of a photo array and identified them as the assailants who had robbed him at gunpoint.

Defendants were arrested on 22 January 2018 and were later each indicted on 23 April 2018 for robbery with a dangerous weapon, possession of a firearm by a felon, and attaining habitual felon status.

Defendants' charges came on for a joint trial on 7 January 2019. Cratch testified that he told officers he carried his 9-millimeter handgun because he "believed people were after [him]," including Defendants, specifically Randolph whom he believed had "people . . . under him." Asked what he meant by "people under him" on redirect examination, Cratch responded that Randolph was a "gang member," an "OG," and had "a little rank under him."

Following the State's evidence, Cradle and Bryant testified for the defense. Cradle testified that Randolph did not point a gun at Cratch, but merely called his friend Dimp and then he and Griffin walked away. Bryant testified that he was unaware of any robbery and that he did not see any firearms that night when he drove Randolph and Griffin from the party.

On 9 January 2019, the jury found Defendants each guilty of robbery with a dangerous weapon and possession of a firearm by a felon. Defendants then pled guilty

to attaining habitual felon status. The trial court sentenced Randolph to 60 to 84 months in prison and Griffin to 120 to 156 months in prison.

Defendants gave oral notice of appeal.

II. ANALYSIS

A. Testimony Regarding Gang Membership

Defendants argue that Cratch's testimony concerning Randolph's alleged gang affiliation and leadership prejudiced the results of their trial. Because the circumstances surrounding their appeals and the arguments in their individual briefs differ, we address each of Randolph's and Griffin's arguments in turn.

Randolph contends that Cratch's testimony was not relevant and therefore violated Rules 401 and 404(a) of the North Carolina Rules of Evidence. We disagree.

We first note that Randolph has waived his Rule 404(a) argument for appellate review. Randolph asserts on appeal that the context of his counsel's objection shows he also objected on the grounds of inadmissible character evidence prohibited by Rule 404(a). *See State v. Rios*, 251 N.C. App. 318, 322, 795 S.E.2d 234, 237 (2016) ("Because the basis of [counsel's] objection is apparent from the context, however, [the] defendant properly preserved this issue for appellate review." (citing N.C. R. App. P. 10(a)(1) (2016))). During Cratch's testimony, Randolph's defense counsel specifically objected on the ground of relevance and mentioned no other basis for his objection. Because Randolph's trial counsel failed to object under Rule 404(a), "he

cannot swap horses between courts in order to get a better mount” for appellate review. *State v. Perry*, 159 N.C. App. 30, 40, 582 S.E.2d 708, 715 (2003) (quotation marks and citations omitted); *see also State v. Augustine*, 359 N.C. 709, 721, 616 S.E.2d 515, 525 (2005) (waiving appellate review for violations of Rules 404(a) and 405 because defense counsel only argued that the evidence was speculative).

In any event, we have previously held that evidence of gang membership is not “character evidence” prohibited by Rule 404(a). *State v. Horskins*, 228 N.C. App. 217, 227, 743 S.E.2d 704, 712 (2013) (citations omitted). We therefore address Randolph’s argument only as to whether his alleged gang affiliation was relevant to his trial under Rule 401.

Evidence as to gang membership “may only be admitted if relevant to the defendant’s guilt.” *State v. Hinton*, 226 N.C. App. 108, 113, 738 S.E.2d 241, 246 (2013) (citations omitted). Generally, all relevant evidence is admissible. N.C. Gen. Stat. § 8C-1, Rule 402 (2017). Rule 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C. Gen. Stat. § 8C-1, Rule 401 (2017). In highlighting the breadth of Rule 401, we have stated:

In criminal cases, every circumstance that is calculated to throw any light upon the supposed crime is admissible. In order to be relevant, evidence need not bear directly on the question in issue if it is helpful to understand the conduct

STATE V. GRIFFIN

Opinion of the Court

of the parties, their motives, or if it reasonably allows the jury to draw an inference as to a disputed fact. The value of the evidence need only be slight.

State v. Miller, 197 N.C. App. 78, 86, 676 S.E.2d 546, 551-52 (2009) (quotation marks, citations, and alterations omitted). Although “a trial court’s rulings on relevancy technically are not discretionary and therefore are not reviewed under the abuse of discretion standard applicable to Rule 403,² such rulings are given great deference on appeal.” *State v. Wallace*, 104 N.C. App. 498, 502, 410 S.E.2d 226, 228 (1991).

Contrary to Randolph’s argument, Cratch’s gang testimony was not for the purpose of “depict[ing] a ‘violent’ gang subculture,” *State v. Privette*, 218 N.C. App. 459, 481, 721 S.E.2d 299, 314-15 (2012), but rather to shed light on facts that were of consequence to the determination of his guilt. The testimony helped explain Cratch’s reservations toward Randolph and Griffin; why he started carrying his 9-millimeter handgun following his fight with Randolph; why he believed that Griffin had stolen his chrome .25-caliber handgun; why Randolph and Griffin suspected Cratch had a handgun; why his personal belongings were stolen while he and Randolph were fighting a year before; why Griffin was present with Randolph during the robbery in Cratch’s car; and why he suspected that Cradle was acting in concert with Randolph

² Rule 403 gives the trial court the discretion to prevent the admission of otherwise relevant evidence if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C. Gen. Stat. § 8C-1, Rule 403 (2017). Randolph does not argue that the gang membership evidence violated Rule 403.

and Griffin.

Presuming *arguendo*, Cratch's gang testimony was irrelevant, Randolph has not shown a reasonable possibility that it affected the result of his trial. *See, e.g.*, N.C. Gen. Stat. § 15A-1443(a) (2017). Cratch's initial gang testimony spanned only a few questions and he stated on cross-examination that he had never seen Randolph or Griffin do "gang things," nor did he testify with any specificity how he knew of their alleged gang affiliation. Bryant and Cradle testified that Randolph and Griffin were not gang members. While Cradle contradicted Cratch's testimony regarding the robbery, the jury could have viewed Cradle's testimony as biased not because of gang affiliation but because Cradle was related to Randolph.

Griffin contends that Cratch's testimony violated Rules 401, 403, and 404(b). Although Griffin in his brief quotes the language of Rules 403 and 404(b), he does not argue why they apply here or how they were violated. He argues only that his alleged gang affiliation was not relevant under Rule 401. By failing to present any argument regarding Rules 403 and 404(b) in his brief, Defendant has abandoned those issues.³ *See* N.C. R. App. P. 28(b)(6) (2020) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."); *State v. Knight*, 245 N.C. App. 532, 539, 785 S.E.2d 324, 331 (2016) (mentioning the

³ Although there is some discussion in Griffin's reply brief regarding Rule 403, we have held that the failure to address claims in one's principal brief cannot be revived in the reply brief. *Braswell v. Medina*, 255 N.C. App. 217, 222 n.4, 805 S.E.2d 498, 503 n.4 (2017) (citation omitted).

doctrine of *res judicata* without “mak[ing] [any] cognizable argument as to how the doctrine applie[d]” constituted abandonment).

Because Griffin’s trial counsel did not object to Cratch’s testimony about gang affiliation at trial, we review this issue as it applies to him under the more restrictive plain error review standard. To constitute plain error, the trial court must have committed a “fundamental error” such that it “had a probable impact on the jury’s finding that the defendant was guilty.” *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citations and quotation marks omitted).

We reiterate our relevance analysis above and apply it to Griffin. Cratch did not specifically testify that Griffin was a gang member. But Cratch’s testimony was relevant to provide insight as to why Griffin would have been present with Randolph during the robbery and why Cratch thought Cradle was working with Griffin and Randolph. Even presuming the trial court erred, any error is not shown to arise to plain error, as we already held above that Randolph failed to overcome the lesser burden of proving reasonable possibility of a different result.

B. Attorney’s Fees

Griffin argues that the trial court erred in ordering him to pay \$2,475 in attorney’s fees absent notice and an opportunity to be heard. We will not review this issue because it is not properly presented before us.

Because judgments for attorney's fees are civil rather than criminal judgments, *State v. Jacobs*, 172 N.C. App. 220, 235, 616 S.E.2d 306, 316 (2005) (citing N.C. Gen. Stat. § 7A-455 (2015)), criminal defendants must provide written notice of appeal pursuant to Rule 3 of our appellate rules of procedure. N.C. R. App. P. 3(a), (c) (2020). Though this Court has issued writs of certiorari to review a defendant's claims as to attorney's fees, *State v. Friend*, __ N.C. App. __, __, 809 S.E.2d 902, 905 (2018), Griffin did not petition for the writ, nor has he requested that we exercise our discretion under Rule 2 to review this issue, but instead incorrectly asserts that this issue is automatically preserved. Griffin's appeal from his attorney's fees judgment is therefore dismissed.

III. CONCLUSION

For the foregoing reasons, we hold Defendants have failed to demonstrate reversible error as to Cratch's gang testimony and dismiss Griffin's argument that he was not given notice and an opportunity to be heard before the trial court ordered him to pay attorney's fees.

NO ERROR IN PART; DISMISSED IN PART.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).