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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1105

Filed: 15 December 2020

Robeson County, Nos. 10 CRS 54101–04

STATE OF NORTH CAROLINA

v.

DANIEL TRAVIS RICE

Appeal by defendant from judgments entered 4 October 2018 by Judge James G. Bell in Robeson County Superior Court. Heard in the Court of Appeals 20 October 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General L. Michael Dodd, for the State.

Leslie Rawls for defendant.

DIETZ, Judge.

Defendant Daniel Rice appeals his convictions stemming from a robbery and shootings that left two victims dead and another seriously injured. Rice contends that the trial court improperly admitted evidence of a firearm recovered during his arrest the day after the shootings.

We reject Rice's arguments. First, the firearm evidence properly was admitted for purposes other than to show Rice's propensity to commit the charged offenses and thus was admissible under Rule 404(b) of the Rules of Evidence. Second, the trial court's determination that the challenged evidence was not unfairly prejudicial under Rule 403 of the Rules of Evidence was well within the court's sound discretion. Finally, even assuming the trial court erred by admitting this evidence, Rice has not met his burden to show that, but for the challenged evidence, there is a reasonable possibility that the jury would have reached a different verdict. Accordingly, any error was harmless.

Facts and Procedural History

In June 2010, a van carrying Defendant Daniel Rice and four others, Dakota Freeman, Donovan Chavis, Casey Dial, and Chris Locklear, pulled up near an SUV to conduct a drug deal.

Freeman, Chavis, and Dial left the van and walked toward the SUV at the same time an occupant of the SUV approached the van. Soon after, Freeman and Dial began shooting into the SUV, firing more than forty shots. Two of the SUV's occupants died of their injuries and another was seriously injured. As the van's occupants rushed back, Rice moved to the driver's seat and drove the shooters away from the scene.

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The next morning, law enforcement officers arrived at Chavis's home where Chavis, Dial, and Rice were all present. At the time, Rice was sitting in the driver's seat of a car. Rice told the officers that the car belonged to his girlfriend. The officers searched the car and found a black handgun with silver-colored plating under the driver's seat.

The State charged Rice with numerous offenses related to the robbery and shootings, including two counts of first degree murder. A jury found Rice guilty of discharging a firearm into occupied property; robbery with a firearm; conspiracy to commit robbery with a firearm; assault with a deadly weapon with intent to kill inflicting serious injury, attempted first degree murder; and two counts of second degree murder.

At sentencing, the trial court acknowledged that Rice was not one of the shooters but that he was more culpable than the other "non-shooters" involved in the crime because there was evidence that Rice both assisted in planning the robbery and acted as the getaway driver. The trial court consolidated a number of the lesser offenses and sentenced Rice at the bottom of the presumptive range in two concurrent sentences of 165 to 207 months in prison. Rice appealed.

Analysis

Rice argues that the trial court erred by overruling his objection to the admission of the gun recovered when he was arrested. He contends that evidence of

his possession of that gun was improper character evidence that was inadmissible under Rule 404(b) of the Rules of Evidence.

Rule 404(b) permits the admission of evidence of “other crimes, wrongs, or acts” for purposes other than to show the defendant “acted in conformity therewith.” N.C. Gen. Stat. § 8C-1, Rule 404(b). “Such evidence may be admitted under this rule as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.” *State v. Schmieder*, 265 N.C. App. 95, 98–99, 827 S.E.2d 322, 326 (2019). Rule 404(b) is a rule of inclusion of relevant evidence of other acts by a defendant, “subject to but *one exception* requiring its exclusion if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.” *Id.* at 99, 827 S.E.2d at 326 (emphasis in original).

“The burden is on the defendant to show that there was no proper purpose for which the evidence could be admitted.” *State v. Moseley*, 338 N.C. 1, 32, 449 S.E.2d 412, 431 (1994). 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 resulting Rule 403 determination for abuse of discretion. *Schmieder*, 265 N.C. App. at 99, 827 S.E.2d at 326.

Applying these principles, we hold both that the evidence properly was admitted and that, even if it were admitted in error, any error was harmless. First,

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with respect to admissibility, one the State's key witnesses, Rice's co-conspirator Chris Locklear, testified that Rice carried a "black" handgun at the time of the crime. The handgun recovered during Rice's arrest also was a "black" handgun according the officer who recovered it:

Q. And do you recall what the gun looked like?

A. It was black. It had some like silver -- silver or nickel plated features to it.

To be sure, as Rice argues, Locklear did not mention the "silver or nickel plated features" on the gun. And the State did not ask Locklear to examine that recovered firearm at trial and confirm that it was the one Rice carried the night of the crime.

But that does not, as Rice contends, render the inference that it was the same gun impermissible "speculation." Locklear testified that Rice had a black handgun at the time of the crime. Officers recovered a black handgun with silver-colored plating when they arrested Rice the next day. The jury properly could have inferred that this was the firearm Locklear described Rice as possessing during the crime and, therefore, that the evidence of this firearm directly supported the State's case. As a result, this evidence was not admitted solely to show that Rice had a propensity to commit murder and the various other serious crimes with which Rice was charged. It was therefore permissible evidence under Rule 404(b).

Rice also argues that the probative value of this firearm evidence was substantially outweighed by the danger of unfair prejudice. Specifically, Rice

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contends that the evidence was unfairly prejudicial because it “lent support” to Locklear’s testimony that Rice “was involved in planning the robbery.” In other words, by confirming part of Locklear’s account, Rice argues that this evidence prejudiced his defense theory that Locklear was lying.

But this argument is based on the incorrect premise that there was no basis for the jury to infer that the gun Locklear described was the same one that officers recovered the next day. As explained above, that is wrong. There was evidence from which the jury reasonably could have inferred that these guns were the same. In light of this fact, the trial court was well within its sound discretion to admit the evidence of the gun with the accompanying limiting instruction after determining that its probative value was not substantially outweighed by the danger of unfair prejudice.

Finally, even assuming the trial court erred by admitting this evidence, that error was harmless. 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*, 252 N.C. App. 165, 172, 797 S.E.2d 359, 364 (2017).

Here, there is no reasonable possibility that, but for the admission of the challenged firearm evidence, the jury would have reached a different result. First, Rice gave a voluntary, recorded statement to investigators in which he confessed to being present during the robbery, shootings, and resulting murders. Rice identified

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the shooters and admitted to driving the shooters away from the scene. One of the victims and several of Rice's co-conspirators also testified that Rice was present during the robbery and shootings.

Several of Rice's co-conspirators also testified that Rice helped plan and execute the robbery that led to the shootings, or that he was present to assist with that robbery. This included both Locklear's lengthy testimony about Rice's involvement in the robbery and Freeman's acknowledgement that Rice played a role in the robbery by protecting the van while others approached the victims. Freeman also made a call from jail that was recorded by the authorities. In that call, Freeman explained that Rice was responsible for disposing of the firearms used in the robbery and shootings and that he hoped Rice "hid the guns good."

In light of this evidence, there is no reasonable possibility that, had the firearm evidence been excluded, the jury probably would have reached a different result. The State never asserted that Rice was one of the shooters. The crucial evidence for the State's case was the series of facts demonstrating that Rice was a participant in the robbery and resulting shootings through his planning, assistance, and role as the getaway driver. This crucial evidence came from multiple witnesses and other sources, and none of it turned on Rice's possession of a firearm the night of the crime. Accordingly, even assuming the trial court erred by admitting the firearm, Rice has

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not met his burden to show a reasonable possibility that, had the firearm evidence been excluded, the jury would have reached a different result.

Conclusion

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

NO ERROR.

Judges BRYANT and HAMPSON concur.

Report per Rule 30(e).