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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-20

No. COA20-790

Filed 4 January 2022

Robeson County, No. 16CRS053491, 53536

STATE OF NORTH CAROLINA

v.

COMANCHE BROOKS LOCKLEAR, Defendant.

Appeal by Defendant from judgments entered 2 April 2019 by Judge James G. Bell in Robeson County Superior Court. Heard in the Court of Appeals 22 September 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Taylor H. Crabtree, for the State.

Paul F. Herzog for the Defendant.

DILLON, Judge.

¶ 1

Defendant Comanche Brooks Locklear appeals from judgments finding him guilty of first-degree murder and robbery with a dangerous weapon, stemming from an event where Defendant allegedly shot a man who was pursuing his ex-girlfriend.

I. Background

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Opinion of the Court

¶ 2 Defendant and Zonna Locklear (“Zonna”)¹ began dating in 2016. Defendant’s friend, Gary Wayne Bisbee (“Gary”), was living in a trailer on Defendant’s property at the time. After continually loaning him money, Gary eventually asked Bisbee to move off the property. Defendant and Zonna also broke off their relationship around the same time.

¶ 3 While Zonna and Defendant were broken up, Gary contacted Zonna to “hang out” and Zonna informed Defendant about the conversation. Zonna and Defendant then concocted a plan for Zonna to pretend to be romantically interested in Gary so that Defendant could beat him up and “put him out of the house naked.” In furtherance of this plan, Zonna invited Gary over to her house and texted Defendant when Gary was naked. Although naked, Gary had a gun under his pillow. Defendant entered the house with his own gun. When Defendant entered the bedroom, Zonna fled. She heard quick gunshots, and Defendant emerged from the bedroom with two guns. Defendant informed Zonna that Gary was dead.

¶ 4 Defendant and Zonna planned to cover up Gary’s murder by informing the police that Gary had been killed by intruders and that Zonna had been kidnapped and left on the side of the road. Law enforcement doubted Zonna’s story and discovered Gary’s body at her house. Search warrants were obtained for the three

¹ Zonna Locklear is not related by blood or marriage to Defendant.

individuals' cell phone records. Zonna was offered a plea deal whereby she was obligated to testify truthfully against Defendant in exchange for reduced charges.

¶ 5 Defendant was indicted for a number of crimes. A jury found Defendant guilty of first-degree murder and robbery with a dangerous weapon. Defendant timely appealed.

II. Analysis

¶ 6 Defendant argues on appeal that his trial counsel committed ineffective assistance of counsel when he offered evidence during the presentation of the defense's case which was duplicative of the State's evidence or which could have been admitted during the State's case via cross-examination. We disagree.

¶ 7 We review whether a defendant was denied effective assistance of counsel *de novo*. *State v. Wilson*, 236 N.C. App. 472, 475, 762 S.E.2d 894, 896 (2014). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal citation and quotation marks omitted).

¶ 8 To show ineffective assistance of counsel, a defendant must demonstrate "that his trial counsel's performance was deficient, such that the errors committed were so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment." *State v. Murrell*, 362 N.C. 375, 398, 665 S.E.2d 61, 77 (2008) (internal citation and quotation marks omitted). Second, "defendant is required to

show prejudice resulting from trial counsel's deficient performance, which requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 398, 665 S.E.2d at 77 (internal quotation marks omitted).

¶ 9 We conclude that Defendant failed under both components of the inquiry. First, Defendant argues that in putting on evidence, defense counsel lost the crucial right to the final argument to the jury. However, the State correctly points out that defense counsel's chief tactic at trial was to refute premeditation and to show there was no evidence of intent to commit an armed robbery. While there may have been risks associated with putting on evidence, which included the introduction of unfavorable evidence against Defendant, defense counsel chose to rebut the State's case. *See State v. Brindle*, 66 N.C. App. 716, 718, 311 S.E.2d 692, 693-94 (1984) ("Ineffective assistance of counsel claims are not intended to promote judicial second-guessing on questions of strategy and trial tactics.").

¶ 10 But even if Defendant's counsel made a miscalculation and lost the right to argue last, Defendant has failed to show that the result of his trial would have been different absent counsel's alleged failure. Unflattering evidence presented during Defendant's case had already been presented during prosecution witness testimony. Defendant's argument incorrectly implies that the right to final closing argument before the jury would have changed the result when the jury would have considered

the same evidence from the State.

¶ 11 Therefore, we conclude that Defendant has not met his burden of establishing that there was a reasonable likelihood the result of his trial would have been different.

III. Conclusion

¶ 12 We conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).