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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-583

No. COA21-629

Filed 16 August 2022

Edgecombe County, No. 19CRS52075

STATE OF NORTH CAROLINA

v.

JOHN MICHAEL MCNEIL, Defendant

Appeal by Defendant from judgment entered 07 April 2021 by the Honorable Craig Croom in Edgecombe County Superior Court. Heard in the Court of Appeals 8 June 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sonya Calloway-Durham, for the State.

Marilyn G. Ozer for Defendant-Appellant.

DILLON, Judge.

¶ 1 Defendant appeals from judgment entered a jury's verdict convicting him for first-degree murder. We conclude Defendant received a fair trial.

I. Background

¶ 2 During the summer of 2019, Defendant John Michael McNeil allowed the victim, a Mr. Strickland, to live in a room in his home. During the course of the summer, Defendant discovered that Mr. Strickland was dealing drugs out of the room

and asked him to move out. When Mr. Strickland failed to move out by the agreed upon date, the two men engaged in a heated argument in the home, which turned violent. During this encounter, Mr. Strickland cut Defendant with a sharp object; and Defendant stabbed Mr. Strickland in the back with a kitchen knife.

¶ 3 After calming down and discovering no working phone in the home, the two walked to a neighbor's house for help. After unsuccessful attempts to receive assistance, the two men walked back to Defendant's home.

¶ 4 Another violent conflict ensued between the men within the home. During this second encounter, Defendant hit Mr. Strickland in the head with a baseball bat. Mr. Strickland died as a result, from blunt force injuries to the head.

¶ 5 During trial, Defendant claimed that he killed Mr. Strickland in self-defense. The jury convicted Defendant of first-degree murder, and Defendant was sentenced to life in prison without possibility of parole. Defendant appeals.

II. Analysis

A. Detective's Imaginary Inculpatory Statements

¶ 6 Defendant's first argument concerns portions of the trial testimony during the State's case which recounted false statements made by officers to Defendant during their questioning of him. Specifically, they suggested the existence of witnesses who could provide incriminating evidence. The officers made these statements to Defendant as an interrogation technique to see how Defendant would react.

¶ 7 The officers told Defendant that witnesses saw Defendant chasing Mr. Strickland (during the time Defendant said he and Mr. Strickland were returning to Defendant's home after seeking help), that the two men were fighting, and that Mr. Strickland shouted that Defendant had stabbed him.

¶ 8 During trial, the jury was allowed to hear that the investigating officers had made these statements. Defendant argues that the jury may have believed these statements to be true and that his constitutional right to confront the "witnesses" was violated and, therefore, the statements should not have been admitted.

¶ 9 The Confrontation Clause in the Constitution of the United States bars testimonial statements of witnesses if they are not subject to cross-examination at trial unless (1) the witness is unavailable and (2) there has been a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 68, (2004). A testimonial statement is "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Id.* at 51. This "bedrock procedural guarantee applies to both federal and state prosecutions." *State v. Pabon*, 380 N.C. 241, 252, 867 S.E.2d 632, 640 (2022).

¶ 10 Under *Crawford*, formal statements made to law enforcement officers are considered testimonial in nature. *Id.* We conclude, though, the statements challenged by Defendant do not present a Confrontation Clause issue due to a well-recognized exception espoused in *Crawford*, as these statements were not offered as

being true. *Id.* at 59-60, 124 at 1364, 158 at 197-98. Rather, as the State argues, these statements were admitted to describe the interrogation technique used to elicit Defendant's reaction. Indeed, for the first four hours of his interrogation, Defendant claimed that Mr. Strickland was killed in a home invasion by a third party. The first time an interrogating officer suggested the idea of "witnesses" seeing an altercation was made at the two-hour mark. After an officer told Defendant about other incriminating evidence (upon which there was no factual basis) made right after the four-hour mark, Defendant confessed that he was the one who fatally struck Defendant and explained the events as described above.

¶ 11 And on two different occasions immediately preceding the admission of the statements, the trial court instructed the jury not to consider the statements for the truth of the matter asserted:

> Ladies and gentlemen, you are about to hear a statement. You are not to consider this statement for the truth of the matter asserted but only as to the effect on the defendant or the reaction of the defendant. This type of question is used as an investigative technique to elicit a reaction, not that event occurred as asked. The law allows an officer to even lie to a defendant as part of this investigative technique.

Therefore, we conclude the nonhearsay purpose for which the statements were offered, combined with the trial court's curative instruction, eliminated any alleged prejudice to Defendant.

B. Victim's Assault Conviction

¶ 12 Defendant testified about statements Mr. Strickland had made, which would indicate Mr. Strickland was a violent person. He offered this testimony to support his claim of self-defense. Defendant, however, argues he should have also been allowed to introduce evidence of Mr. Strickland's prior conviction for assault with a deadly weapon ("AWDW").

¶ 13 Generally, evidence of a victim's *character* is not admissible to prove the victim acted in conformity with his character on a particular occasion. N.C. Gen. Stat. § 8C-1, Rule 404(a) (2019). However, Rule 404(b) does permit evidence of "other crimes, wrongs, or acts" for certain purposes other than to show that a victim acted in conformity therein.

¶ 14 Presuming the trial court erred, we conclude the trial court's error was not prejudicial.

¶ 15 In *State v. Jacobs,* 363 N.C. 815, 689 S.E.2d 859 (2010), our Supreme Court was faced with a similar issue. An issue in that case was whether the trial court erred by not allowing Defendant to offer certified copies of a victim's prior convictions. The defendant, though, was allowed to testify that prior to the day he killed the victim, he had always seen the victim with a gun and that the victim previously stated that he had spent time in prison. *State v. Jacobs*, 195 N.C. App. 599, 603, 673 S.E.2d

724, 727 (2009). The defendant also testified that the victim boasted to him about robberies, shootings, and drug transactions. *Id.*

¶ 16 Our Supreme Court concluded that the victim's prior convictions were "relevant in that they are consistent with and corroborate to a degree defendant's testimony about the victim's violent past and prison time", and thus admissible under Rule 404(b). *Jacobs*, 363 N.C. at 824, 689 S.E.2d at 865.

¶ 17 Defendants' testimony is analogous to *Jacobs*. Defendant testified that Mr. Strickland said he was known for beating people up and bragged about his hands being registered in Nash County. When Defendant asked Mr. Strickland what he meant by these statements, Mr. Strickland replied that he had been charged for "beating a lot of people up." Defendant also testified that Mr. Strickland bragged about assaulting people and fighting in prison to earn the respect of other inmates.

¶ 18 Although in *Jacobs* our Supreme Court ultimately decided that the trial court's error in excluding the victim's prior convictions did not warrant a new trial, the Court reasoned that a prior conviction of the victim does "not encourage the jury to acquit or convict on an improper basis." *Id.* at 825, 689 S.E.2d at 865.

¶ 19 In the present case, Mr. Strickland's AWDW conviction provided the only evidence from a neutral source to corroborate Defendants' self-serving testimony about Mr. Strickland's violent past. However, just as our Supreme Court concluded in *Jacobs*, we conclude the exclusion does not necessitate a new trial: "[E]videntiary

error does not necessitate a new trial unless the erroneous admission was prejudicial." *State v. Wilkerson,* 363 N.C. 382, 415, 683 S.E.2d 174, 194 (2009)(citations omitted).

¶ 20 Here, Defendant has not shown the existence of a reasonable possibility that the jury would have reached a different verdict had the victim's prior conviction been admitted. The AWDW conviction was for a *misdemeanor* conviction occurring in 2002, sixteen years before Defendant killed Mr. Strickland.

III. Conclusion

¶ 21 Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges TYSON and JACKSON concur.

Report per Rule 30(e).