IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-613

No. COA21-461

Filed 6 September 2022

Durham County, Nos. 15-CRS-58280, 58364

STATE OF NORTH CAROLINA

v.

ALAN LASSITER, Defendant.

Appeal by Defendant from judgment entered 26 November 2019 by Judge Paul C. Ridgeway in Durham County Superior Court. Heard in the Court of Appeals 11 May 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Benjamin O. Zellinger, for the State.

Law Office of Lisa Miles, by Lisa Miles, for the Defendant.

DILLON, Judge.

¶ 1 Defendant appeals from the trial court's judgment finding him guilty of one count of first-degree murder and two counts of attempted murder.

I. Background

¶ 2 Defendant was the father of three children. Faced with losing his children to Child Protective Services, Defendant attempted to kill them. He bound two of his

children by their hands and feet with shoelaces and threw them into a lake. One of the children drowned; the other survived. The third child was able to run away from the scene and call law enforcement.

¶ 3 At trial, Defendant pleaded not guilty by reason of insanity. He was convicted by jury of one count of first-degree murder and two counts of attempted murder.

¶ 4 Defendant timely appealed.

II. Analysis

¶ 5 On appeal, Defendant complains of certain evidence offered and admitted against him at trial without objection by his counsel. Specifically, he challenges the testimonies of Larry Ellsworth, a licensed clinical social worker, and Nancy Burson, a clinical social worker for the UNC Department of Psychiatry. Defendant contends that their testimonies regarding the trauma suffered by Defendant's children, the children's therapy after the incident, and the children's time in foster care were irrelevant, prejudicial, and improper victim impact evidence. Defendant also argues that testimony detailing Defendant's sexual abuse of one of the children was irrelevant and should have been excluded.

¶ 6 He makes two arguments on appeal concerning this evidence, which we address in turn.

A. Plain Error

¶ 7 As Defendant did not object to the challenged testimony, he asks for plain error review.

¶ 8 Under plain error review, a defendant must show "that absent the error[,] the jury probably would have reached a different verdict." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). Of course, as we are reminded by our Supreme Court, "[t]o find plain error, an appellate court must determine that an error occurred at trial." *State v. Miller*, 371 N.C. 266, 269, 814 S.E.2d 81, 83 (2018). Accordingly, if the testimonies in this case were not relevant, Defendant must show that the trial court erred in failing to intervene when the testimonies were offered.

¶ 9 We conclude that, even if the trial court committed error, such error did not rise to the level of plain error. The record contained considerable evidence of Defendant's guilt, including eyewitness reports of Defendant's actions on the night of the incident and Defendant's testimony admitting to the crimes alleged. Defendant does not dispute that he threw his daughters into the pond. Accordingly, it is unlikely that the jury would have reached a different verdict absent the admission of victim impact evidence.

¶ 10 We likewise conclude that it is unlikely the trial court's admission of victim impact evidence was determinative in Defendant's insanity defense. There exists little connection between his surviving children's therapy and foster care experiences after the incident and Defendant's diminished capacity at the time of the incident.

C. Ineffective Assistance of Counsel

¶ 11 Defendant argues that he received ineffective assistance of counsel. To successfully assert an ineffective assistance of counsel claim, a defendant must satisfy the two-prong test set forth by our Supreme Court: "[f]irst, [the defendant] must show that counsel's performance fell below an objective standard of reasonableness. Second, [the defendant] must show that the error committed was so serious that a reasonable probability exists that the trial result would have been different." *State v. Gainey*, 355 N.C. 73, 112, 558 S.E.2d 463, 488 (2002) (internal marks omitted).

Even if Defendant could satisfy the first prong, we conclude that Defendant could not satisfy the second prong. Due to the overwhelming evidence of Defendant's guilt, there is not a reasonable probability the jury would have reached a different verdict.

III. Conclusion

¶ 12 We conclude that Defendant was given a fair trial, free from reversable error.

NO ERROR.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).