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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-636

Filed 07 March 2023

Alamance County, No. 12CRS54901

STATE OF NORTH CAROLINA

v.

CHRISTOPHER RYANT WILLIAMS, Defendant.

Appeal by defendant from judgment entered 5 November 2021 by Judge Brian C. Wilks in Alamance County Superior Court. Heard in the Court of Appeals 24 January 2023.

William D. Spence for defendant-appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Amber I. Davis, for the State-appellee.

GORE, Judge.

I.

In February 2012, defendant Christopher Ryant Williams allegedly held the then four-year-old victim, F.S., underwater in a bathtub causing extensive burns to her face. The burn wounds on F.S.'s face were visible for approximately two months. On 13 May 2013, the Alamance County grand jury indicted defendant on one count

of intentional child abuse inflicting serious physical harm relating to this incident.

Prior to trial, the State filed a motion to admit evidence of other crimes, wrongs, or acts under N.C. Gen. Stat. § 8C-1, Rule 404(b): (1) evidence of defendant making the victim child, F.S., run up and down the stairs as punishment and hitting her with a belt when she reached the bottom of the stairs; (2) evidence of defendant forcing F.S. to eat until she vomited and then forcing her to eat her own vomit; (3) evidence of defendant burning F.S. with a lighter and cigarettes as a form of punishment; (4) evidence that defendant instructed F.S., along with her older sister (B.S.) to tell their mother (T.M.) that F.S.'s injuries were sustained by accident; and (5) evidence that defendant committed these offenses when he was providing supervision/care when the biological mother was away from the residence. The State contends these acts are relevant to illustrate essential components of defendant's common plan or scheme, the victim's state of mind, defendant's lack of accident, intent at the time of the instant case, and highly probative to establish that defendant acted with malice in the facts alleged against him.

On 2 November 2021, the trial court considered the State's motion to admit 404(b) evidence during the testimony of F.S. Based on F.S.'s inability to identify when the other bad acts occurred, the trial court sustained defendant's objection, but made clear that it would consider the testimony of a second witness. The trial court allowed the parties to examine B.S. about the prior acts. At this time, F.S. was fourteen and B.S. was nineteen.

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The trial court granted, in part, defendant's objection to testimony related to defendant burning F.S.'s hand with a lighter, but ordered that testimony related to defendant forcing F.S. to run up and down the stairs, hitting her with a belt, and testimony related to defendant forcing F.S. to eat her own vomit was allowed. The trial court determined that these incidents could be submitted to the jury for whatever weight they wanted to give it as it satisfied "the exception to show absence of mistake, common plan, scheme, all of the exceptions listed to the Rule 404(b) other than to show propensity."

On 4 November 2021, the jury returned a verdict finding defendant guilty of intentional child abuse, serious physical injury. The trial court sentenced defendant in the presumptive range for a class E felony, prior record level I, to an active term of 23 to 40 months' imprisonment.

Defendant timely gave oral notice of appeal in open court and appeals pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) from a final judgment of the superior court. Defendant raises two issues: (i) whether the trial court erred or plainly erred in admitting Rule 404(b) evidence of prior acts of abuse and (ii) whether defendant's counsel provided ineffective assistance of counsel by failing to object to the Rule 404(b) evidence introduced at trial. Upon review, we determine that defendant received a fair trial free from prejudicial error.

II.

"Whether evidence is relevant is a question of law[.]" *State v. Kirby*, 206 N.C.

App. 446, 456, 697 S.E.2d 496, 503 (2010). “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 Rule 403 determination for abuse of discretion.” *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). “Defendant bears the burden of showing that the evidence was erroneously admitted and that he was prejudiced by the error.” *Kirby*, 206 N.C. App. at 456, 697 S.E.2d at 503 (citations omitted); *see also* N.C. Gen. Stat. § 15A-1443(a) (2021).

Defendant acknowledges his counsel failed to raise an objection to the State’s introduction of Rule 404(b) evidence at the time it was offered before the jury. “In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1). “To be timely, an objection to the admission of evidence must be made at the time it is actually introduced at trial.” *State v. Snead*, 368 N.C. 811, 816, 783 S.E.2d 733, 737 (2016) (quotation marks and citations omitted). “An objection made only during a hearing out of the jury’s presence prior to the actual introduction of the testimony is insufficient[]” to preserve the objection for appellate review. *Id.* (quotation marks and citations omitted).

Defendant “specifically and distinctly” requests this Court to review for plain error. N.C.R. App. P. 10(a)(4). “The plain error rule applies only in truly exceptional cases. Before deciding that an error by the trial court amounts to ‘plain error,’ the

appellate court must be convinced that absent the error the jury probably would have reached a different verdict.” *State v. Walker*, 316 N.C. 33, 39, 340 S.E.2d 80, 83 (1986) (citing *State v. Odom*, 307 N.C. 655, 661, 300 S.E.2d 375, 378-79 (1983)).

III.

North Carolina Rule of Evidence 404(b) provides, in pertinent part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

§ 8C-1, Rule 404(b) (2021). Under Rule 404(b), “evidence of other offenses is *admissible* so long as it is *relevant to any fact or issue other than* the character of the accused.” *State v. Coffey*, 326 N.C. 268, 278, 389 S.E.2d 48, 54 (1990) (quotation marks and citation omitted). Our Courts have stated that Rule 404(b) is “a clear general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant” *Id.* at 278-79, 389 S.E.2d at 54. “This rule of inclusion is ‘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.’” *State v. Jeter*, 326 N.C. 457, 460, 389 S.E.2d 805, 807 (1990) (quoting *Coffey*, 326 N.C. at 279, 389 S.E.2d at 55). “Whether to exclude evidence under Rule 403 is a matter left to the sound discretion of the trial court. . . . Evidence which is probative of the State’s case necessarily will have a prejudicial effect upon the

defendant; the question is one of degree.” *State v. Hoffman*, 349 N.C. 167, 184, 505 S.E.2d 80, 91 (1998) (internal quotation marks omitted) (quoting *Coffey*, 326 N.C. at 281, 389 S.E.2d at 56).

To convict defendant of intentional child abuse, serious physical injury, the State was required to prove that defendant harmed F.S, and that the harm was not the result of accident or mistake. *See* § 14-318.4(a) (2021). “Intent is a mental attitude seldom provable by direct evidence. Our courts have consistently held that past incidents of mistreatment are admissible to show intent in a child abuse case.” *State v. West*, 103 N.C. App. 1, 9, 404 S.E.2d 191, 197 (1991) (citations omitted). It cannot be said that the trial court abused its discretion in admitting evidence relating to the stairs and vomit incidents for the purpose of showing an exception listed under 404(b) other than for the purpose of showing propensity.

Defendant did not object to additional evidence of bad acts not included in the State’s motion, including defendant being abusive towards T.M. (the victim’s mother), another incident of defendant hitting F.S. with a belt, and defendant forcing F.S. to stay awake at night walking the hallway. At trial, a witness referenced defendant burning F.S.’s hand with a lighter, which the trial court had previously determined should be excluded.

Presuming, without deciding, that the admission of any additional evidence of prior bad acts at issue in this case was error, defendant fails to demonstrate the error was *fundamental*, such that it “had a probable impact on the jury’s finding that the

defendant was guilty.” *Odom*, 307 N.C. at 660, 300 S.E.2d at 378 (quotation marks and citation omitted). Specifically relating the crime charged, the victim F.S. testified that defendant burned her face with hot water in the bathtub; the victim’s sister, B.S., also testified that defendant held F.S. under the water in the bathtub while F.S. cried and, afterward, F.S.’s face “had a lot of pus on it.” Photographs of F.S.’s injured face were admitted into evidence; both F.S. and B.S. testified that defendant instructed them to lie to their mother about how F.S. was injured. The victim’s mother, T.M., testified that she saw blisters on F.S.’s face when she arrived home, and that it took two months for the wounds to heal. These witnesses all described how T.M. took her children to defendant’s mother’s home when T.M. found out that defendant had burned F.S.’s face in the bathtub. The State introduced a videotaped forensic interview of B.S., wherein B.S. described F.S.’s face being burned by defendant in the bathtub. Given the overwhelming evidence presented at trial, defendant fails to demonstrate there was a reasonable probability the outcome would have been different had testimony concerning the additional “bad acts” at issue been excluded. *See Walker*, 316 N.C. at 40, 340 S.E.2d at 84 (holding that “the overwhelming evidence against the defendant prevented the error complained of from rising to the level of ‘plain error[.]’”).

IV.

Next, defendant argues his trial attorney provided ineffective assistance of counsel for failing to object to the above testimony. We disagree.

“When a defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel’s conduct fell below an objective standard of reasonableness.” *State v. Braswell*, 312 N.C. 553, 561-62, 324 S.E.2d 241, 248 (1985) (citation omitted). To meet his burden, defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*: 1) deficient performance; and 2) prejudice. 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693 (1984); *see Braswell*, 312 N.C. at 562-63, 324 S.E.2d at 248 (adopting the standard set forth in *Strickland*).

Deficient performance means trial counsel “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687, 80 L. Ed. 2d at 693. Prejudice “requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial” *Id.* Regarding the first prong of the *Strickland* test—deficient performance—“[c]ounsel is given wide latitude in matters of strategy,” *State v. Fletcher*, 354 N.C. 455, 482, 555 S.E.2d 534, 551 (2001), and defendant has a heavy burden to overcome “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance” *Strickland*, 466 U.S. at 689, 80 L. Ed. 2d at 694. When evaluating the second prong of the *Strickland* test—prejudice—“[t]he fact that counsel made an error, even an unreasonable error, does not warrant reversal of a conviction unless there is a reasonable probability that, but for counsel’s errors, there would have been a different result in the proceedings.” *Braswell*, 312 N.C. at 563, 324 S.E.2d at 248.

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“[W]hile an analysis of plain error may inform an analysis of prejudice under the ineffective assistance of counsel test, it should not be determinative.” *State v. Lane*, 271 N.C. App. 307, 316, 844 S.E.2d 32, 40-41 (2020). Considering the State’s ample evidence of each essential element of intentional child abuse inflicting serious physical harm, and defendant’s identity as the perpetrator of the crime charged, defendant fails to clearly demonstrate a reasonable probability that the outcome at trial would have been different had his counsel raised a timely objection. “Importantly, ‘*Strickland* asks whether it is “reasonably likely” the result would have been different[,]’ and ‘[t]he likelihood of a different result must be substantial, not just conceivable.’” *Lane*, 271 N.C. App. at 319, 844 S.E.2d at 42 (2020) (alterations in original) (quoting *Harrington v. Richter*, 562 U.S. 86, 111-12, 178 L. Ed. 2d 624, 647 (2011)).

V.

For the foregoing reasons, we conclude that the admission of additional 404(b) evidence at issue did not rise to the level of plain error. Further, defendant fails to demonstrate exceptional circumstances that would necessarily “undermine[] the reliability of the result of the proceeding.” *Strickland*, 466 U.S. at 693, 80 L. Ed. 2d at 697.

NO PLAIN ERROR IN PART AND NO PREJUDICIAL ERROR IN PART.

Judges STADING and RIGGS concur.

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Report per Rule 30(e).