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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-980

Filed 05 September 2023

Forsyth County, Nos. 18CRS053397, 18CRS051677-78

STATE OF NORTH CAROLINA

v.

JASHAWN ARNEZ SUMMERS

Appeal by Defendant from judgment entered 2 June 2022 by Judge L. Todd Burke in Forsyth County Superior Court. Heard in the Court of Appeals 8 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Steven Armstrong, for the State.

J. Clark Fischer for Defendant.

COLLINS, Judge.

Defendant Jashawn Arnez Summers appeals from judgment entered upon jury verdicts of guilty of attempted first degree murder, two counts of discharging a firearm into an occupied vehicle while in operation, possession of a firearm by a felon, and first degree murder. Defendant argues that the trial court erred by admitting certain evidence at trial, plainly erred by failing to adequately instruct the jury to

disregard the challenged evidence, and erred by denying his motion for appropriate relief (“MAR”). We hold that the trial court did not prejudicially err by admitting the challenged evidence at trial and did not plainly err in its limiting instruction to the jury. Furthermore, we lack jurisdiction to hear Defendant’s appeal from the order denying his MAR because Defendant failed to appeal from the order. Accordingly, we find no prejudicial error in part, no plain error in part, and dismiss in part.

I. Background

The case was tried between 23 May 2022 and 2 June 2022. The evidence at trial tended to show the following: On 22 February 2018, Christopher Grooms and Tenisha Mills ran a few errands before going to Hot Dog City to pick up dinner for their three children. Grooms was in the driver’s seat and Mills was in the front passenger seat of their car. After pulling into the parking lot, Grooms spotted Defendant and Armando Pagan inside Hot Dog City. Grooms decided against going into Hot Dog City because he and Defendant had an ongoing altercation over \$500 and he wanted to avoid confrontation.

As Grooms was driving out of the parking lot, he saw Defendant and Pagan exiting Hot Dog City and walking towards a white SUV. Grooms exited the parking lot and drove down Glenn Street. After turning off Glenn Street onto 25th Street, a white SUV pulled up next to Grooms’ car. Grooms “leaned up” to see who was in the vehicle and saw Defendant in the rear passenger seat. Defendant rolled down the window and began shooting at Grooms’ car.

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Mills was shot in the head and killed, and Grooms was taken to the hospital by ambulance. At the hospital, Grooms was interviewed by Detective Susan Warner; the interview was recorded by Warner's colleague's body camera. During this interview, Grooms stated that a white SUV pulled up to the left side of his car and Defendant started shooting at them from the rear passenger area of the vehicle. A few hours later, Grooms was interviewed by Detective T.R. Albert and confirmed that Defendant was in the rear passenger seat of the white SUV and began shooting at his car.

Defendant was indicted for attempted first degree murder, two counts of discharging a firearm into an occupied vehicle while in operation, possession of a firearm by a felon, and first degree murder. At trial, the State moved to admit the 17-minute video of the interview conducted by Warner. Defendant objected to "a specific portion" of the video. After a bench conference held off the record, the trial court admitted the video in its entirety, noting on the record that Defendant had objected.

The video was published to the jury. After the video was played, the trial court gave the following instruction to the jury:

Ladies and gentlemen, by way of instruction, there is a plethora of law, plenty of law that states that you cannot find someone guilty of current charges just because they're a bad person. There is law that states that you cannot hold what someone has done in the past against them in trying them for the current charges.

In the video you heard an accusation that the defendant had shot his cousin. That's exactly what that was, an accusation. If there were any charges brought about as a result of that, there was never a conviction. Charges were dismissed. And as you've already heard, when you hear about prior convictions that the defendant may have on his record, you can only consider those convictions that did impact upon the credibility of the defendant if he were to testify. And historically or generally, those type of convictions have been convictions concerning some type of trust, like larceny, embezzlement, obtaining property by false pretenses.

Does the State care to add or comment or bring anything to the [c]ourt's attention about those instructions.

The prosecutor and defense counsel both answered that they did not wish to add anything to the instruction.

The jury returned guilty verdicts on all charges. The trial court arrested judgment on one count of discharging a firearm into an occupied vehicle while in operation, consolidated the remaining convictions, and sentenced Defendant to life in prison without the possibility of parole. Defendant filed notice of appeal from the judgment on 6 June 2022. Defendant subsequently filed an MAR on 10 June 2022, which the trial court denied by written order entered 18 August 2022.

II. Discussion

A. Admission of Challenged Evidence

Defendant argues that the trial court erred by admitting Grooms' recorded statement that Defendant had previously shot his cousin.

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The trial court's determination as to whether evidence of other crimes, wrongs, or acts falls within the scope of Rule 404(b) is a question of law, which this Court reviews de novo on appeal. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). However, evidentiary error does not necessitate a new trial unless the defendant shows that the erroneous admission was prejudicial. *State v. Jacobs*, 363 N.C. 815, 825, 689 S.E.2d 859, 865 (2010). Evidentiary error is prejudicial "when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C. Gen. Stat. § 15A-1443(a) (2022).

"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." N.C. Gen. Stat. § 8C-1, Rule 404(b) (2022). "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." *Id.*

Here, Defendant's specific objection to Grooms' recorded statement was not on the record, nor was the State's response to Defendant's objection. Furthermore, the trial court's reason for overruling Defendant's objection is not on the record. However, even assuming *arguendo* that the challenged portion of the video was Grooms' statement that Defendant had previously shot his cousin and that the statement was erroneously admitted, Defendant has failed to show prejudice because there was otherwise overwhelming evidence of Defendant's guilt.

In the unchallenged portion of the video interview, Grooms stated that a white SUV pulled up to the left side of his car and Defendant “started shooting at them [from] the rear passenger area of the vehicle.” Grooms also confirmed in an interview with Albert that Defendant shot at his car from the rear passenger seat of the white SUV. Consistent with his previous statements, Grooms testified at trial that Defendant had been seated in the rear passenger seat of the white SUV and had been the person shooting at Grooms’ car. Furthermore, Pagan stated in an interview with Albert on 12 April 2022 that Defendant was seated in the rear passenger seat of the white SUV and began shooting at Grooms’ car. Pagan testified at trial, consistent with his previous statements, that Defendant shot at Grooms’ car from the rear passenger seat of the white SUV.

In light of this evidence, Defendant has failed to show that there is a reasonable possibility that, had the challenged evidence not been admitted, a different result would have been reached at trial. *See* N.C. Gen. Stat. § 15A-1443(a). Accordingly, the trial court did not prejudicially err by admitting Grooms’ recorded statement that Defendant had previously shot his cousin.

B. Limiting Instruction

Defendant argues that the trial court plainly erred by failing to properly instruct the jury to disregard Grooms’ recorded statement that Defendant had previously shot his cousin.

“For error to constitute plain error, a defendant must demonstrate that a

fundamental error occurred at trial.” *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). “To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” *Id.* (quotation marks and citations omitted). “Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings[.]” *Id.* (quotation marks, brackets, and citations omitted).

Here, although the trial court’s instruction did not properly limit the jury’s consideration of the challenged evidence, because the admission of the evidence did not constitute prejudicial error in light of the overwhelming evidence of Defendant’s guilt, “[D]efendant cannot show that, absent the error, the jury probably would have returned a different verdict.” *Id.* at 519, 723 S.E.2d at 335. Accordingly, the trial court’s limiting instruction to the jury did not constitute plain error.

C. Motion for Appropriate Relief

Defendant argues that the trial court erred by summarily denying his post-trial MAR.

Defendant brought his MAR under N.C. Gen. Stat. § 15A-1414. Under N.C. Gen. Stat. § 15A-1422(b), “[t]he grant or denial of relief sought pursuant to [section] 15A-1414 is subject to appellate review only in an appeal regularly taken.” N.C. Gen. Stat. § 15A-1422(b) (2022). To perfect an appeal under N.C. Gen. Stat. § 15A-1422(b),

a defendant must file notice of appeal from the order denying his MAR “within the time [and] in the manner . . . provided in the rules of appellate procedure.” *Id.* § 15A-1448(b). Rule 4(a)(2) of the North Carolina Rules of Appellate Procedure requires notice of appeal to be filed within fourteen days after entry of the order denying a defendant’s MAR. N.C. R. App. P. 4(a)(2).

The record on appeal contains no evidence that Defendant filed notice of appeal from the 18 August 2022 order denying his MAR. Accordingly, this Court is without jurisdiction to review Defendant’s challenge to the denial of his MAR, and that portion of Defendant’s appeal is dismissed. *See State v. Hagans*, 188 N.C. App. 799, 805-06, 656 S.E.2d 704, 708-09 (2008).

III. Conclusion

The trial court did not prejudicially err by admitting Grooms’ recorded statement that Defendant had previously shot his cousin and did not plainly err in its limiting instruction to the jury. We therefore find no prejudicial error in part and no plain error in part. Furthermore, because Defendant failed to properly appeal from the order denying his MAR, we dismiss in part.

NO PREJUDICIAL ERROR IN PART; NO PLAIN ERROR IN PART;
DISMISSED IN PART.

Judges ZACHARY and RIGGS concur.

Report per Rule 30(e).