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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1020

Filed 12 September 2023

Gaston County, Nos. 15CRS1557, 15CRS2945, and 15CRS5353

STATE OF NORTH CAROLINA

v.

ERIC WILSON TAYLOR, Defendant.

Appeal by Defendant from a judgment entered 21 March 2022 by Judge Joseph N. Crosswhite in Gaston County Superior Court. Heard in the Court of Appeals 8 August 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Kathryne E. Hathcock, for the State.*

*Sarah Holladay, for Defendant-Appellant.*

RIGGS, Judge.

Defendant Eric Wilson Taylor appeals from his convictions for second-degree murder and felony death by vehicle following a retrial after his prior convictions were vacated on appeal. *State v. Taylor*, 263 N.C. App. 412, 821 S.E.2d 901, 2018 WL 6614047 (unpublished). Mr. Taylor now asserts that, in his second trial: (1) the trial court prejudicially erred in admitting evidence of 20-year-old convictions for second-

degree murder and driving while impaired, other driving-offense convictions dating back to 1986, and a possession of drug paraphernalia conviction from 2005; (2) the trial court plainly erred in allowing references to his prior trial; (3) cumulative error warrants a new trial; and (4) his counsel was ineffective in failing to ensure a complete recordation of the trial. After careful review, we hold Mr. Taylor has failed to show error or plain error under his first three arguments and dismiss his ineffective assistance of counsel (“IAC”) claim without prejudice to filing a motion for appropriate relief with the trial court.

### **I. FACTUAL AND PROCEDURAL HISTORY**

Mr. Taylor was originally tried and convicted of second-degree murder and felony death by motor vehicle in 2017. *Id.* at \*1. Several witnesses testified at that trial, including: (1) Rick Brown, an off-duty firefighter who witnessed Mr. Taylor speeding erratically, swerve into oncoming traffic several times, and crash head-on into another vehicle; (2) Ashley Wright, a police officer on patrol with the Gaston County Police Department who heard and saw the crash before attending to the injured drivers; and (3) Jody Nix and Leslie Moore-Preslar, both of whom purchased controlled substances from Mr. Taylor and testified that he had smoked crack and taken Xanax before the crash. Mr. Taylor appealed those convictions and successfully pursued an ineffective assistance of counsel claim, eventually leading to the vacatur of those convictions and a new trial. *Id.* at \*3.

The trial court held a pre-trial hearing for Mr. Taylor’s second trial on 24

January 2022 to address the State's intention to introduce Mr. Taylor's driving record—which included a 1997 conviction for second-degree murder by vehicle—and other criminal convictions under Rule 404(b) of the North Carolina Rules of Evidence. The trial court concluded the hearing by taking the matter under advisement. It later entered an order as follows:

4. The Defendant's driving history is admissible in this case to show malice. In applying the temporal remoteness analysis, the Court finds that convictions found with the Defendant's driving history that are older than the Defendant's 1986 Rowan County DWI conviction are too temporally remote to be admissible in this case. Matters beginning with the 1986 Rowan County DWI conviction are not too remote and their admission is not unduly prejudicial to the Defendant.

5. The fact of the Defendant's 1997 Second Degree Murder conviction is admissible along with the other matters contained in his driving history in this case to show malice. It is not too temporally remote and its admission is not unduly prejudicial to the Defendant.

6. The Defendant's 2005 conviction for Possession of Drug Paraphernalia exhibits enough similarity to the present offense to be admissible as evidence of malice in this case. The other criminal convictions contained in the Defendant's criminal history for Robbery with a Dangerous Weapon, Credit Card Fraud and other larcenies are not sufficiently similar to the present offense and will not be admissible as evidence of malice.

The order expressly reserved ruling on whether the underlying facts of Mr. Taylor's prior second-degree murder conviction by vehicle could be admitted into evidence.

Mr. Taylor's second trial began on 14 March 2022. Though Mr. Taylor's counsel

had previously filed a written motion for complete recordation, that motion was not pressed prior to jury selection; instead, counsel requested only that opening and closing arguments be transcribed. Once the jury was empaneled, the State called numerous witnesses, including Mr. Brown, Officer Wright, Mr. Nix, and Ms. Moore-Pressler. Each testified in a manner largely consistent with their testimonies in the earlier trial, and transcripts of their prior testimonies were admitted into evidence by the trial court without objection. Mr. Taylor's driving record dating back to 1986 and his 1997 second-degree murder conviction were allowed into evidence as provided by the pre-trial order, but the underlying facts of that latter conviction were excluded as unduly prejudicial under Rule 403 of the North Carolina Rules of Evidence.

The jury convicted Mr. Taylor of second-degree murder and felony death by motor vehicle. He subsequently pled guilty to attaining violent habitual felon status and repeated felony death by vehicle. The trial court consolidated Mr. Taylor's convictions and imposed a life sentence without parole for attaining violent habitual felon status. Mr. Taylor gave oral notice of appeal at sentencing.

## **II. ANALYSIS**

Mr. Taylor raises four issues on appeal: (1) the trial court prejudicially abused its discretion in admitting evidence of Mr. Taylor's prior convictions; (2) the trial court committed plain error in permitting the State to reference Mr. Taylor's prior trial, including the admission of transcripts of witness testimony from that trial; (3) cumulative error warranting a new trial resulted from these errors; and (4) Mr.

Taylor’s counsel was ineffective in failing to ensure that jury selection was recorded. We address each contention in turn.

### **A. Standards of Review**

Whether challenged evidence falls within Rule 404(b) of the North Carolina Rules of Evidence is reviewed *de novo* as an issue of law. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). Whether evidence admissible under Rule 404(b) nonetheless should have been excluded as unduly prejudicial under Rule 403 is reviewed for abuse of discretion. *Id.*

To prevail on appeal of a preserved evidentiary issue, a defendant must demonstrate “a reasonable possibility that, had the error not been committed, a different result would have been reached at trial.” *State v. Scott*, 331 N.C. 39, 46, 413 S.E.2d 787, 791(1992). Unpreserved errors are subject to the plain error standard when distinctly argued on appeal, meaning the defendant must establish a “fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done.” *State v. Doisey*, 138 N.C. App. 620, 625–26, 532 S.E.2d 240, 244 (2000) (citation and quotation omitted). When no single error is sufficiently prejudicial to warrant setting aside a verdict, the cumulative prejudice of these errors may nonetheless require a new trial; in such instances, a defendant must show that these errors collectively “deprived defendant of his due process right to a fair trial free from prejudicial error.” *State v. Canady*, 355 N.C. 242, 254, 559 S.E.2d 762, 768 (2002).

**B. Mr. Taylor's Prior Convictions**

Our precedents establish that prior driving-related convictions are admissible under Rule 404(b) to show malice in an alleged second-degree murder by vehicle. *State v. Maready*, 362 N.C. 614, 620, 669 S.E.2d 564, 568 (2008) (citation omitted). Such convictions are relevant to show that “defendant was aware that his conduct leading up to the collision at issue here was reckless and inherently dangerous to human life.” *State v. Jones*, 353 N.C. 159, 173, 538 S.E.2d 917, 928 (2000). The prior convictions must, however, share “similarity and temporal proximity” to the alleged crime. *Maready*, 362 N.C. at 624, 669 S.E.2d at 570 (citation and quotation marks omitted). The closeness in time necessary to satisfy the Rule is relaxed when “the prior conduct tends to show a defendant’s state of mind.” *Id.* There is no “fixed temporal maximum” that controls. *Id.* at 625, 669 S.E.2d 571. Intervening periods of incarceration may be excluded from this analysis. *State v. Lloyd*, 354 N.C. 76, 91, 552 S.E.2d 596, 610 (2001).

Mr. Taylor’s 1997 conviction for second-degree murder satisfies the above requirements. Once his roughly 11.5 years of incarceration for the offense is excised from the equation, for purposes of Rule 404(b), Mr. Taylor’s murder conviction was only 9.5 years removed from the events giving rise to the case here. Such distance is not so remote as to place the murder conviction out of the Rule’s grasp. *See, e.g., Maready*, 362 N.C. at 623, 669 S.E.2d at 569 (holding sixteen-year-old driving offenses were not so remote as to be inadmissible under Rule 404(b) in a trial for

vehicular second-degree murder). As for its similarity to the charged offense, “the similarity was evident from the nature of the [matching] charges.” *State v. Schmieder*, 265 N.C. App. 95, 100, 827 S.E.2d 322, 327 (2019).

Mr. Taylor’s other driving convictions dating back to 1986 were likewise admissible under the Rule. A long and lengthy history of repeated serious driving offenses like DWIs and vehicular second-degree murder satisfy the Rule’s temporal and similarity requirements insofar as it demonstrates “a clear and consistent pattern of criminality that is highly probative of [the defendant’s] mental state at the time of [the offense].” *Maready*, 362 N.C. at 624, 669 S.E.2d at 570. That pattern exists in the driving record admitted into evidence here; accounting for the many years Mr. Taylor spent in prison for these offenses, and as pointed out by the State, the record shows that Mr. Taylor was convicted of a DWI every three years outside of prison from 1994 onwards. His offenses predating 1994—namely reckless driving and speeding—are likewise within the Rule as “involv[ing] the same types of conduct [Mr. Taylor] was alleged to have engaged in here,” and “[t]he gaps in time between charges, never greater than three or four years, were not significant” in light of his incarceration and numerous license revocations and suspensions. *Schmieder*, 265 N.C. App. at 100, 827 S.E.2d at 327. The trial court did not err under Rule 404(b) in admitting evidence of these offenses, and Mr. Taylor’s reliance on several non-vehicular homicide cases, *see, e.g., State v. Carpenter*, 361 N.C. 382, 646 S.E.2d 105 (2007); *State v. Flood*, 221 N.C. App. 247, 726 S.E.2d 908 (2012), do not dissuade us

from this result, as those decisions predate more recent—and more directly factually and legally analogous—cases. *See, e.g., Maready*, 362 N.C. at 624, 669 S.E.2d at 570; *Schmieder*, 265 N.C. App. at 100, 827 S.E.2d at 327.

The trial court also did not abuse its discretion in admitting this evidence under Rule 403. The trial court excluded evidence of offenses predating 1986 and the factual details of Mr. Taylor’s prior second-degree murder convictions. It further gave a limiting instruction to the jury concerning this latter conviction. Given “[t]he trial court’s deliberate and discretionary weighing of potential unfair prejudice against the evidence’s probative value . . . [w]e cannot say that the trial court abused its discretion under Rule 403.” *State v. Bradley*, 279 N.C. App. 389, 406, 864 S.E.2d 850, 863 (2021).

### **C. Prior Trial Transcripts**

Mr. Taylor next asserts plain error in the trial court’s admission of witness transcripts from his first trial. Assuming *arguendo* that this was error, we hold that he has failed to show sufficient prejudice. Mr. Taylor’s argument on this point—that the jurors may have read a local news article and the admission of the previous trial transcripts might have led “a juror to believe that their verdict would not be binding, or to be angry with Mr. Taylor for exercising his right to appeal”—is entirely speculative. The notes reconstructing jury selection indicate that all prospective jurors who saw the article and expressed an inability to be impartial were excused from the pool. As to the seated jurors, the trial court instructed them to be impartial, and we will not presume the jury disregarded that instruction. *State v. Smith*, 351



N.C. 251, 266, 524 S.E.2d 28, 39 (2000). In short, Mr. Taylor’s conjecture that the published news article and admitted testimony transcripts “could lead the jury to reach any of a number of improper conclusions” is inadequate to demonstrate prejudice on plain error review.

#### **D. Cumulative Error**

Having held that Mr. Taylor has not shown error under his first argument and inadequate prejudice under his second, he cannot show cumulative prejudice sufficient to warrant a new trial in this case. *Cf. State v. Thompson*, 359 N.C. 77, 106, 604 S.E.2d 850, 871 (2004) (holding any showing of cumulative error was precluded by prior holdings that no errors occurred at trial).

#### **E. IAC Claim**

In his final argument, Mr. Taylor argues that he received ineffective assistance of counsel based on his trial attorney’s failure to ensure that jury selection was recorded. We dismiss this claim without prejudice to filing a motion for appropriate relief (“MAR”) in the trial court because, “[w]hen the IAC claim cannot be resolved on the appellate record, the proper disposition is to dismiss the IAC claim without prejudice to the defendant filing an MAR.” *State v. Demick*, \_\_\_ N.C. App. \_\_\_, \_\_\_ 886 S.E.2d 602, 619 (2023).

Mr. Taylor’s counsel filed a pre-trial motion requesting recordation of jury selection but did not press that motion at trial; as a result, jury selection went unrecorded. We do not know from the record why; Mr. Taylor’s counsel may have

forgotten to do so, or he might have abandoned the motion with the consent and knowledge of his client or for some other reason not amounting to IAC. Relatedly, any perceived discrepancies in the reconstructions of *voir dire* provided by trial counsel for the parties may be resolved through the receipt of evidence and fact-finding by the trial court. That court can likewise receive evidence concerning and make findings establishing whether any potential error or meritorious grounds for appeal arose during jury selection but went unrecorded. We therefore dismiss Mr. Taylor's IAC claim without prejudice so that he may pursue it at the trial court and with the benefit of an evidentiary hearing.

### **III. CONCLUSION**

For the foregoing reasons, we hold that Mr. Taylor received a trial free from reversible error and dismiss his IAC claim without prejudice.

NO ERROR IN PART; NO PLAIN ERROR IN PART; DISMISSED WITHOUT PREJUDICE IN PART.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).