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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1072

Filed 3 September 2024

Pender County, No. 20CRS50629

STATE OF NORTH CAROLINA

v.

RAYMOND LEE BROOKS

Appeal by defendant from judgment entered 10 March 2023 by Judge G. Frank Jones in Pender County Superior Court. Heard in the Court of Appeals 14 August 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Robert C. Ennis, for the State.

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

TYSON, Judge.

Raymond Lee Brooks, Jr. (“Defendant”) appeals from a judgment entered upon a jury’s verdict finding him guilty of first degree murder, robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon. He argues the trial court abused its discretion in failing to declare a mistrial and he received ineffective assistance of counsel. We discern no prejudicial or reversible error.

I. Background

Defendant, his half-sister, Myasia Morange, and her boyfriend, Brandon Chambers, used a false dating application profile to arrange a meeting with Christopher Stewart to rob him on 26 March 2020. Morange met Stewart at Miller's Pond Park and walked with him to a picnic area, where Chambers and Defendant had concealed themselves behind the public restroom.

Chambers emerged from where he was hiding and hit Stewart in the face three or four times. As Stewart fought back, Defendant approached him and struck him in the head with a metal pipe, knocking Stewart unconscious. Defendant struck Stewart in the head with the pipe approximately seventeen times, killing him. Defendant and Chambers stole Stewart's phone and \$800 in United States currency. Defendant was arrested on 14 April 2020 and later indicted for first degree murder, robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon.

Morange testified for the State, with her attorney, Mr. Mediratta, present. During direct examination, Mr. Mediratta interrupted: "Your honor, I'm sorry. I have to object. I think [defense counsel] might be intimidating my witness. I'll ask him to scooch back a little bit, please." The trial court instructed defense counsel to move out of the witness's line of sight and for the State to proceed with questioning.

Defendant was convicted of all charges he was indicted for, including first degree murder, robbery with a dangerous weapon, and conspiracy to commit robbery

with a dangerous weapon. He was sentenced to life imprisonment without parole. Defendant filed timely notice of appeal.

II. Jurisdiction

Jurisdiction lies with this court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2023).

III. Failure to Declare a Mistrial

Defendant argues the trial court abused its discretion by *sua sponte* failing to declare a mistrial following Mr. Mediratta’s objection. He claims the incident improperly prejudiced him by portraying defense counsel as a “bully” to the jury and rendering cross-examination ineffective.

A. Standard of Review

A trial court’s decision of whether to grant mistrial is reviewed for abuse of discretion. *State v. Hill*, 347 N.C. 275, 297, 493 S.E.2d 264, 276 (1997). “[A]n error, even one of constitutional magnitude, that defendant does not bring to the trial court’s attention is waived and will not be considered on appeal.” *State v. Wiley*, 355 N.C. 592, 615, 565 S.E.2d 22, 39 (2002) (citations omitted).

“[P]lain error review in North Carolina is normally limited to instructional and evidentiary error.” *State v. James*, 226 N.C. App. 120, 127, 738 S.E.2d 420, 426 (2013) (citation omitted). “[P]lain error review is not available for a trial court’s failure to declare a mistrial on its own motion.” *State v. Lee*, 213 N.C. App. 392, 394, 713 S.E.2d 174, 176 (2011) (citations omitted).

B. Analysis

Defendant failed to move for a mistrial at trial and did not preserve this issue for appeal. *Id.*; *Wiley*, 355 N.C. at 615, 565 S.E.2d at 39. Defendant does not allege an instructional or evidentiary error. Plain error review is unavailable. *James*, 226 N.C. App. at 127, 738 S.E.2d at 426. This argument is not properly before this Court and is dismissed. *Id.*; *Lee*, 213 N.C. App. at 394, 713 S.E.2d at 176; *Wiley*, 355 N.C. at 615, 565 S.E.2d at 39.

IV. Ineffective Assistance of Counsel

Defendant argues he was provided ineffective assistance of counsel when his attorney failed to move for a mistrial following Mr. Mediratta's objection.

A. Standard of Review

To demonstrate ineffective assistance of counsel, a defendant must show counsel's performance was deficient and Defendant was prejudiced. *State v. Braswell* 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) (citation omitted). A deficient performance is one that falls below an objective standard of reasonableness and is so serious it effectively denies the defendant his due process rights. *Id.* "Judicial review of counsel's performance must be highly deferential." *State v. Gainey*, 355 N.C. 73, 113, 558 S.E.2d 463, 488 (2002) (citation omitted).

Counsel's performance prejudices a defendant only when, "looking at the totality of the evidence, there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *State*

v. Phillips, 365 N.C. 103, 122, 711 S.E.2d 122, 138 (2011) (citation and quotation omitted).

There is “a strong presumption that counsel’s conduct falls within the broad range of what is reasonable assistance.” *State v. Fisher*, 318 N.C. 512, 532, 350 S.E.2d 334, 346 (1986) (citation omitted). “[W]hen this Court is able to determine that defendant has not been prejudiced by any alleged ineffectiveness of counsel, we need not consider whether counsel’s performance was deficient.” *State v. Augustine*, 359 N.C. 709, 719, 616 S.E.2d 515, 524 (2005) (citations omitted).

B. Analysis

Here, Defendant’s counsel’s performance did not prejudice him. Overwhelming evidence of guilt was admitted against Defendant, including: (1) the presence of the victim’s blood on Defendant’s shoes; (2) a recording of Defendant’s confession to his mother of murdering Stewart; and, (3) testimony from an eyewitness to Stewart’s premediated murder.

Defendant put the State to its proof to prove the charges against him beyond a reasonable doubt and neither proffered nor presented any evidence. Given the totality of the evidence, no merit exists to support the proposition that the jury would have reached a different verdict due to the purported ineffectiveness of defense counsel’s conduct or cross-examination if Mr. Mediratta had not interjected.

A defendant is not prejudiced by counsel’s failure to raise a claim that would have been unsuccessful. *State v. Waring*, 364 N.C. 443, 513-14, 701 S.E.2d 615, 659

(2010); *State v. Banks*, 367 N.C. 652, 653, 766 S.E.2d 334, 336 (2014). In *State v. Waring*, our Supreme Court concluded the defendant's counsel's failure to object was not ineffective assistance because there was no basis for raising an objection. 364 N.C. at 513-14, 701 S.E.2d at 659. In *State v. Banks*, our Supreme Court also held a defendant is not prejudiced by counsel's failure to raise an argument, which would have been unsuccessful at trial. 367 N.C. at 653, 766 S.E.2d at 336.

Here, Defendant's motion for mistrial would have been similarly unsuccessful for lack of showing prejudice. A mistrial should be granted only when irregularities in the trial "make it impossible for the defendant to receive a fair and impartial verdict." *State v. Spinks*, 277 N.C. App. 554, 568, 860 S.E.2d 306, 318 (2021). It is not probable the jury would have been unable to render an impartial verdict because of a single comment by counsel suggesting a testifying witness might be intimidated by defense counsel. *Id.*

Because the motion for mistrial had no basis or merit, it is not probable the jury would have reached a different result if it had been raised. No prejudice is shown. Defendant's argument is overruled.

V. Conclusion

The trial court did not abuse its discretion by *sua sponte* failing to declare a mistrial. Plain error review is not applicable. Defendant did not receive ineffective assistance of counsel when his attorney declined to move for a mistrial.

Defendant received a fair trial, free from prejudicial errors he preserved and

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argued on appeal. Defendant demonstrates no reversible or prejudicial error in the jury's verdicts or in the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges STADING and THOMPSON concur.

Report per Rule 30(e).