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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-142

Filed 1 October 2024

Buncombe County, No. 20 CRS 80474

STATE OF NORTH CAROLINA

v.

DEVERON ANGELO ROBERTS

Appeal by defendant from judgement entered 17 November 2022 by Judge Alan Z. Thornburg in Superior Court, Buncombe County. Heard in the Court of Appeals 10 September 2024.

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

Marilyn G. Ozer, for defendant-appellant.

ARROWOOD, Judge.

Deveron Angelo Roberts (“defendant”) appeals from the trial court’s judgment entered 17 November 2022. Defendant contends the trial court violated his Sixth Amendment right to confront a witness and his right to a fair trial. For the following reasons, we find defendant received a fair trial free from error.

I. Background

On 2 March 2020, defendant was indicted on one count of first-degree murder. The matter came on for trial on 7 November 2022 in Superior Court, Buncombe County. At trial, the evidence tended to show the following.

Defendant lived in Asheville with his parents at 185 Fayetteville Street, while his grandmother lived next door at 187 Fayetteville Street. Defendant began using his grandmother's home as a music video studio with an open-door policy, attracting many visitors. In 2019, a drive-by shooting of Devon Davidson and Tyrese Cave, both friends of defendant, occurred at the 187 Fayetteville residence while defendant was inside. Then, according to defendant's testimony, he was robbed in December 2019 by Antwan Eddings ("Eddings"), who was a frequent visitor to the 187 Fayetteville residence, along with some other men. Defendant testified that he had a gun placed to his head during this incident, although he did not see who did it. He was aware, however, that the group that robbed him carried guns. He did not report the incident to the police.

On 12 January 2020, the day before the murder, defendant's friend Shabazz Tucker ("Tucker") was shot in the leg at 187 Fayetteville while defendant was sleeping at 185 Fayetteville. The police investigated the shooting and left around 12:50 a.m. the morning of 13 January 2020. After the police left the scene, defendant, Eddings, Eddings' childhood friend Ernest Weston ("Weston"), Olajah Grant ("Grant"), and Davidson drove to an apartment complex, got food, then returned to

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187 Fayetteville; they then proceeded to get some liquor from defendant's uncle and brought it back to 187 Fayetteville. At 3:00 a.m., defendant's mother went to 187 Fayetteville to get her car keys to go to work; there, she heard a commotion and her son saying "Y'all need to go," "It's over," and "Get out." Defendant testified that he told Eddings that he had to go, at which point Eddings began to argue and proceeded to punch defendant. Defendant testified that he was terrified for his life, and that he knew Eddings carried a gun based on the robbery in 2019. This testimony was contradicted by Weston, who testified that there was no argument before the shooting. Defendant proceeded to shoot Eddings multiple times. Weston testified that just after the shooting, he called Eddings' "baby mama" and told her Eddings had just been shot, to which she responded, "Where's he at?"

At trial, the State filed an application to grant immunity to Weston and Grant for them to testify as part of the State's case-in-chief. During cross-examination, defense counsel asked Weston several questions concerning events prior to 13 January to which Weston invoked the Fifth Amendment or his attorney objected. Grant, although provided the same immunity as Weston, was informed by his attorney that he would not be protected from federal prosecution and invoked the Fifth Amendment on every question asked; he was sentenced to 30 days for contempt of court.

Detective Patrick Destefano ("Detective Destefano") of the Asheville Police Department, who responded to both shootings the night in question, testified as part

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of the State's case-in-chief. Detective Destefano testified that he had never had prior contact with Eddings but had heard his name as part of his effort to stay informed concerning certain apartment complexes. During part of Detective Destefano's testimony, he began answering a question concerning Eddings with the following: "There had been – there had been suspicion as well as –." Before finishing, the court, *ex mero mortu*, interrupted him and told him not to testify further regarding that question. The state's final witness was Rhonda Jones, Eddings' mother, who lived in Florida. She testified concerning her relationship with her son and his life prior to his death, which included telling the jury her pet name for her son; that he had moved Asheville to live with his father when he was in eight grade; and that when she asked him to move back to Florida, he told her, "Mom, no, I've got a son now. I don't want to be out of my son's life."

Defendant was found guilty of first-degree murder, and the trial court sentenced him to life in prison without the possibility of parole on 17 November 2022. Defendant gave oral notice of appeal.

II. Discussion

Defendant raises two issues on appeal. First, defendant contends that his Sixth Amendment rights were violated when Weston, having been granted immunity and required to testify, was allowed to invoke his Fifth Amendment rights without a determination by the court that answering the questions would present a reasonable

danger of self-incrimination. Secondly, defendant contends that his right to a fair trial was violated when Eddings' mother gave testimony resembling a victim impact statement, despite the trial court preventing Detective Destefano from testifying as to how he knew the name "Eddings." We address each argument in turn.

A. Sixth Amendment Right to Confrontation

Under the North Carolina Rules of Appellate Procedure, issues in criminal cases "not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C. R. App. P. Rule 10(a)(4) (2016). Plain error is fundamental error that is so basic and prejudicial that justice could not have occurred. *State v. Lawrence*, 365 N.C. 506, 516–17 (2021) (quoting *State v. Odom*, 307 N.C. 655, 660 (1983)).

The Fifth Amendment of the United States Constitution guarantees that no one shall be forced to testify against themselves in a criminal proceeding. U.S. Const. amend. V. However, this does not end the inquiry, given the criminal defendant's Sixth Amendment right to confront and cross-examine witnesses against him. *See State v. Ray*, 336 N.C. 463, 468 (1994). Once a witness invokes their Fifth Amendment right after a question has been asked, the trial court must determine whether "the question is such that it may be reasonably inferred that the answer may be self-incriminating." *State v. Eason*, 328 N.C. 409, 418 (1991) (citations omitted).

If the court determines that the question will not be self-incriminating, it may force the witness to answer the question. *Id.* at 419. In making this determination, the trial court must decide if there is a real danger that the testimony will be used against the witness in a criminal prosecution or furnish a link in the chain needed to prosecute the witness. *State v. Pickens*, 346 N.C. 628, 637 (1997) (citations omitted).

In the case *sub judice*, the trial court did not make a specific determination concerning the danger of criminal prosecution and allowed Weston to take the Fifth. However, as defense counsel did not object at trial, we review the lower court's decision for plain error.

In *State v. Ray*, the North Carolina Supreme Court distinguished between direct and collateral matters when inquiring into testimony that implicates both the Fifth and Sixth Amendments. 336 N.C. 463, 471 (1996). “[T]he essential question ‘must finally be whether defendant’s inability to make the inquiry created a substantial danger of prejudice by depriving him of the ability to test the truth of the witness’ direct testimony.’” *Id.* (citing *United States v. Rogers*, 475 F.2d 821, 827 (7th Cir. 1973) ((quoting *Fountain v. United States*, 384 F.2d 624, 628 (5th Cir.), *cert. denied*, 390 U.S. 1005 (1968))). Collateral matters “bear only on the credibility of the witness” *Ray*, 336 N.C. at 470 (quoting *United States v. Cardillo*, 316 F.2d 606, 611 (2d. Cir. 1963)).

When defense counsel sought to cross-examine Weston, he asked questions that were beyond the essence of the direct testimony. The State’s direct examination

was focused (with minor exceptions) on the events of 13 January and the hours and days thereafter, not on what occurred beforehand. Defendant notes in his brief that the jury was shown a video recording of Weston's questioning at the police station, during which he answered questions concerning events prior to the 13 January shooting. Defendant contends that this video should be considered testimonial. Regardless of how the video could be conceptualized, the shooting occurred on 13 January; the State's direct examination focused on that day, thus events prior are collateral and did not deprive defendant of the ability to test the truth of the witness's testimony and any error with respect thereto was harmless

B. Trial Court's Control Over Testimony

We review a trial court's evidentiary ruling only for an abuse of discretion and a conviction will only be reversed when an evidentiary ruling is shown to have been "so arbitrary that it could not have been the result of a reasoned decision." *State v. Hagans*, 177 N.C. App. 17, 23 (2006) (citations omitted). Even if the court does commit error, the moving party must show that a different result would likely occur absent that error. *See State v. McBride*, 173 N.C. App. 101, 105 (2005) (citations omitted); N.C.G.S. § 15A-1443(a).

Under the North Carolina Rules of Evidence, evidence is relevant if it has the tendency to make the existence of a consequential fact more or less likely. N.C.G.S. § 8C-1, Rule 401. Relevant evidence is generally admissible, but it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

Id. Rule 402–403. Character evidence is not generally admissible to prove that an individual acted in conformity with their character on a particular occasion. *Id.* Rule 404(a). However, character evidence is admissible when used to demonstrate a pertinent characteristic of the victim. *Id.* Rule 404(a)(1).

Here, neither evidentiary ruling made by the trial court, rose to the level of an unreasonable decision. Even if either of these decisions were erroneous, defendant has failed to meet his burden of proving a different result absent error. The State presents Jones’ testimony as corroborating evidence that Eddings was a new father who loved his son, and as adding credence to Weston’s video interview. Corroborating evidence is relevant in that it makes the corroborated testimony more believable. Even assuming error, defendant has failed to present enough evidence that the jury would have returned a verdict of “not guilty” absent Jones’ testimony, considering the wealth of evidence already presented against defendant.

Relatedly, defendant notes that North Carolina case law generally prohibits victim-impact statements during the guilt-innocence phase of a trial. Be that as it may, his argument suffers from a logical misstep. He notes in his brief that “a child’s loss of a parent is victim impact evidence” (citing *State v. Nicholson*, 355 N.C. 1, 39 (2002)); this may be true, but not *every* piece of testimony concerning the loss of a parent is a victim impact statement. Defendant focuses on the emotional aspect of Jones’ testimony while ignoring its potential relevancy, and thereby assumes it is a

victim impact statement. However, the State has already demonstrated the relevancy of Jones' testimony. Thus, we are unpersuaded by defendant's argument.

Concerning Destefano's testimony, the State is correct that it is presumptuous to assume what Destefano's testimony would be. The State is further correct in that even when assuming that Destefano would only testify that he knew the name Eddings from investigation into suspicious activity, defendant has not met his burden of proving a different outcome. A vague statement by a police detective that the victim was involved in suspicious activity, when weighed against the evidence against defendant, is not strong enough.

Finally, defendant contends that Destefano's testimony could be characterized as character evidence of Eddings' pertinent trait. However, this argument fails for two reasons. First, in every case "in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion." N.C.G.S. § 8C-1, Rule 405(a). Destefano's testimony that he knew the name "Eddings" in connection with suspicious activity is not opinion or reputation testimony. Two, character evidence must be "pertinent," such as when a defendant claiming self-defense seeks to offer evidence that the victim was violent. *State v. Squire*, 321 N.C. 541, 549 (1988). Here, according to the Defendant's own admission, the testimony that Destefano is believed to have been about to offer is suspicion of "criminal activity," which is too vague to qualify as pertinent. In addition, it should be noted that no proffer of the excluded evidence was

made or ever sought. An appellate court will not presume something that is not supported by the record.

III. Conclusion

For all the foregoing reasons we find defendant received a fair trial free from prejudicial error.

NO ERROR.

Judge GRIFFIN concurs.

Judge MURPHY concurs in the result only.

Report per Rule 30(e).