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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-342

Filed 17 December 2024

Caswell County, No. 21-CRS-50133

STATE OF NORTH CAROLINA

v.

JAMES SHERMAN WILSON, Defendant.

Appeal by defendant from judgment entered 20 March 2023 by Judge John M. Morris in Caswell County Superior Court. Heard in the Court of Appeals 11 September 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Hyrum J. Hemingway, for the State.

William D. Spence, for the Defendant-Appellant.

STADING, Judge.

James Sherman Wilson (“Defendant”) appeals from a judgment after a jury found him guilty of voluntary manslaughter. Upon the jury finding an aggravating factor, the trial court sentenced Defendant to an active prison term of 92–123 months.

Following sentencing, Defendant orally gave his notice of appeal. For the reasons below, we hold Defendant received a trial free of error.

I. Background

On 9 May 2021, Sherman Darrel Pointer attended a Mother's Day celebration with Harley Snow, the mother of his children; Mary Pointer, his mother; and Demetrius Pointer, his brother. Defendant was Mary's live-in boyfriend and the father of her three children, including Sherman and Demetrius. Defendant did not attend the celebration. Around 11:00 p.m., Sherman, Harley, their children, and Demetrius went to Mary's home in Caswell County. Mary had left the celebration early and was already home when Sherman and the others arrived. Sherman and Harley were to spend the night at Mary's home. Demetrius stayed for a few minutes and then left with his girlfriend. Around this time, Defendant arrived at the house.

Defendant spoke with Harley and entered the bedroom he shared with Mary. An argument ensued between them. Though Defendant briefly left the home, the argument continued when he returned. Overhearing the argument, Sherman told Harley that he did not "want to deal with this" and "should have known this was going to happen." Sherman called Demetrius to pick him up, but Demetrius was already halfway home. While Sherman was on the phone, Defendant came out of his room and confronted Sherman who said he was tired of Defendant cussing at his mother and all of the general acrimony. After several minutes of arguing, Defendant said, "Okay . . . if there's a problem, I'll show you."

Defendant went into his bedroom and came out with a gun. Sherman said, “It’s not the first time you pulled a gun out on me.” Defendant responded, “Oh, well, watch this,” and shot Sherman multiple times. Sherman stepped back, fell over, and attempted to crawl. When Sherman’s five-year-old son approached, Defendant ran away. Harley ran after Defendant, who jumped into his work truck and sped out of the driveway. Sherman was not breathing, prompting Harley to call 911. Sherman died at the scene from multiple gunshot wounds.

Responding officers located six spent .22 shell casings at the scene. The murder weapon was never recovered. Defendant’s truck was at his brother’s house in the early hours of 10 May 2021. Defendant turned himself in to the Caswell County Sheriff’s Office the next day.

During a forensic interview, Sherman’s young son stated, “My daddy was looking at pappa and then he turned around and shot him - he tried to get his gun but he shot him on the back.” The child also stated that Sherman and Defendant had been “fighting with fists” and that “daddy was going to get a knife.” On cross-examination, Harley admitted she had called Defendant on prior occasions because Sherman was intoxicated, aggressive, and out of control. At the time of his death, a toxicology report showed Sherman’s “blood alcohol level was 0.24.”

Both before trial and during the charge conference, Defendant requested that the trial court instruct the jury on first-degree murder where a deadly weapon is used, covering all lesser-included homicide offenses and self-defense. While the State

argued that there was insufficient evidence to merit an instruction on self-defense, it did not object to rendering the instruction to the jury. The trial court agreed to give Defendant's proposed instruction, except that it excluded involuntary manslaughter. The trial court also agreed to give the State's requested flight instruction. The trial court instructed the jury accordingly.

At the close of the State's case, Defendant moved, without argument, to dismiss the first-degree murder charge. After the trial court denied Defendant's motion, the defense rested without putting on any evidence. At the close of all evidence, Defendant again moved to dismiss the first-degree murder charge, and the trial court again denied Defendant's motion.

During their closing argument, the prosecutor discussed the flight issue:

It's beyond a reasonable doubt that he fled. Ancient wisdom, Proverbs 28:1, the great King Solomon himself said that the wicked flee when no man pursues, but the righteous is as bold as the lion. The wicked flee when no man pursues, but the righteous is as bold as a lion.

I'm asking you to decide whether someone who just committed an act of self-defense is going to run from the scene and not be found for a whole day and a half almost. Remember, this happens on the late hours of May 9th, early hours of May 10th, so May 10th, 12 a.m. He turned himself in on May the 11th at 7:30 a.m. That's a whole day and then seven more hours.

Someone who just committed self-defense running like that? Do they take their truck to their brother's house and ditch it, make sure the murder weapon is gone and never to be located? Is that self-defense? You get to use your common sense and reason to decide whether that is. But the Judge is going to give you an instruction – it's called a flight instruction – that basically says that someone fleeing the scene in a murder case – really, in any case, but he's giving you the one in a murder

– for murder based off of other things that you have to look at, you can consider that as evidence of guilt. We’d ask you to.

After the jury left the courtroom to deliberate, Defendant informed the trial court that he objected “to the religious content of [the State’s] closing argument.” That said, Defendant did not ask the trial court for any relief. The jury later returned a guilty verdict for voluntary manslaughter. In a bifurcated proceeding, the jury found that Defendant committed the offense when he should have known a child was present—an aggravating factor for sentencing. The trial court therefore sentenced Defendant in the aggravated range to an active prison term of 92 to 123 months. Defendant entered his notice of appeal in open court.

II. Jurisdiction

Defendant appeals his judgment under N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

III. Analysis

Defendant submits two issues for our consideration: (1) whether the trial court erred in denying his motion to dismiss the voluntary manslaughter charge for insufficient evidence; and (2) whether the trial court erred in allowing the prosecutor to reference a verse from the Bible during her closing argument. After scrutinizing the record, we discern no error.

A. Denial of Defendant’s Motion to Dismiss

Defendant's failure to object to the trial court's jury instructions on voluntary manslaughter, combined with his affirmative request for such instructions, precludes him from seeking appellate review since he failed to preserve his challenge for review and invited any such error. Defendant did not object to the voluntary manslaughter instructions, including those regarding the heat of passion, nor did he argue that the unpreserved issue constituted plain error.

In criminal cases, an instructional error not preserved by an objection at trial may be appealed for plain error. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). Under plain error review, appellate courts can alleviate the harshness of preservation rules. *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). Yet "[p]lain error should be used sparingly and only in exceptional cases where the error affects a substantial right that seriously affects the fairness, integrity, and reputation of judicial proceedings." *State v. Booth*, 286 N.C. App. 71, 74, 879 S.E.2d 370, 373 (2022) (citing *State v. Thompson*, 254 N.C. App. 220, 224, 801 S.E.2d 689, 693 (2017)). Our Rules of Appellate Procedure provide as follows:

an issue that was 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. 10(a)(4). Thus, a defendant must specifically and distinctly argue in their appellate brief that the trial court plainly erred. *State v. Anthony*, 271 N.C. App. 749, 753, 845 S.E.2d 452, 456 (2020); *see also* N.C. R. App. P. 10(a)(4).

Defendant did not object to the heat of passion instructions and has not specifically or distinctly argued that this unpreserved issue constitutes plain error. The term “plain error” is not mentioned in Defendant’s brief. As a result, Defendant’s failure to comply with N.C. R. App. P. 10(a)(4) precludes appellate review of this alleged error. *See State v. Smith*, 269 N.C. App. 100, 105, 837 S.E.2d 166, 169 (2019) (holding that defendant’s brief failed to specifically and distinctly allege plain error and was therefore insufficient to warrant appellate review).

Defendant is also barred under the doctrine of invited error. Before trial and at the close of evidence, Defendant specifically requested jury instructions on voluntary manslaughter, including the heat of passion instruction outlined in N.C.P.I. 206.10. The record shows that the trial court’s instructions reflected Defendant’s requests. Under the doctrine of invited error, a defendant who requests a specific jury instruction cannot later challenge that instruction on appeal. *See State v. McPhail*, 329 N.C. 636, 643-44, 406 S.E.2d 591, 596-97 (1991) (holding that a “criminal defendant will not be heard to complain of a jury instruction given in response to his own request.”); *see also Boykin v. Wilson Med. Ctr.*, 201 N.C. App. 559, 563, 686 S.E.2d 913, 916 (2009) (holding that invited error constitutes “legal error that is not a cause for complaint because the error occurred through the fault of the

party now complaining.”). The doctrine of invited error is codified in North Carolina General Statute § 15A-1443(c), which provides that “[a] defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.” Case law reinforces that a defendant who invites error has waived his right to appellate review concerning that error, including plain error review. *See State v. Crane*, 269 N.C. App. 341, 343, 837 S.E.2d 607, 608 (2020). Given Defendant’s failure to object to the jury instructions and his explicit request for those instructions, his claim is unreviewable. *Frugard v. Pritchard*, 338 N.C. 508, 512, 450 S.E.2d 744, 746 (1994) (“A party may not complain of action which he induced.”) (citations omitted).

B. State’s Biblical Reference in Closing Argument

Defendant next faults the trial court because it did not intervene to prevent the prosecutor from referencing Proverbs 28:1 in her closing argument. Defendant concedes that his trial counsel did not object to the prosecutor’s statements when made but argues that the objection made “at the conclusion of the trial court’s charge to jury and outside the presence of the jury,” was necessary to avoid prejudice. Further, Defendant assigns error to the trial court’s failure to recall the jury and instruct them to disregard the prosecutor’s biblical reference.

“While we have said that Biblical references should not be used in arguments to the jury, we have allowed considerable latitude in such arguments without holding it to be reversible error.” *State v. Bunning*, 338 N.C. 483, 490, 450 S.E.2d 462, 465 (1994) (citing *State v. Artis*, 325 N.C. 278, 331, 384 S.E.2d 470, 500 (1989)). We have

held, for example, that it is “egregious to argue that the law is divinely inspired . . . or that law officers are ordained by God.” *Id.* (referencing *State v. Oliver*, 309 N.C. 326, 359, 307 S.E.2d 304, 326 (1983) and *State v. Moose*, 310 N.C. 482, 501, 313 S.E.2d 507, 519 (1984)). The prosecution’s reference to Proverbs 28:1, here, does not rise to that level of egregiousness.

When viewed in context, the record shows that the prosecutor referenced the specific passage to explain the significance of flight to the jury. We do not believe this reference prejudiced Defendant, and it was not so egregious that the trial court should have intervened *ex mero motu* or recalled the jury for additional instructions to disregard the comment. *See State v. Call*, 349 N.C. 382, 420–21, 508 S.E.2d 496, 520 (1998) (holding that it was proper “for the prosecutor to comment that the jury could rely on biblical authority to weigh defendant’s flight as evidence of his guilt.”); *see also State v. Bunning*, 338 N.C. 483, 490, 450 S.E.2d 462, 465 (1994) (although the Court did not approve of the “[t]he Biblical quotation used by the prosecuting attorney impl[y]ing to the jurors that if the defendant was guilty and they convicted him they would be blessed by God[,]” it believed “the jurors were properly able to discount the prosecuting attorney’s promise.”). Our precedent thus leads us to hold that the trial court’s inaction with respect to the prosecutor’s reference in their closing argument did not amount to error.

IV. Conclusion

STATE V. WILSON

Opinion of the Court

Upon review, we conclude that the trial court did not commit error by denying Defendant's motion to dismiss the voluntary manslaughter charge for insufficiency of the evidence. We also conclude that the trial court neither committed error by declining to intervene *ex mero motu* when the State referenced a Bible verse nor by failing to recall the jury with instructions to disregard that portion of the State's closing argument.

NO ERROR.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).