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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-828

Filed 21 May 2025

Wake County, Nos. 21CR210675-910, 21CR210676-910

STATE OF NORTH CAROLINA

v.

DARIUS LAMAR WATSON, Defendant.

Appeal by defendant from judgment entered 17 January 2024 by Judge Gale M. Adams of Wake County Superior Court. Heard in the Court of Appeals 24 April 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Zachary K. Dunn, for the State.

Phoebe W. Dee, for defendant-appellant.

FLOOD, Judge.

Defendant Darius Watson appeals from the trial court’s judgment finding him guilty of second degree murder and possession of a firearm by a felon. On appeal, Defendant argues, (1) the trial court erroneously admitted hearsay testimony over Defendant’s objection, and (2) N.C.G.S. § 14-415.1—which prohibits a convicted felon from possessing a firearm—violates the United States and North Carolina

Constitutions. Upon review, we conclude that Defendant waived any objection to the challenged testimony, and therefore has failed to show reversible error. Moreover, Defendant failed to preserve his second, constitutional argument; as the basis of the argument does not amount to an exceptional circumstance warranting appellate review, we decline to invoke Rule 2, and dismiss this argument.

I. Factual and Procedural Background

On the evening of 1 July 2021, at “a little bit after” 9:00 p.m., Michael Evans (“Witness Evans”) was in his truck, waiting at the intersection of Poole Road and Raleigh Boulevard in Raleigh, North Carolina, when another car struck his truck from behind. Witness Evans exited his truck to inspect the damage, and then heard a noise that he described as sounding like “pow pow pow[,]” “felt a bullet go by [his] head[,] and ducked just in time right down beside [his] truck.”

At the same time as Witness Evans was waiting at the intersection in his truck, an Uber driver named Robert Carr was transporting a passenger from a Subway restaurant back to the passenger’s home, and was waiting at the same intersection. Carr described the relevant events as follows:

[W]e’re just sitting there, and then all of a sudden a white car came up beside me and pulled a little bit in front of me, not completely, but a little bit in front of me. And we’re just sitting there for a light to change, and then all of a sudden we hear a gunshot[, a]nd . . . I said, “Oh, my goodness.” Then we heard a crash and the car in [sic] the left of me had ran [sic] into the back of that truck.

Carr then rolled down the window of his car to check on the driver of the white car, observed that the driver was “slumped over[,]” and could not determine whether the driver was alive. As Carr was checking on the driver, the passenger of the white car—whom Carr observed to be a “black man with close-cut hair . . . [and] a dark complexion”—“turned to [Carr,] . . . put his hand out the window[,] and pulled the trigger” of a firearm he was holding. Upon seeing the passenger beginning to pull the trigger, Carr: “took off” in his car; successfully fled the scene; and upon arriving at the next stoplight, noticed that Witness Evans had also fled the scene and was sitting in his truck, next to Carr’s vehicle.

Both Witness Evans and Carr called 9-1-1, and Raleigh Police Sergeant Christopher Bradford soon arrived on the scene of the shooting. Upon arrival, Sergeant Bradford observed a “white sedan in the northbound lanes facing southbound against the guardrail[,] and the passenger door ajar.” Soon thereafter, Officer Epps¹ arrived on the scene, and the two officers observed an adult black male—later identified as Antonio Quinones—in the driver’s seat of the white car, with a firearm in his lap, and a “significant amount of blood on the front of his white T-shirt that he was wearing.” The officers initially believed Quinones had sustained a gunshot wound to the chest, but then noticed that the blood was “coming out of his head.” Quinones was breathing at this time, but Sergeant Bradford observed it to be

¹ Officer Epps’ first name is not in the Record on appeal.

“agonal breathing[,]” which is not done consciously and is usually exhibited by those who “are near death.” Quinones was transported to WakeMed Hospital, where he later died; his cause of death was determined to be a gunshot wound to the back of his head.

After Quinones’ death, police investigators spoke with Taylor Porchea—Quinones’ girlfriend and mother to his two-year-old son—who was at the hospital. Porchea informed the investigators that, on the night of the shooting, Quinones had been with Defendant, selling drugs at the 100 block of St. Augustine Avenue. Raleigh police thereafter issued a “be on the lookout” notice for Defendant.

One week after Quinones’ death, on 8 July 2021, Raleigh police received a 9-1-1 call from Defendant’s grandmother’s residence. Officers were dispatched to the grandmother’s residence to apprehend and question Defendant, and among those officers was Officer Daniel Twiddy. The dispatched officers arrived on the scene, entered the grandmother’s residence, and detained Defendant. While Defendant was “handcuffed [and] sitting there”—still at the residence—Defendant began “making spontaneous utterances[,]” one of which was to “admit[] to the murder of . . . Quinones.” Regarding Quinones’ murder, Defendant specifically asserted that he “blew his brains out,” and Officer Twiddy captured this assertion with his police body-cam.

Defendant was arrested, and on 26 July 2021, charged by a bill of indictment with first degree murder and possession of a firearm by a felon. On 8 January 2024,

this matter came on for hearing before the trial court. During evidence, the State presented testimonial evidence from nineteen witnesses, among whom was Porchea, as well as Dachia Evans (“Evans”), another girlfriend of Quinones. Porchea testified prior to Evans, and during her testimony, Porchea stated that: Defendant was Quinones’ “best friend”; Defendant and Quinones’ “hung out . . . every single day”; she knew Defendant by two nicknames, “Michael Myers” and “Bay-Bay”; on the night of Quinones’ death, at “around . . . 9:00 p.m.,” she had a phone call with Quinones; and she was aware that Defendant and Quinones “were together when [she] spoke to [Quinones] on the phone[.]” Defendant objected to none of Porchea’s testimony.

Following Porchea’s testimony, Evans testified that the white car driven by Quinones on the night of his death was a rental Kia sedan, and that the car had been rented by Evans. Evans further testified that, “in the early evening hours” of 1 July 2021, Evans had called Quinones by phone; toward the end of this phone call, Quinones said to Evans, “[s]top calling me[.]” after which Evans heard him say, “Bay-Bay, wake up.” Defendant objected to this testimony on the basis of hearsay, and the State argued that the statement met the present sense hearsay exception to the hearsay rule. The trial court overruled Defendant’s objection, providing that “the statement, if hearsay, would qualify as a present sense impression.” Evans then resumed her testimony, and expounded on her phone call with Quinones, stating, in relevant part:

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I was asking him about the car, is he going to bring the car back[, a]nd he said he was going to bring the car back[.] . . . Then I was still on the phone listening and I heard him say, “Bay-Bay, you need to wake up and get on point. You’ve been asleep for two hours.”

The State thereafter presented the expert testimony of Detective Eddie Camacho, who was qualified as an expert in cellular analytics and mapping. Detective Camacho testified that, on 1 July 2021, at approximately 9:30 p.m., Defendant’s cell phone was in the “general area” of the scene of Quinones’ murder.

Following trial, on 17 January 2024, the jury returned verdicts finding Defendant guilty of second degree murder and possession of a firearm by a felon, and that same day, the trial court entered its judgment, sentencing Defendant to a term of 365 to 450 months’ imprisonment for second degree murder, and to a consecutive term of 19 to 32 months’ imprisonment for possession of a firearm by a felon. Defendant timely appealed.

II. Jurisdiction

Appeal to this Court lies of right from the final judgment of a superior court pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a) (2023).

III. Analysis

On appeal, Defendant argues: (A) the trial court erroneously admitted Evans’ testimony over Defendant’s objection, as the testimony amounted to hearsay; and (B) N.C.G.S. § 14-415.1 (2023) is in violation of the United States and North Carolina Constitutions. We address each argument, in turn.

A. Hearsay Testimony

Defendant argues that Evans' testimony as to what she overheard Quinones say on the phone was inadmissible hearsay, as there were insufficient indicia of reliability to support admission of this statement attributed to Quinones. As explained below, however, Defendant waived the benefit of his objection to Evans' testimony.

Per the North Carolina Rules of Evidence, hearsay evidence is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” N.C.R. Evid. 801(c); *see also State v. Kelly*, 75 N.C. App. 461, 465 (1985) (defining hearsay as “(1) an out-of-court statement (2) offered for proof of the matter asserted”). Hearsay testimony is generally inadmissible, but may be admitted if “the proffered testimony falls under one of the various exceptions listed in” the North Carolina Rules of Evidence. *State v. Stafford*, 317 N.C. 568, 573 (1986); *see also* N.C.R. Evid. 803. Where hearsay testimony was erroneously admitted, such error will not necessitate a new trial unless the defendant demonstrates he was prejudiced by the error. *State v. Blankenship*, 259 N.C. App. 102, 111 (2018).

As to the requisite demonstration of prejudice, it is well established that the admission of “evidence without objection waives prior or subsequent objection to the admission of evidence of a similar character[.]” *State v. Hudson*, 331 N.C. 122, 151 (1992) (citation and internal quotation marks omitted), and where a defendant waives objection to alleged hearsay testimony, he is not prejudiced by the testimony's

admission. *See State v. Anderson*, 295 N.C. App. 168, 177 (2024) (“Nonetheless, [the d]efendant was not prejudiced by [the hearsay evidence,] because he waived any objection to [the non-declarant’s] testimony.”). This Court has concluded that testimony challenged as inadmissible hearsay is of a similar character to priorly-admitted evidence, where they both “support the same proposition[.]” *Id.* at 179.

Here, Defendant objected at trial to Evans’ testimony that, when she was on the phone with Quinones on the evening of 1 July 2021, she heard him say “Bay-Bay, wake up.” Prior to Evans’ testimony, however, Porchea testified that she was aware Defendant and Quinones “were together” at the time she was speaking with Quinones on the phone—at 9:00 p.m. These testimonies are of a similar character, as they support the same proposition that, shortly before Quinones’ murder, Defendant was in the white Kia sedan, together with Quinones. *See id.* at 179. Accordingly, as Defendant failed to object to Porchea’s testimony, he waived any benefit of an objection to Evans’ testimony. *See Hudson*, 331 N.C. at 151. Even assuming Evans’ testimony amounted to inadmissible hearsay and its admission was error, Defendant has not demonstrated he was prejudiced by the error, and as such, failed to show he is entitled to a new trial. *See Anderson*, 295 N.C. App. at 177; *Blankenship*, 259 N.C. App. at 111. We conclude the trial court committed no prejudicial, reversible error.

B. N.C.G.S. § 14-415.1

Defendant next argues that N.C.G.S. § 14-415.1 is unconstitutional under both the United States and North Carolina Constitutions, but concedes that he failed

to preserve this argument for appellate review. Defendant therefore requests this Court invoke Rule 2 of the North Carolina Rules of Appellate Procedure to reach the merits of this argument. In our discretion, we decline to do so.

Under Rule 2, “[t]o prevent manifest injustice to a party . . . either court of the appellate division may . . . suspend or vary the requirements or provisions of any of these rules in a case pending before it . . . upon its own initiative[.]” N.C.R. App. P. 2. An appellate court’s decision to invoke Rule 2 and suspend the appellate rules is always an exercise of discretion. *See State v. Bursell*, 372 N.C. 196, 201 (2019). Rule 2, however, “relates to the residual power of our appellate courts to consider, *in exceptional circumstances*, significant issues of importance in the public interest or to prevent injustice which appears manifest to the Court *and only in such instances*.” *State v. Campbell*, 369 N.C. 599, 603 (2017) (citation omitted).

Here, Defendant has failed to demonstrate that the basis of his argument constitutes an “exceptional circumstance[.]” warranting invocation of Rule 2. In making his constitutional argument, Defendant cites the United States Supreme Court’s decision of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, wherein the Court set forth the standard that, for an allegedly unconstitutional firearm regulation to pass constitutional muster, the State must demonstrate that said regulation is “consistent with this Nation’s historical tradition of firearm regulation[.]” 597 U.S. 1, 34 (2022). Defendant contends that, per this standard, N.C.G.S. § 14-415.1 is

unconstitutional. The Fourth Circuit Court of Appeals, however, has recently held that, while the

law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions in the wake of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*[.] . . . the *facial* constitutionality of [possession of a firearm by a felon] is not one of them.

United States v. Canada, 123 F.4th 159, 161 (2024) (emphasis added). As such, Defendant has failed to demonstrate why his case constitutes an “extraordinary circumstance” justifying this Court invoke Rule 2, and we dismiss Defendant’s argument. *See Campbell*, 369 N.C. at 603.

IV. Conclusion

Upon review, we find Defendant waived any objection to Evans’ testimony, and therefore conclude the trial court committed no prejudicial, reversible error in admitting the testimony. Moreover, we decline to invoke Rule 2 to consider Defendant’s argument concerning the constitutionality of N.C.G.S. § 14-415.1, and dismiss this argument.

NO PREJUDICIAL ERROR In Part, and DISMISSED In Part.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).