

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-788

Filed 16 September 2026

Rockingham County, No. 21CR052495-780

STATE OF NORTH CAROLINA

v.

DONALD RAY NEWMAN, Defendant.

Appeal by defendant from judgments entered 9 December 2024 by Judge John Michael Morris in Rockingham County Superior Court. Heard in the Court of Appeals 26 March 2026.

Attorney General Jeff Jackson, by Assistant Attorney General A. Mercedes Restucha, for the State.

Christopher J. Heaney for defendant-appellant.

GORE, Judge.

Defendant Donald Ray Newman appeals the judgments convicting him of attempted first-degree murder, first-degree burglary, and assault with a deadly weapon with intent to kill inflicting serious injury. Defendant also petitions this Court for writ of certiorari due to technical defects in his notice of appeal. Upon

reviewing the record and the briefs, we grant defendant's petition and discern no plain nor prejudicial error on the merits.

I.

Defendant married Angela Williams, the victim in this case, in November 2020. They continued to reside in separate homes after they married. In August 2021, defendant and Angela took a trip to Las Vegas with her brother and sister-in-law. While on the trip, defendant became angry with Angela and threw a slipper at her, placed her in a headlock, and struck her on her back; she fought back until he stopped.

Upon their return to North Carolina, Angela told defendant she wanted a divorce. Defendant responded by telling her, "You're going to end up like the rest of them." Angela felt threatened by this statement because she interpreted it to mean she would be killed like his two previous ex-wives. Defendant had previously shared with her a rumor going around that he killed his previous wives, although there was no evidence to prove this. Because of this conversation, Angela obtained a 50B protective order against defendant.

Soon after, and due to strange happenings at her home, Angela installed another security system, Vivint, in addition to the Ring camera defendant previously installed and could access. Angela took the gun she previously purchased while defendant was with her and placed it under her mattress for additional protection.

During the late evening of 8 October 2021, Angela finished a phone call with her mother and was alerted on her phone by the Vivint security system that someone was in her backyard. Angela could tell defendant was in her backyard. Defendant wore a mask and gloves and came inside through the basement. Defendant pointed a gun at Angela; he punched her, pushed her down to the floor, and unsuccessfully attempted to zip tie her hands behind her back. According to Angela, defendant picked her up from the floor and told her he would kill her.

Angela was able to initiate a secret code with her Vivint security system to alert emergency services while defendant thought she was disarming the system. Defendant directed Angela to the bedroom to retrieve her gun; Angela attempted to run towards the hidden gun and defendant shot her in the chest. Despite the gunshot wound, Angela was able to grab her gun and shoot multiple shots at defendant. Angela ran from her house to her neighbors' house to seek help. Defendant took Angela's car from the carport and drove it a block away before wiping down all the surfaces to remove fingerprints. Defendant drove to South Hill, Virginia, and sought medical attention at a hospital. At the neighbors' house, emergency services arrived and took Angela to the hospital where she underwent multiple surgeries and extensive rehabilitation.

Defendant was arrested and later wrote a letter to the clerk of court. Defendant alleged he was enticed to Angela's home with the "promise of sex", and after entering the home through a basement window (because it was "held together

with tape”), he was “lured into the marital bedroom” before Angela shot him in the back. Defendant further alleged that he “tried to retreat and regroup [but he] was pinned down on the floor.”

Defendant was charged and indicted with attempted first-degree murder, first-degree burglary, and assault with a deadly weapon with intent to kill inflicting serious injury. Defendant filed a motion in limine to prevent the State from admitting certain statements and information through testimony about the deaths of defendant’s prior wives. The trial court denied this motion during the pretrial motions. During trial, defense counsel did not object, but the State paused the proceedings based upon previous discussion during pretrial and conducted a voir dire of Angela. The trial court determined it was a question of admission under Rule 403, but it allowed the statements subject to a limiting instruction.

Accordingly, Angela was allowed to testify that defendant told her, “You’re going to be just like the rest of them”; she further described her perception that he would kill her and that he was the one who killed his prior wives. She testified that she sought a 50B protective order after this conversation. The trial court gave a limiting instruction that the jury should only consider the testimony to “determine the state of mind and the impact on the listener.”

The jury returned guilty verdicts on all the charges. The trial court entered judgments against defendant and sentenced defendant to three consecutive terms of 180 to 228 months’ imprisonment, 73 to 100 months’ imprisonment, and 83 to 112

months' imprisonment. Defendant did not orally appeal the judgments, but he timely filed a written notice of appeal. The notice failed to identify the Court to which he sought appeal.

II.

Defendant appeals pursuant to N.C.G.S. § 7A-27(b)(1) and N.C.G.S. § 15A-1444(a). Defendant also filed a petition for writ of certiorari due to defects in his notice of appeal. Defendant did not orally appeal the final judgments but instead filed a notice of appeal within fourteen days of the entered judgments. Within the written notice, defendant failed to identify the court to which appeal is taken as required pursuant to Rule 4 of the North Carolina Rules of Appellate Procedure. The State argues this is a jurisdictional defect but also recognizes it is within this Court's discretion to grant certiorari pursuant to Rule 21 when petitioned by the defendant. *See* N.C.R. App. P. 21. We have previously suggested that this type of defect does not "requir[e] dismissal of an appeal on a jurisdictional basis." *State v. Baungartner*, 273 N.C. App. 580, 583 (2020). In our discretion, we grant defendant's petition. *Id.*

Defendant seeks review of the following: (1) whether the trial court plainly erred by allowing testimony pursuant to Rule 403 of the North Carolina Rules of Evidence; and alternatively, (2) whether defendant received ineffective assistance of counsel when defense counsel failed to object to the testimony about his prior wives.

Defendant concedes he failed to renew his objection during trial regarding the admission of defendant's statement to Angela and the related information about his

prior wives. Accordingly, defendant requests plain error review for the unpreserved evidentiary issue. Under plain error review “the defendant must show that a fundamental error occurred at trial; that absent the error, the jury probably would have returned a different verdict; and that the error is an exceptional case that seriously affects the fairness, integrity or public reputation of judicial proceedings.” *State v. Reber*, 386 N.C. 153, 158 (2024) (cleaned up).

A.

Defendant argues the trial court plainly erred by allowing Angela to testify that defendant told her, “You’re going to be just like the rest of them” in response to her asking for a divorce. He argues the admission of her testimony that she “knew right then and there he killed the women” (referring to his ex-wives) was plain error. Defendant argues the statements were more prejudicial than probative and should have been excluded under Rule 403 of the Rules of Evidence. We disagree.

Rule 403 limits the inclusion of evidence when the probative value of the evidence is “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]” N.C.R. Evid. 403. It is within the trial court’s “sound discretion” to determine “whether to exclude evidence under Rule 403.” *State v. Coffey*, 326 N.C. 268, 281 (1990).

In the present case, the State sought and was granted the admission of this testimony as a statement of a party opponent and under Rule 401 and 403. The trial court gave a limiting instruction to prevent the jury from confusing the issues.

Because our review is limited to whether the trial court plainly erred, we consider whether the absence of this testimony would have led the jury to probably return a different verdict and whether it is the “exceptional case” that seriously affects the fairness and integrity of the judiciary. *Reber*, 386 N.C. at 158. Based upon the overwhelming evidence available at trial, we hold the trial court did not plainly err.

The evidence available at trial established defendant had a physical altercation with Angela while on a trip, and Angela obtained a 50B protective order against defendant. On the night of the attack, defendant entered Angela’s house through her basement window after waiting around her home; defendant wore a mask, gloves, and wielded a gun, which were discovered in defendant’s truck and home. Evidence of bloodied napkins and a zip tie in the kitchen, supported the testimony that defendant punched Angela causing her to bleed, and attempted to zip tie her hands behind her back.

Evidence of the security system calling 9-1-1 supported Angela’s testimony that she told defendant she had a security system, and instead of disarming the system (per defendant’s demand), she sent a code that initiated emergency services. Evidence of bullet casings from two different guns supported the testimony that defendant took Angela to the bedroom, she ran for and retrieved her hidden gun, she was shot in the chest, and she shot at defendant multiple times.

The neighbors’ testimony supported Angela’s testimony that she fled to her neighbor’s house. Further, there was video footage to support the testimony

defendant took Angela's vehicle from her carport, drove it a block down the road, and wiped down Angela's vehicle to remove fingerprints. Finally, evidence supports the testimony by law enforcement that defendant drove his own vehicle to South Hill, Virginia and sought medical attention for his gunshot wounds. Accordingly, there is overwhelming evidence to support the jury's verdict absent the inclusion of the statements made about defendant's former wives. Therefore, this error was not fundamental, and the trial court did not plainly err.

B.

Defendant alternatively argues he received ineffective assistance of counsel due to defense counsel's failure to renew his objection to the statements made regarding defendant's former wives. We disagree.

Defendant is entitled to "effective assistance of counsel." *State v. Braswell*, 312 N.C. 553, 561 (1985). "When a defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel's conduct fell below an objective standard of reasonableness." *Id.* at 561–62. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." *Strickland v. Washington*, 466 U.S. 668, 697 (1984). If we determine "there is no reasonable probability that in the absence of counsel's alleged errors the result of the proceeding would have been different, then the court need not determine whether counsel's performance was actually deficient." *Braswell*, 312 N.C. at 563.

Having already discussed the overwhelming evidence presented at trial, we are satisfied that the result of the proceeding would not have differed in the absence of defense counsel's failure to properly renew his objection. Therefore, defendant was not prejudiced by his counsel, and we need not determine whether his "performance was actually deficient." *Id.* Defendant received a fair trial free of prejudicial error.

III.

For the foregoing reasons, we discern no plain nor prejudicial error.

NO PLAIN ERROR, NO PREJUDICIAL ERROR.

Judge MURRY concurs.

Judge ARROWOOD concurs in the result only.

Report per Rule 30(e).