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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-981

Filed 18 November 2026

Catawba County, No. 23CR440756-170

STATE OF NORTH CAROLINA

v.

JAMES GRAY MCALLISTER

Appeal by Defendant from Judgment entered 21 November 2024 by Judge Matt Osman in Catawba County Superior Court. Heard in the Court of Appeals 16 September 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Alexis C. Pugh, for the State.

Blau & Hynson, PLLC, by Daniel M. Blau, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

James Gray McAllister (Defendant) appeals from his conviction for Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury. The Record on appeal tends to show the following:

Defendant lives in a small lakeside neighborhood in Hickory that runs along a

single private concrete and gravel drive known as Campbell Street. A public road becomes Campbell Street at the entrance to the neighborhood, between house 3433 and its immediate neighbor. Starting in approximately 2022, the owner of house 3433 began renting it out as an Airbnb. Renters would sometimes park along Campbell Street, making it difficult for residents to access the neighborhood. Defendant's home is located four houses down from house 3433. Defendant testified that he and two other neighbors had previously retained an attorney to contact the county and Airbnb owner, but this did not resolve the parking problem.

Gregory Carpenter lives two houses down from house 3433. On 21 October 2023, while working in his front yard, Mr. Carpenter saw Defendant drive by and honk his horn at cars parked outside house 3433. Mr. Carpenter heard Defendant stop his vehicle, then he heard hammering. He walked to the end of the driveway and saw Defendant nailing a sign to Doug Monin's address post, which was located on the line between Mr. Monin's property and house 3433. Mr. Monin was out of town at the time and had asked Mr. Carpenter to watch his home until he returned.

Mr. Carpenter approached Defendant, walked around him to see that he was nailing up a "no trespassing" sign, and asked if he had permission from Mr. Monin to put the sign up. Defendant responded that he did and continued nailing up the sign.

Mr. Carpenter and Defendant both testified at trial regarding the altercation that followed. Mr. Carpenter testified he did not believe Defendant had permission, so he stepped in front of Defendant and pulled down the "no trespassing" sign.

Defendant struck Mr. Carpenter on the back of the head with the hammer, knocking him down. Mr. Carpenter stood up and turned around, and Defendant struck him again with the hammer. Mr. Carpenter deflected this blow away from his eye with his right arm and was struck on the forehead. Following this second blow, Mr. Carpenter managed to take the hammer from Defendant, who accused Mr. Carpenter of assaulting him, got into his car, and drove away.

Defendant testified that he was nailing up the sign when Mr. Carpenter grabbed him from behind and jerked his hands up into the air. Defendant attempted to pull free, and during the struggle accidentally struck Mr. Carpenter. He testified that he did not intend to strike Mr. Carpenter with the hammer or otherwise assault him.

After Defendant drove away, Mr. Carpenter told his partner, Wanda Tyner, to call 911. She did so, then wrapped Mr. Carpenter's head with a towel to stop his bleeding. She drove Mr. Carpenter to the hospital, where he received staples to close the wound on the back of his head and stitches to close the one on his forehead. While in the hospital, Mr. Carpenter met with officers from the Catawba County Sheriff's Department, who obtained a warrant for Defendant's arrest.

Officers arrived at the neighborhood later that night to serve the arrest warrant. Mr. Carpenter showed them where the altercation had happened, and the officers observed blood on the ground. They found Defendant asleep in his vehicle parked behind his house and placed him under arrest.

Defendant was indicted on one count of Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury. On 18 November 2024 his case came on for trial.

The State presented as evidence the testimony of Mr. Carpenter and the officers who served the arrest warrant. Another witness, Abigail Sanchez, testified regarding a subsequent encounter with Defendant, during which he confronted Ms. Sanchez and accused her of removing his sign. Defendant objected to Ms. Sanchez's testimony as inadmissible character evidence. The trial court allowed Ms. Sanchez to testify under Rule 404(b) of our Rules of Evidence and gave the jury a limiting instruction.

The jury found Defendant guilty of Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury. The trial court sentenced Defendant to a mitigated term of 44 to 65 months and recommended substance abuse treatment and work release. Defendant appeals.

Issues

The issues on appeal are whether the trial court erred by: (I) denying Defendant's Motion to Dismiss for insufficient evidence; (II) admitting evidence relating to prior and subsequent encounters between witnesses and Defendant; and (III) admitting into evidence Mr. Carpenter's unredacted medical records.

Analysis

I. Insufficient Evidence of Intent to Kill

Defendant argues there was insufficient evidence to convict him of Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury (ADWIKISI). Defendant moved to dismiss the charge at the close of the State's evidence and renewed his motion at the close of all evidence; the trial court denied his motion. He argues there was insufficient evidence that he intended to kill Mr. Carpenter.

We review *de novo* the denial of a motion to dismiss a criminal charge, considering the matter anew and freely substituting our own judgment for that of the trial court. *State v. Cox,* 256 N.C. App. 511, 520, 808 S.E.2d 339, 345 (2017). On a motion to dismiss, "the question for the [c]ourt is whether there is substantial evidence (1) of each element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch,* 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith,* 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). When reviewing the sufficiency of evidence, the court "must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *Fritsch,* 351 N.C. at 378-79, 526 S.E.2d at 455.

The elements of ADWIKISI are (1) an assault (2) with a deadly weapon (3) with intent to kill (4) inflicting serious injury not resulting in death. *State v. James,* 321 N.C. 676, 687, 365 S.E.2d 579, 586 (1988); N.C. Gen. Stat. § 14-32(a) (2025). Defendant argues the evidence was insufficient only with regards to the intent to kill.

"An intent to kill is a mental attitude, and ordinarily it must be proved, if proven at all, by circumstantial evidence, that is, by proving facts from which the fact sought to be proven may be reasonably inferred." *State v. Cauley,* 244 N.C. 701, 708, 94 S.E.2d 915, 921 (1956). The State must show Defendant had the specific intent to kill during the assault; "it is not enough for the evidence to show that Defendant merely intended to strike the blows which could cause death." *State v. Powell,* 300 N.C. App. 445, 450, 921 S.E.2d 603, 608 (2025). However, "the nature of the assault, the manner in which it was made, the weapon, if any, used, and the surrounding circumstances are all matters from which an intent to kill may be inferred." *Alexander,* 337 N.C. 182, 188, 446 S.E.2d 83, 87 (1994). "The surrounding circumstances include the foreseeable consequences of a defendant's actions as a defendant must be held to intend the normal and natural results of his deliberate act." *State v. Bediz,* 269 N.C. App. 39, 42, 837 S.E.2d 188, 191 (2019) (citation omitted).

Considered in the light most favorable to the State, there is sufficient evidence to allow a reasonable person to conclude Defendant intended to kill Mr. Carpenter: Mr. Carpenter stepped in front of Defendant to remove the No Trespassing sign, and Defendant struck him on the back of the head with a hammer, hard enough to knock Mr. Carpenter to the ground and cause an injury which required staples. He then struck Mr. Carpenter again, a blow that would have struck his victim in the eye if it were not deflected, ultimately hitting Mr. Carpenter in the forehead and causing a

second injury requiring medical treatment. This evidence tending to show Defendant used a hammer in an attempt to repeatedly strike Mr. Carpenter in the head, "a sensitive and critical area of the body," *State v. Wright,* 2010 N.C. App. 52, 69, 708 S.E.2d 112, 124 (2011), is sufficient evidence from which a jury may infer an intent to kill to support denying the Motion to Dismiss.

Defendant primarily cites our Supreme Court's decision in *State v. Ferguson* to argue this evidence is insufficient to establish an intent to kill. 261 N.C. 558, 135 S.E.2d 626 (1964). However, that decision does not address the sufficiency of the evidence of intent. It instead addresses an erroneous jury instruction, by which the trial court expressly directed the jury to conclude there was an intent to kill even if it concluded the defendant's specific intent was only to "inflict great bodily harm," because "every man in law is presumed to intend any consequence which naturally flows from an unlawful act." 261 N.C. at 560-61, 135 S.E.2d at 628. This is at odds with the nature of the offense, which requires the specific intent to kill, and accordingly our Supreme Court has held that assault with a deadly weapon resulting in serious injury cannot establish a presumption of the intent to kill. *State v. Gibson,* 196 N.C. 393, 145 S.E. 772 (1928). "Such intent must be found by the jury as a fact from the evidence." *Ferguson,* 261 N.C. at 561, 135 S.E.2d at 628. Although the fact that an assault occurred cannot create a presumption of intent to kill, the specific facts of the assault may lead a jury to conclude that intent existed.

Here, the trial court properly instructed the jury that in order to find

Defendant guilty, it was required to find beyond a reasonable doubt that Defendant specifically intended to kill Mr. Carpenter. It also submitted for the jury's consideration the lesser included offense of Assault with a Deadly Weapon Inflicting Serious Injury. The jury found Defendant intended to kill Mr. Carpenter and convicted him of the greater offense. There was substantial evidence sufficient to allow the jury to conclude Defendant intended to kill Mr. Carpenter. Therefore, the trial court did not err by denying Defendant's Motion to Dismiss.

II. Evidence of Prior and Subsequent Acts

At trial, witnesses testified regarding both a subsequent altercation between Defendant and his neighbors and prior encounters between Defendant and the officers who served the arrest warrant. The trial court admitted the testimony under Rule 404(b) of our Rules of Evidence. Rule 404(b) is a "general rule of inclusion" which allows the admission of evidence of other crimes, wrongs, or acts by a defendant "so long as it is relevant to any fact or issue other than the character of the accused." *State v. Coffey,* 326 N.C. 268, 278, 389 S.E.2d 48, 54 (1990) (citation omitted). Purposes for which such evidence may be admitted include, but are not limited to, "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." N.C. Gen. Stat. § 8C-1, Rule 404(b). The evidence must be excluded "if its only probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *Coffey,* 326 N.C. at 279, 389 S.E.2d at 54.

On review of a trial court's 404(b) ruling, when the trial court has made findings of fact and conclusions of law to support that ruling, we look to whether the evidence supports the findings of fact and whether those findings support the trial court's conclusions. *State v. Beckelheimer,* 366 N.C. 127, 130, 726 S.E.2d 156, 159 2012). We review *de novo* the trial court's conclusion that the evidence falls within the coverage of 404(b) and is therefore admissible. *Id.*

A. Testimony of Abigail Sanchez

Abigail Sanchez testified that on 31 March 2024, five months after the altercation at issue in this case, she was housesitting for the Hopson family, who lived in the house between Defendant's and Mr. Carpenter's. She was walking the Hopsons' dog on their property and heard Defendant approach her from behind while shouting. Defendant confronted Ms. Sanchez, recording her with his phone and repeatedly asking whether she had removed his sign. Defendant then confronted Mr. Carpenter and Ms. Tyner, who were also outside, asking them the same question and yelling "did you fucking touch my sign?" Officers from the Catawba County Sheriff's Department were called and responded to the scene, but no charges resulted.

Defendant objected to this testimony as inadmissible character evidence. The trial court allowed Ms. Sanchez to testify under Rule 404(b) and instructed the jury to limit its consideration of her testimony to the purposes of providing additional context to the 21 October incident, demonstrating a pattern of conduct, or showing an absence of mistake.

Ms. Sanchez's testimony was relevant for these purposes to issues present in the case, particularly because Defendant presented evidence that he did not intend to assault Mr. Carpenter but accidentally struck him with the hammer when he was grabbed from behind. *See State v. Murillo,* 349 N.C. 573, 594, 509 S.E.2d 752, 764 (1998) (citation omitted) ("Where, as here, an accident is alleged, evidence of similar acts is more probative than in cases in which an accident is not alleged."). Testimony of Defendant's conduct and attitude regarding the no trespassing sign is relevant to show a pattern of aggressive conduct towards his neighbors and an accordant absence of mistake, a purpose expressly permitted by Rule 404(b).

On appeal, Defendant does not argue evidence of the subsequent altercation was introduced without a proper purpose, but argues the incident was not sufficiently similar to the incident giving rise to his criminal charge. In addition to the requirement of relevance to some issue other than the defendant's character or propensity to commit the crime in question, "the admissibility of evidence under [Rule 404(b)] is guided by two further constraints—similarity and temporal proximity." *State v. Lynch,* 334 N.C. 402, 412, 432 S.E.2d 349, 354 (1993). Thus, evidence of another bad act must additionally constitute "substantial evidence tending to support a reasonable finding by the jury that the defendant committed the *similar* act." *State v. Al-Bayyinah,* 356 N.C. 150, 155, 567 S.E.2d 120, 123 (2002) (citation omitted). An act is similar if there are "some unusual facts present in both [incidents]." *State v. Stager,* 329 N.C. 278, 304, 406 S.E.2d 876, 890 (1991).

The trial court found there was sufficient similarity between the two incidents because Defendant's "reaction here is arguably similar to his reaction during the incident where the hammer was used." Defendant notes several dissimilarities between the two incidents, including their specific locations within the neighborhood, the persons with whom Defendant was in conflict, the length of the altercation, whether Defendant initiated the contact with a neighbor, and numerous other details. Although dissimilarities may be relevant to this determination, the key inquiry is into the similarities and, specifically, whether those similarities are sufficient to allow the evidence to serve the purpose for which it is offered. *See, e.g., Beckelheimer,* 366 N.C. at 131-32, 726 S.E.2d at 159 (reversing opinion of this Court which "focused on the differences between the incidents and determined they were significant," examining the similarities between the alleged crimes, and concluding the "similarities are sufficient to support the State's theory of modus operandi in this case.") "Our case law is clear that near identical circumstances are not required, rather, the incidents need only share 'some unusual facts' that go to a purpose other than propensity for the evidence to be admissible." *Id.* at 132, 726 S.E.2d at 160 (citations omitted). The similarities need not "rise to the level of the unique and bizarre." *State v. Green,* 321 N.C. 594, 604, 365 S.E.2d 587, 593 (1988).

Here, both incidents involved an altercation between Defendant and his neighbors—including Mr. Carpenter—occurring within the neighborhood, involving Defendant's emotional, angry reaction to the removal of a no trespassing sign he had

installed. These unusual facts support the State's argument that Defendant was the aggressor in the underlying incident and that striking Mr. Carpenter with a hammer was not an accident or mistake. Thus, this evidence was admitted for a proper purpose under Rule 404(b). Therefore, the trial court did not err by admitting this evidence under Rule 404(b) for this limited purpose.

B. Law Enforcement Testimony

Defendant also argues the trial court erred by admitting testimony from two officers concerning prior interactions with Defendant.[1] Both officers testified about serving the arrest warrant on Defendant and explained the procedures they used in the context of their previous encounters with him.

Investigator Brittany Weaver described the process of interviewing Mr. Carpenter in the hospital, swearing out an arrest warrant, and serving that warrant on Defendant. On cross-examination Defendant's counsel asked if she learned Defendant's side of the story before arresting him and she answered:

> Any encounter I've had previously with [Defendant] he's been argumentative or impaired, so I did not go to his residence. It was a severe call. I knew I had to act quickly because of them living close to each other. When he was in the car, he was in custody. He was not read Miranda, so I could not ask him at that point.

Lieutenant Jared Hallman, who accompanied Investigator Weaver, also

[1] Defendant on appeal also identifies testimony of a third officer who stated the Sheriff's Office had "been out there several times before." However, the trial court struck this testimony upon Defendant's objection.

testified about serving the arrest warrant. The State asked why the officers had parked below Defendant's house and walked up the driveway to arrest him, and he answered, "I had responded out to calls previously for dangerous practice or gunshots being fired that were allegedly coming from Mr. McAllister's residence." When the State asked why he described the arrest as having gone well, he answered "To previous incidents, and it was expected to not go as well, that it was going to be a dangerous situation . . . we did not have to use any excessive force—not excessive force but any extra force. It went as well as possible, as far as someone getting hurt."

Defendant argues both officers' testimony was evidence of Defendant's prior acts offered only to prove his character and therefore inadmissible under Rule 404(b). The State argues this testimony provided relevant context to the officers' investigation and arrest of Defendant.

Defendant did not object to this evidence at trial. When a defendant fails to object to an evidentiary error at trial, the error is unpreserved and therefore waived on appeal, and we may only review the admission for plain error. *State v. Lawrence,* 365 N.C. 506, 512, 723 S.E.2d 326 (2012). Plain error review should be "applied cautiously and only in the exceptional case" as it is reserved for "grave error which amounts to a denial of a fundamental right of the accused." *Id.* at 516-17, 723 S.E.2d at 326 (citation omitted). To show plain error, the defendant must show: (1) a fundamental error occurred at trial; (2) the error had a "probable impact" on the outcome; and (3) the error is an exceptional case that warrants plain error review,

typically by showing that the error seriously affects the fairness, integrity or public perception of judicial proceedings. *State v. Reber,* 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024) (citations omitted).

Here, even assuming this evidence is not relevant to a proper 404(b) purpose and is therefore inadmissible, Defendant cannot demonstrate prejudice by showing the admission had a probable impact on the outcome of his case. The "probable impact" standard under plain error review is a high bar: Defendant must show the "jury probably would have reached a different result," which "requires a showing that the outcome is significantly more likely than not." *Reber,* 386 N.C. at 159, 900 S.E.2d at 787. "[T]he test examines the state of all the evidence except for the challenged evidence and asks whether, in light of that remaining evidence, the jury probably would have done something different." *Id.* at 162, 900 S.E.2d at 789. The officers' brief testimony consisting of passing references to prior encounters, with no details about those encounters or Defendant's conduct, does not reach this high bar.

Defendant argues the testimony of his prior encounters with police characterize him as a dangerous person who poses a threat to law enforcement, and that the jury's determination of witness credibility would have been more difficult without evidence of Defendant's history of dangerous behavior and police encounters. However, had this testimony been excluded, the remaining evidence would still include Mr. Carpenter's testimony that Defendant assaulted him when he removed the no trespassing sign as well as Ms. Sanchez's description of the subsequent

encounter showing his aggressive and erratic behavior towards his neighbors. Defendant also testified regarding the encounter at issue, and the only conflict in the evidence was whether he intended to strike Mr. Carpenter with the hammer or did so accidentally. Thus, the alleged impact of the officers' testimony on Defendant's credibility does not demonstrate that, without this evidence, the jury probably would have reached a different result. *See, e.g., Reber,* 386 N.C. at 162, 900 S.E.2d at 781 (holding impact on Defendant's credibility of evidence regarding Defendant's history of sexual misconduct insufficient to demonstrate probable impact even when State's case "was not particularly strong"). Therefore, Defendant has not demonstrated plain error.

III. Medical records

Finally, Defendant argues the trial court erred by admitting portions of Mr. Carpenter's medical records. Defendant identifies two categories of information which he argues the trial court should have redacted from the records: descriptions of the encounter with Defendant as an "assault," and his doctor's recommendation that he obtain a restraining order or a concealed carry permit.

Defendant argues both categories of evidence constitute inadmissible lay opinion. The opinions of lay witnesses are only relevant and admissible if they are "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue." N.C. Gen. Stat. § 8C-1, Rule 701. When business records, including medical records, are

admitted, trial courts should "exclude from jury consideration matters in the record which are immaterial and irrelevant to the inquiry, and entries which amount to hearsay on hearsay." *State v. Smith,* 157 N.C. App. 493, 497, 581 S.E.2d 448, 450 (2003).

Two sets of medical records were admitted into evidence, one from the hospital where Mr. Carpenter was initially admitted and treated, and one from a subsequent visit with his family physician. Both sets of records indicated not only that Mr. Carpenter had been hit in the head with a hammer, but that he had been assaulted. The hospital records indicated Mr. Carpenter's "chief complaint" was that he had been "assaulted and hit in the head with a claw hammer." His family doctor wrote under "History of Present Illness:" "He was assaulted with a hammer by his neighbor, James McAllister," and later, in a subsection entitled "Assessment" wrote "Assault to head with hammer." The trial court admitted the language over Defendant's objection, concluding the records were merely reiterating what Mr. Carpenter had told his doctors.

Assuming without deciding the trial court erred by failing to exclude this language, Defendant has not demonstrated he was prejudiced by its admission. "The test for prejudicial error is whether there is a reasonable possibility that, had the error not been committed, a different result would have been reached at trial." *State v. Scott,* 331 N.C. 39, 46, 413 S.E.2d 787 (1992). There is no indication the jury's decision was influenced by this evidence: the primary factual issue in the case was

that of Defendant's subjective intent, of which the doctors had no knowledge and to which their notes had no relation. The trial court instructed the jury it "may only consider the opinion of a witness that is rationally based on the perception of the witness and helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." No reasonable juror would review the medical records and conclude the doctors were aware of additional information about Defendant's intent such that the altercation should be legally defined as an assault. Defendant has failed to demonstrate prejudice.

Defendant also argues he was prejudiced by the portion of the family doctor's records which contained, in the "Plan" section, the notation: "Encouraged to seek restraining order on neighbor and to consider conceal/carry permit." Defendant did not object to this language at trial and we therefore review its admission for plain error, as discussed above.

Defendant argues this note has the effect of "resolving the discrepancy" between Defendant's and Mr. Carpenter's testimony, and without it the jury was unlikely to conclude Defendant had the specific intent required for conviction. We disagree. It is clear that this note represents advice given to a patient after the patient told his doctor he had been assaulted. Thus, no reasonable juror would conclude this note implies any specific conclusion about Defendant's specific intent, or that it otherwise represents evidence in any way related to the elements of the offense. Therefore, Defendant has failed to demonstrate the trial court plainly erred by

admitting this evidence.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error in Defendant's trial and affirm the Judgment.

NO ERROR.

Judges WOOD and GRIFFIN concur.

Report per Rule 30(e).