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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-542

Filed: 2 January 2018

Rowan County, No. 15 CRS 55498

STATE OF NORTH CAROLINA

v.

RASHEED ANTHONY STEPHENS-MADDOX, Defendant.

Appeal by Defendant from Judgment entered 8 June 2016 by Judge Tanya T. Wallace in Rowan County Superior Court. Heard in the Court of Appeals 30 November 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General David L. Gore, III, for the State.

Julie C. Boyer, for Defendant-Appellant.

HUNTER, JR., Robert N., Judge.

Rasheed Anthony Stephens-Maddox ("Defendant") appeals following a verdict convicting him of robbery with a dangerous weapon. Following the verdict, the trial court sentenced Defendant to 62 to 87 months imprisonment. Defendant gave written notice of appeal to this Court on 13 June 2016. On appeal, Defendant contends the trial court committed plain error by allowing the jury to hear testimony and view a

videotaped statement by a witness, after the witness asserted his Fifth Amendment right not to testify. We find no plain error.

I. Factual and Procedural Background

On 7 December 2015, a Rowan County grand jury indicted Defendant for one count of robbery with a dangerous weapon. On 7 June 2016, the Rowan County Superior Court called Defendant's case for trial. The evidence presented at trial tended to establish the following.

The State called Steven Phillips. On 25 September 2015, Phillips travelled to Salisbury to practice with his church choir. Upon arriving in Salisbury, Phillips called Defendant, who he had known for over thirteen years. The two arranged to meet at the apartment of Defendant's friend. When Phillips arrived at the apartment, at approximately seven o'clock in the evening, Defendant met him outside. The two entered the apartment, and Defendant locked the door behind them. Jameel sat in the kitchen and Dwayne was lying on the couch. Phillips sat down on the couch for approximately ten minutes, then when he was ready to leave he joined Rasheed and Jameel in the kitchen. Then, Dwayne came behind Phillips and stuck a gun to the back of his head, and said "lay down on the floor" and "[w]e don't want to hurt you[.]" Rasheed stated "[m]an, we hurting right now[,]" which Phillips understood to mean they did not have any money. Phillips laid down on the floor and Rasheed took $400 out of one of Phillips's pockets and $107 out of the other pocket.

And someone, who Phillips could not identify, took his cell phone. Then, Dwayne told Phillips to leave. Phillips left the apartment complex and drove to a nearby gas station, where he saw a police officer and reported the robbery. The State offered Phillips's statement to the officer into evidence, and Defendant did not object.

The State called Jameel Stephens-Maddox, Defendant's brother. Jameel testified the night of the incident he was at his girlfriend Natalie's house with Defendant, "Cash," Fred, Dwayne, and Natalie. Jameel stated he had been drinking the "whole evening" and was "kind of out of it." Jameel testified there was weed in the apartment. He also testified he remembered speaking to some officers the night of the incident; but he did not remember writing a statement, nor did he remember anyone recording his statement. The State showed Defendant State's exhibit number six and the following exchange occurred:

> Q. So do you recognize what that is, State's Exhibit 6?
> A. Uh-huh.
> Q. What is it?
> A. That's a - - that's a statement right there.
> . . . .
> Q. Okay. A statement you wrote; right?
> A. Yeah; that's what it looks like.
> . . . .
> Q. And that's your signature right there, isn't it?
> A. Uh-huh.
> Q. And what's the date?
> A. 9/26/15.
> Q. Yeah. And that's on the first page; right?
> A. (No verbal response.)
> Q. Now, the second page, you signed that as well, correct?
> . . . .

> A. Yeah.
> . . . .
> Q. And this is the statement that you wrote for the police in regards to what happened at 107 Pearl Street the day before; is that right?
> A. I mean, I don't remember writing it, but . . . when I read it, I, kind of like, can, like, remember a little bit of it.
> Q. And that's your handwriting; isn't it?
> A. I mean I don't . . . write that sloppy. I don't think so, no. I must have been, like, out of it or something. I don't know. I don't write that sloppy.
> Q. Okay. But you admit that that's your signature that you signed right there?
> A. I mean, that's my name. I don't sign my name like that at all.

After a pause in the proceedings, the State resumed questioning Jameel, and asked whether he remembered talking to the police the night of the incident. Jameel then invoked his Fifth Amendment right and refused to answer any more questions.

The State next called Salisbury Police Officer Meredith Walker. The night of 25 September 2015, at approximately nine thirty, Officer Walker exited a gas station parking lot in her patrol vehicle and observed Mr. Phillips pulling into the parking lot, waving his hands frantically in her direction. Mr. Phillips advised her someone had just robbed him at gunpoint. He was "breathing heavily and nervous and stuttering his words[.]" Phillips told her his friends, Jameel and Rasheed, were weighing marijuana in the kitchen and the set of scales they were using malfunctioned. Phillips told her he attempted to go assist them "and when he got up, another gentleman . . . got up behind him, pointed a gun to his head, put him on the

ground, and while Dwayne held the gun to his head, Rasheed took money out of his pockets and his cell phone."

Later, at the police department, Officer Walker interviewed Jameel and audio and video recorded the interview. Jameel also gave two separate written statements. Officer Walker identified State's exhibit number six as Jameel's formal statement, which he wrote and signed; State's exhibit number seven as Jameel's recorded interview, and State's exhibit number eight as a statement Jameel wrote prior to giving his formal statement. She testified Jameel was not impaired during the interview. The State offered these exhibits into evidence, and Defendant did not object.

In his statement, Jameel indicated he was not present in the room when the alleged robbery took place and he did not know what happened. He stated, "I don't know if [Rasheed and Dwayne] had a gun. I can believe the two made a drug deal go bad and took the guy['s] money [be]cause the[y] didn't have any bud. I can honestly say I did not even know [they] had planned to . . . rob somebody." In another statement Jameel said "I honestly don't know what all happened but my instinct [is] telling me they did do it. I know for a fact they [were] there and looking for some bud. I did not see the two rob anybody though . . ."[1]

Defendant then testified on his own behalf. He testified he had known Phillips

[1] Jameel did not explain what he meant by the term "bud."

for at least ten years, and Phillips was his brother's friend. The two of them would occasionally smoke marijuana together. On 25 September, Phillips called Defendant sometime after eight o'clock at night, and said he was in town and he "wanted some weed, and wanted to come chill[.]" Defendant directed Phillips to his friend's apartment, and when Phillips arrived Defendant met him outside. Defendant entered the apartment and they talked, then Defendant gave Phillips some marijuana, and in return Phillips gave Defendant money.

Defendant testified when the two occasionally smoked together, they would often compare who had the better marijuana supply. So, after giving Phillips the marijuana on this occasion, Defendant told Phillips to let him know "how it smoked." About an hour after Phillips left the apartment, he called Defendant complaining about the quality of marijuana Defendant had sold him. Defendant stated Phillips sounded "aggressive" like "he wanted to fight." Defendant vowed to meet Phillips at a later time and "make it right." Defendant did not see Phillips again that night. Defendant testified he did not take any money from Phillips, other than the money Phillips gave in exchange for the marijuana, and no one used a weapon at any time.

The jury returned a verdict of guilty of robbery with a dangerous weapon. The trial court imposed a sentence of 62 to 87 months imprisonment, and a fine of $707. Defendant gave timely notice of appeal to this court.

II. Standard of Review

Because Defendant did not object to the admission of the evidence at trial, he requests this Court to review the admissibility for plain error.

> In criminal cases, 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). Plain error arises when the error is "'so basic, so prejudicial, so lacking in its elements that justice cannot have been done[.]'" *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (quoting *United States v. McCaskill*, 676 F. 2d 995, 1002 (4th Cir. 1982), *cert. denied*, 459 U.S. 1018, 74 L. Ed. 2d 513 (1982)). "Under the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993).

III. Analysis

Defendant argues the trial court committed plain error by allowing Officer Walker to testify regarding Jameel's written statements, and by admitting Jameel's videotaped statement into evidence after he invoked his Fifth Amendment right to not testify. Defendant contends these statements were inadmissible hearsay and the admission of the statements violated his constitutional right to cross examine the witness.

While admission of the statements may have been in error, Defendant failed

to object at trial. Thus, we are limited to reviewing the admission for plain error. "[T]he plain error rule . . . is always to be applied cautiously and only in the exceptional case . . . ." *Odom*, 307 N.C. at 660, 300 S.E.2d at 378 (quoting *McCaskill*, 676 F. 2d at 1002). Even assuming *arguendo* the trial court erred in admitting the statements, Defendant has failed to show he was prejudiced by the admission. He has not demonstrated absent the admission of the statements the jury would likely have reached a different verdict.

Defendant does not explain how Jameel's statements implicate Defendant, or offer any indication of what specifically in the statements is prejudicial to Defendant. From our own review of the evidence, it appears what Defendant may contend to be prejudicial is Jameel's statement "[he could] believe [they] . . . took the guy['s] money . . . ." and his instinct told him Defendant committed the robbery. But in the statement Jameel also made clear he did not know, nor did he see what occurred. Assuming the statements implicate Defendant, Defendant further failed to demonstrate absent the admission, the jury would have likely found him innocent. The victim's testimony was credible and the victim's prior statement to Officer Walker corroborated his testimony. We are not persuaded the admission of Jameel's statements, even if improper, constitutes plain error.

IV. Conclusion

For the foregoing reasons, we conclude the trial court did not commit plain error.

NO PLAIN ERROR.

Judges INMAN and BERGER concur.

Report per Rule 30(e).