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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-518

Filed: 19 June 2018

Wake County, No. 14 CRS 205973

STATE OF NORTH CAROLINA

v.

SHAUN LAMONT WILLIAMS

Appeal by defendant from judgment entered 15 July 2016 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 7 February 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General David J. Adinolfi, II, for the State.

Jarvis John Edgerton, IV, for defendant.

ELMORE, Judge.

Defendant Shaun Lamont Williams appeals from his conviction for first-degree murder. On appeal, defendant contends the trial court committed plain error by admitting (1) an expert witness's opinion that a specific firearm was the source of cartridge casings recovered from the crime scene, and (2) a witness's prior statements,

given to law enforcement the morning after the shooting, where the witness gave slightly altered statements while under oath at trial.

Because we conclude defendant either invited the alleged error or has failed on appeal to meet his burden of showing any error "so fundamental that, absent the error, the jury probably would have reached a different result," we decline defendant's request for a new trial. *State v. McDonald*, 216 N.C. App. 161, 164, 716 S.E.2d 250, 252 (2011) (citation omitted).

Background

On 21 April 2014, a grand jury indicted defendant for the shooting death of Justin Ryan Lee ("the victim"). On 11 July 2016, defendant's case came on for trial upon his not guilty plea. Defendant chose not to testify or present any evidence at trial, while the State's evidence tended to show the following.

The shooting took place in the 7500 block of Fox Road in Raleigh at approximately 9:00 p.m. on 14 March 2014. One witness testified that she was driving on Fox Road around that time when she came upon a red-orange vehicle stopped on the side of the road. She saw a man crouched down on the driver's side of the vehicle, noticed movement on the passenger side, and heard two gunshots as she drove by. A stray bullet struck the witness's vehicle and shattered her driver's side window as she continued driving.

Several witnesses testified that they were driving on Fox Road around 9:00 p.m. and saw the victim lying in the road next to the red-orange vehicle, which appeared to have run over a mailbox before coming to a stop. One witness continued driving northwest on Fox Road toward I-540 and noticed a man walking fast in the same direction, away from the scene. The man crossed the road in front of the witness's vehicle, then ran off the road and into the woods between some houses. The witness called 911 and reported seeing both the victim and the man, whom she described as a black male with medium-length dreadlocks, wearing a red sweatshirt and blue jeans.

An officer with the Raleigh Police Department (RPD) testified that he was patrolling an area near Fox Road when he received reports of the shooting at approximately 9:15 p.m. As the officer drove toward Fox Road, he noticed a black male with medium-length dreadlocks and a red shirt walking in the opposite direction on a bridge that crosses over I-540. When the officer arrived at the scene minutes later, he received a description of the shooting suspect and immediately drove back to the area where he had seen the man walking. The officer located defendant, who fit the description of the suspect, at an apartment building down the road from the I-540 bridge.

The officer testified that defendant was sweating and smelled of marijuana when the officer encountered him at the apartment building. The officer searched

defendant and found a large plastic bag containing 28 grams of marijuana as well as three smaller bags containing approximately one gram of marijuana each; $220.00 in cash held together by a rubber band; $7.00 in loose cash; and a receipt from a McDonald's restaurant on Capital Boulevard. That particular McDonald's is located approximately three miles west of the crime scene, and the receipt was timestamped 8:49 p.m. on 14 March 2014. The receipt showed defendant had paid $20.47 in cash for his food and received exactly $14.00 in change. The officer did not recover a firearm in his search of defendant.

A sergeant with the RPD testified that he was also on patrol on the night of 14 March 2014 and responded to the shooting on Fox Road. In an effort to direct oncoming vehicles away from the investigation, the sergeant stopped his patrol car slightly northwest of the scene and began traffic control at the intersection of Fox Road and Carlton Drive. While standing in the intersection, the sergeant observed loose marijuana strewn throughout the road and being blown around by a strong wind. The sergeant collected approximately 17 grams of marijuana from the intersection of Fox Road and Carlton Drive.

An agent with the City-County Bureau of Investigation (CCBI) testified as an expert in crime scene analysis. The agent's duties included speaking with the responding officers, taking photographs, and collecting evidence. After first meeting

with the witness whose vehicle had been struck by a stray bullet, the agent responded to Fox Road at approximately 11:40 p.m. on 14 March 2014.

In her initial assessment of the scene, the agent observed a 9mm firearm and cartridge in the road near the victim; a cartridge casing in the driveway closest to the vehicle; and a cartridge casing in the yard by the vehicle's passenger door, which had been left open. The agent then examined the vehicle itself and observed two bullet holes in its rear hatch; a cartridge casing, box for holding a digital scale, and a cell phone on the passenger floorboard; a leafy-green substance and $7.00 in loose cash under the passenger seat; two projectiles on the roof; and one projectile inside the rear cargo door. In total, the agent recovered four cartridge casings and three projectiles. The agent testified that all four cartridge casings had been discharged by a .45-caliber firearm not found at the crime scene or elsewhere on the night of the shooting.

The State also introduced the testimony of Shalanda Alston, who identified herself as defendant's girlfriend and his child's mother. Ms. Alston testified that she and defendant lived in separate homes in Norlina, a town in Warren County approximately fifty miles north of Raleigh. On the evening of 14 March 2014, Ms. Alston and defendant drove from Norlina to Raleigh in separate vehicles, both blue, and met at the McDonald's on Capital Boulevard. After they went inside for food, Ms. Alston left McDonald's alone in the blue vehicle defendant had driven to Raleigh,

while defendant left as a passenger in a red vehicle;[1] the other blue vehicle remained parked at McDonald's. Ms. Alston testified that she did not know who was driving the red vehicle, nor did she see or speak to defendant after leaving McDonald's. Ms. Alston attempted to visit her sister in Raleigh that night before driving back to Norlina without defendant.

When asked on direct examination if she knew defendant sold marijuana, Ms. Alston testified that defendant was not a "drug dealer"; rather, "[defendant] works, and if anybody wants any [marijuana], he would sell them that, but he's not a seller." The following exchange then took place between Ms. Alston and the prosecutor:

> Q: But [defendant] does sell marijuana by the ounce if somebody needs it?
>
> A: No.
>
> Q: You don't recall telling law enforcement —
>
> A: Yeah, I did tell law enforcement [defendant] sells by the ounce, but he didn't do that.
>
> Q: Do you tell that [sic] —
>
> A: I did tell them that he does sell it, but he doesn't sell it by the ounce. . . . I said he had an ounce and, if anybody wanted to get any, he would sell them a bag. That's all I told them.
>
> Q: So you told them he had an ounce that night?

[1] Defendant concedes in his brief that this was the same red-orange vehicle being driven by the victim on the night of the shooting, and that investigators found defendant's cell phone in the vehicle.

> A: It was, yeah, in my house.

Ms. Alston further testified that she knew defendant owned a gun and had told law enforcement the same, and that the gun she saw defendant with on the day of the shooting was silver. However, Ms. Alston denied telling law enforcement defendant had a gun with him on the night of the shooting.

> Q: Okay. Do you — did you see [defendant] with a gun that night?
>
> A: No.
>
> Q: Do you remember telling the police —
>
> A: Yes, I did. I told them I seen him earlier that day with one, not that night.
>
> Q: So you do not recall that you told the police that [defendant] has a gun and had a gun with him that night?
>
> A: No.
>
> Q: But you do know that he has a gun?
>
> A: Oh, yeah, I — yeah, he had one.

In her testimony, Ms. Alston identified defendant's cell phone number, which matched that of the cell phone found on the passenger floorboard of the red-orange vehicle. She also identified two letters from defendant, written after his arrest, in which he asked Ms. Alston what she told law enforcement to explain why they had driven separate vehicles to Raleigh on the night of the shooting.

Immediately after Ms. Alston's testimony, Detective Gibney of the RPD testified that he and another detective interviewed Ms. Alston at her home on the morning of 15 March 2014, less than twenty-four hours after the shooting. The following exchange then took place between Detective Gibney and the prosecutor:

> Q: And did you ask [Ms. Alston] whether or not [defendant] dealt marijuana?
>
> A: Yes.
>
> Q: And what did she tell you?
>
> A: She says that she knows that [defendant] sells marijuana and sells weed by the ounce.
>
> . . .
>
> Q: Did she tell you whether or not she saw — whether she knew whether the defendant had a firearm?
>
> A: Yes. She said that [defendant] has a gun and had a gun with him last night.

Defendant did not object to Detective Gibney's testimony as to what Ms. Alston told detectives the morning after the shooting.

On 24 June 2016—more than two years after the shooting—an officer with the RPD responded to a found-property call at the corner of Fox Road and Carlton Drive. The officer testified that a young girl had discovered a .45-caliber firearm in a storm drainage pipe that ran through a ditch and under the driveway of her home on Carlton Drive, approximately five houses away from where the crime scene had been

in 2014. At the time of its discovery, the green-and-black-camouflage firearm was covered in mud and appeared to have been left in the pipe for an extended period of time. The officer testified that even after washing it and seeking the help of another officer to rack its slide, the firearm was too corroded for him to clear a cartridge still stuck in its chamber.

The officer eventually located the firearm's serial number and traced it to defendant's cousin, Dante Alexander. Mr. Alexander had reported the firearm stolen from his Warrenton home, also in Warren County, just two days after the shooting. In a statement dated 16 March 2014, Mr. Alexander told law enforcement he had put the firearm in his truck on 8 March, hosted a party at his home on 12 March, and discovered the firearm missing from his unlocked truck on 13 March. Mr. Alexander testified that he had not given anyone permission to take his firearm from Warren to Wake County, and he did not know of any reason for his firearm to have been found on Carlton Drive.

The State then called Eugene Bishop—its twenty-fourth of twenty-seven total witnesses—as an expert in forensic firearms examination. Mr. Bishop testified that thirty-five of his forty-six years in law enforcement had consisted of performing firearms examinations for the SBI. He estimated that in the course of his career, he had performed "millions of examinations" and testified as an expert in the area more than 400 times in state, federal, and military courts. Mr. Bishop was accepted

without objection as an expert in forensic firearms examination and testified to examining the firearm at the State's request. Mr. Bishop's examination involved test-firing the weapon and comparing the test-fired cartridge casings and projectiles to the cartridge casings and projectiles recovered from the crime scene.

The RPD provided Mr. Bishop with the firearm, cartridges for test-firing, and seven envelopes containing the four recovered cartridge casings and three recovered projectiles. The firearm still had a cartridge stuck in its chamber, which Mr. Bishop attempted to dislodge first by knocking on the firearm, then by soaking its chamber in solvent overnight. Mr. Bishop testified that because the firearm was so badly corroded, he ultimately had to replace some of its parts in order to perform his test-fires. At the State's request, Mr. Bishop provided the following explanation of his examination process:

> A: By test firing a weapon, we recover the test fired cartridge cases and place them on a comparison microscope, which is two microscopes in one with an optical bridge. So we could see two items at the same time under the same magnification. Then we compare the two test fires to each other to see whether or not there's enough markings placed on those cartridge cases to say, yes, they were fired from that weapon.
>
> Then we take the evidence and compare them to each other, and then we compare them to the test to make that determination whether or not the evidence cartridge cases were fired from that particular weapon.
>
> . . . .
>
> Q: And did you do that in this case?

> A: Yes, ma'am.
>
> Q: And were you able to determine that . . . the four shell casings gathered from the scene, were fired from the same gun?
>
> A: Yes, I did.
>
> . . . .
>
> Q: And when you compared the four shell casings from the scene to your two fired shots that you did with the gun, were you able to make a determination as to whether those matched?
>
> A: Yes, ma'am.
>
> Q: And so what does that tell you?
>
> A: That the four evidence cartridge cases were fired from the same firearm as the test firings that I found. So they were fired from the same gun that I test fired.
>
> Q: And that gun was this 45 caliber?
>
> A: That's correct.

Also on direct examination, Mr. Bishop acknowledged having been unable to make a determination regarding the three projectiles because the firearm's barrel was so corroded that it had to be replaced. He opined that the projectiles "had similar rifling characteristics to each other, but it was not enough detail to determine conclusively that [they were] fired by a particular weapon." Mr. Bishop explained that the barrel is a key component of a firearm when comparing projectiles for identifying marks,

while the slide is the most important component when examining cartridge casings. Unlike this particular firearm's barrel, its slide had not required replacement prior to Mr. Bishop's examination.

At trial, defendant did not object to Mr. Bishop's testimony or any portion thereof, nor did he request that the trial court issue a limiting instruction when the expert opinion was admitted.

In its closing argument to the jury, the State emphasized its theory that the circumstances of the shooting were consistent with an unsuccessful drug sale, while defense counsel maintained that the State had failed to produce evidence linking defendant to the shooting itself. In its jury charge, the trial court recited the pattern jury instructions regarding testimony of an expert witness as well as impeachment or corroboration by prior statement. Relevant excerpts from the jury charge include the following:

> You should consider the opinion of an expert witness, but you are not bound by it. In other words, you are not required to accept an expert witness's opinion to the exclusion of the facts and circumstances disclosed by other testimony. . . .
>
> Evidence has been received tending to show that at an earlier time a witness made a statement which may conflict with or be consistent with the testimony of the witness at this trial. You must not consider such earlier statement as evidence of the truth of what was said at the earlier time because it was not made under oath at this trial.

On 15 July 2016, the jury returned a verdict finding defendant guilty of first-degree murder in the perpetration of several felony offenses, including possession with intent to sell or deliver a controlled substance. The trial court sentenced defendant to life imprisonment without parole. Defendant appeals.

Discussion

On appeal, defendant first contends the trial court committed plain error by admitting testimony from the State's firearm examination expert, Mr. Bishop, to the effect that every firearm produces "unique" markings when its firing pin strikes a cartridge casing, such that an "exclusive" match between a specific firearm and casing is possible and was found here. Defendant argues Mr. Bishop's degree of certainty regarding toolmark identification exceeded the permissible scope of expert testimony under Rule 702(a) of our Rules of Evidence, and that the testimony should therefore have been limited or excluded as unreliable under the *Daubert* standard applicable to Rule 702(a) as amended in 2011. Defendant cites to developing case law from various other jurisdictions to support his argument.

Defendant also contends the trial court committed plain error by admitting the prior statements of Ms. Alston via Detective Gibney's testimony. Defendant argues the statements were hearsay for which no exception was offered and were thus inadmissible for substantive purposes. He further contends that because Ms. Alston

denied making the statements while under oath at trial, the statements concerned collateral matters only and were thus inadmissible for impeachment purposes.

Standard of Review

Unpreserved error in criminal cases is reviewed only for plain error, which must be "specifically and distinctly" argued on appeal. N.C. R. App. P. 10(a)(4).

> For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citations, quotation marks, and brackets omitted).

Here, defendant failed to object at trial to the admission of both Mr. Bishop's expert testimony as well as Ms. Alston's prior statements. However, pursuant to Rule 10(a)(4) of our Rules of Appellate Procedure, he specifically and distinctly argues that the alleged errors constitute plain error. We therefore review the two issues presented on appeal by defendant for plain error only.

I. Expert Testimony re: Firearm Toolmark Identification

In his first argument on appeal, defendant contends Mr. Bishop's testimony presents this Court with the following issue of first impression: whether the science

of firearm toolmark identification is sufficiently reliable—under the more rigorous *Daubert* standard for admissibility that now applies to Rule 702(a) of our Rules of Evidence—to support expert testimony that a cartridge casing can be exclusively matched to a specific firearm.

There do not appear to be any published decisions from our state appellate courts or the Fourth Circuit Court of Appeals analyzing firearm identification evidence under the *Daubert* standard. However, as defendant notes, some post-*Daubert* decisions in other jurisdictions have limited or excluded testimony such as Mr. Bishop's. *See, e.g., United States. v. Green*, 405 F. Supp. 2d 104 (D. Mass. 2005); *United States v. Monteiro*, 407 F. Supp. 2d 351 (D. Mass. 2006); *United States. v. Diaz*, 2007 WL 485967 (N.D. Cal. 2007); *United States v. Glynn*, 578 F. Supp. 2d 567 (S.D.N.Y. 2008). Thus, while acknowledging that this Court has previously allowed analogous testimony, defendant urges us to examine Mr. Bishop's expert opinion in light of *Daubert* and our General Assembly's 2011 amendment to Rule 702(a).

i. Relevant Law

In *State v. McGrady*, our Supreme Court confirmed that amended Rule 702(a) "adopts the federal standard for the admission of expert witness testimony articulated in" *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993), and its progeny. 368 N.C. 880, 884, 787 S.E.2d 1, 5 (2016). The *McGrady* Court noted that although the basic structure of its inquiry was the same, the

Howerton test for admissibility that applied to former Rule 702(a) was "decidedly less rigorous" than the *Daubert* standard, which established "exacting standards of reliability" for the admission of expert testimony. *Id.* at 885, 787 S.E.2d at 6 (citations and quotation marks omitted); *see also Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 464, 597 S.E.2d 674, 690 (2004). Specifically,

> the testimony must meet the three-pronged reliability test that is new to the amended rule: (1) The testimony must be based upon sufficient facts or data. (2) The testimony must be the product of reliable principles and methods. (3) The witness must have applied the principles and methods reliably to the facts of the case.

McGrady, 368 N.C. at 890, 787 S.E.2d at 9 (citations, quotation marks, and brackets omitted); N.C. Gen. Stat. § 8C-1, Rule 702(a) (2015). "These three prongs together constitute the reliability inquiry" discussed in the *Daubert* line of cases. *Id.* "The precise nature of the reliability inquiry will vary from case to case depending on the nature of the proposed testimony," and the trial court has discretion in determining how to address the reliability inquiry. *Id.*

ii. Alleged Error

Here, defendant acknowledges that "[c]ourts in North Carolina have upheld the admission of expert testimony on firearm toolmark identification for decades." *State v. Britt*, 217 N.C. App. 309, 314, 718 S.E.2d 725, 729 (2011). Nevertheless, defendant cites to federal case law from Massachusetts, California, and New York to support his argument that, under the more rigorous reliability standards applicable

to amended Rule 702(a), expert firearm examiners "may only testify that a match has been made to a reasonable degree of certainty," and not "to the exclusion of all other firearms in the world." Defendant relies primarily on this argument in contending that Mr. Bishop's testimony failed the first two prongs of Rule 702(a)'s reliability inquiry.

As to the first prong of the inquiry—that is, that the testimony must be based upon sufficient facts or data—defendant argues it was plain error for the trial court to allow Mr. Bishop to testify that the mark a firearm leaves on a cartridge casing is "unique as to each gun that's made." Defendant contends that because it was impossible for Mr. Bishop to have tested every firearm ever made, the facts and data upon which he based his testimony could only have supported a conclusion of a match to "a reasonable degree of certainty." According to defendant, "[t]his reasonable degree of certainty . . . does not encompass an absolute match to the exclusion of any other firearm, and it was plain error for Mr. Bishop to tell the jury otherwise."

Defendant argues Mr. Bishop's testimony also failed the second prong of the inquiry because it was not the product of reliable principles and methods. In his brief, defendant concedes that "the principles and methods of firearm examination are reliable enough to produce testimony of a likely, probable, or reasonable degree of certainty," but contends "claims of absolute certainty can never be the product of these methods[,] unless the methods are refined to somehow remove subjective

human judgment." Defendant asserts that "[i]t was plain error for Mr. Bishop to falsely overstate the reliability of firearm examination principles and methods."

Lastly, defendant argues Mr. Bishop failed to apply the principles and methods of firearm examination reliably to the facts of this particular case. Defendant reasons that, "[g]iven the extensive damage to the weapon, and the modifications to the weapon resulting from it being banged on, soaked in chemicals, and rebuilt . . . it is impossible to rationally assert . . . that Mr. Bishop applied the principles of firearm examination in a manner likely to produce a reliable result."

iii. Analysis

Based on the foregoing, defendant contends "Mr. Bishop's challenged expert testimony utterly failed to meet any of the three prongs" of amended Rule 702(a)'s reliability inquiry. We disagree.

As to the first two prongs of the reliability inquiry, defendant focuses entirely on Mr. Bishop's alleged degree of absolute certainty regarding a match between the cartridge casings and firearm. Defendant does not argue Mr. Bishop did not actually have sufficient facts or data or use reliable principles and methods to conduct a proper examination, or that toolmark identification itself is no longer a reliable method of proof, but rather that Mr. Bishop's facts, data, principles, and methods could only have supported a conclusion that a match was more likely than not. In sum, defendant contends the trial court plainly erred by failing to *sua sponte* limit Mr.

Bishop to testimony of a match "to a reasonable degree of certainty." We are not persuaded by defendant's argument.

At trial, Mr. Bishop testified that in his expert opinion, the recovered cartridge casings "were fired from the same gun that [he] test fired." Mr. Bishop did not overstate his opinion by, for example, explicitly claiming absolute certainty, or a match to the exclusion of all other firearms in the world, or a total absence of subjective human judgment from his examination. And while Mr. Bishop did not qualify his opinion with "to a reasonable degree of certainty," he also never uttered the words "unique as to each gun that's made" or "exclusive identification"—two phrases defendant refers to extensively in his brief as the alleged claims of certainty that amounted to false overstatements of reliability. In fact, it was defense counsel, not Mr. Bishop, who chose to use the exact phrases defendant challenges on appeal.

On cross-examination, defense counsel asked Mr. Bishop less than five total questions, none of which sought to challenge the expert's facts, data, principles, or methods. Instead, defense counsel elicited the following testimony from Mr. Bishop:

> Q: . . . [F]rom your expert opinion, looking at so many of these over the years, there's a *unique marking* that's created by the gun or the hammer when it strikes the casing and goes out? Is that fair to say? There's a *unique marking* that's made each time?
>
> A: Yes, sir. Each time the firing pin strikes the primer of the cartridge, it puts an imperfection inside . . . on that cartridge. And also, when it's being pushed back on a semi-automatic, it's also hitting what they call the breech face

> area, putting other marks on the base of the cartridge. So we're looking for all that information when we test fire the gun.
>
> Q: Okay. And my question based on your response there is . . . in the gun business and what you're an expert in, ballistics, . . . is that *unique as to each gun that's made* so much so that the way it strikes is an *exclusive identification*, if you understand my question?
>
> A: Yes, sir, it is. Even though they are manufactured one after each other, there's still a difference in all items that are inside the gun.
>
> Q: Very well. No further questions.

(Emphasis added.) At no time—either on direct or cross-examination—did defense counsel object to any portion of Mr. Bishop's testimony or dispute the reliability of his expert opinion.

"Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert*, 509 U.S. at 596, 113 S. Ct. at 2798; *see also Hairston v. Alexander Tank & Equip. Co.*, 310 N.C. 227, 244, 311 S.E.2d 559, 571 (1984) ("It is the function of cross-examination to expose any weaknesses in [expert] testimony, which defense counsel undertook to do in fifty-three pages of the transcript."). "These conventional devices, rather than wholesale exclusion . . . are the appropriate safeguards where the basis of scientific testimony meets the standards of Rule 702." *Daubert*, 509 U.S. at 596, 113 S. Ct. at 2798. Moreover,

"[s]tatements elicited by a defendant on cross-examination are, even if error, invited error, by which a defendant cannot be prejudiced as a matter of law." *State v. Gobal*, 186 N.C. App. 308, 319, 651 S.E.2d 279, 287 (2007) (citations omitted); *see also* N.C. Gen. Stat. § 15A-1443(c) (2015).

Based on the first two prongs of *Daubert*'s reliability inquiry, defendant asserts that Mr. Bishop's expert opinion should have been limited, but not excluded. However, defendant did not challenge Mr. Bishop's degree of certainty regarding a match—a detail which Mr. Bishop did not overstate or even express in giving his opinion on direct examination—by subjecting Mr. Bishop's testimony to vigorous cross-examination. Instead, defendant himself chose to use the terms "unique" and "exclusive" to describe the alleged match between the cartridge casings and firearm. Because "a defendant who invites error . . . waive[s] his right to all appellate review concerning the invited error, including plain error review[,]" we decline to entertain defendant's contention that the trial court plainly erred by failing to limit Mr. Bishop's testimony. *State v. Barber*, 147 N.C. App. 69, 74, 554 S.E.2d 413, 416 (2001).

As to the third prong of the inquiry, defendant contends Mr. Bishop's principles and methods could not possibly have been applied reliably to the facts of his case because of the "extensive damage to the weapon" prior to Mr. Bishop's examination. Defendant asserts in his brief that because "[t]he record does not indicate which parts of the firearm Mr. Bishop changed out," it's possible that some of the necessary

components for toolmark identification were replaced. However, a review of the transcript indicates that defendant's assertion is meritless.

In his testimony, Mr. Bishop acknowledged the damage to the firearm; explained how he had addressed the damage as well as how it had affected his examination (*e.g.*, replacing the firearm's barrel precluded Mr. Bishop from forming an opinion as to the recovered projectiles); and provided a detailed description of that process to the jury. We therefore cannot conclude, based solely on the physical condition of the firearm, that Mr. Bishop's testimony failed to meet the third prong of *Daubert*'s reliability inquiry.

For the reasons stated herein, we hold that the trial court did not plainly err in admitting Mr. Bishop's expert opinion on firearm toolmark identification.

II. Prior Statements of a Witness

Defendant also contends the trial court committed plain error by allowing the State to tender Ms. Alston's prior statements via Detective Gibney's testimony.

i. Relevant Law

"The credibility of a witness may be attacked by any party, including the party calling him." N.C. Gen. Stat. § 8C-1, Rule 607 (2015). However,

> extrinsic evidence of prior inconsistent statements may not be used to impeach a witness where the questions concern matters collateral to the issues. Such collateral matters have been held to include testimony contradicting a witness's denial that [s]he made a prior statement when that testimony purports to reiterate the substance of the

statement.

State v. Hunt, 324 N.C. 343, 348, 378 S.E.2d 754, 757 (1989) (citations omitted); *see also State v. Riccard*, 142 N.C. App. 298, 304, 542 S.E.2d 320, 324 (2014) ("[W]hile North Carolina Rule of Evidence 607 allows a party to impeach its own witness on a material matter with a prior inconsistent statement, impeachment is impermissible where it is used as a mere subterfuge to get evidence before the jury which is otherwise inadmissible.").

ii. Alleged Error

Defendant contends that because Ms. Alston "expressly denied" telling Detective Gibney that defendant sold marijuana by the ounce and had a gun with him on the night of 14 March 2014, the State could not then introduce her prior statements for purposes of impeachment or corroboration. According to defendant, when Ms. Alston denied making the prior statements, the statements thereafter concerned collateral matters only. Defendant asserts that our Supreme Court's decision in *State v. Hunt* is controlling on this issue and supports his position that the trial court plainly erred in admitting Ms. Alston's prior statements.

iii. Analysis

In *Hunt*, the Court held that it was reversible error to permit a law enforcement officer to testify as to the substance of prior statements that a witness denied ever making. 324 N.C. at 348, 378 S.E.2d at 757. The Court noted that the

officer "could properly have been called to contradict the fact, denied by [the witness], that she had made the statement to him on the specified date." *Id.* at 348–49, 378 S.E.2d at 757. However, "it was improper to impeach her concerning what she had or had not told [the officer] by offering the testimony of [the officer]." *Id.* (citation, quotation marks, and brackets omitted). The Court reasoned that this method of impeachment was improper in *Hunt* because there was no valuable substance to the witness's testimony, which "consisted entirely of responding to challenges to her credibility and bias." *Id.* at 351, 378 S.E.2d at 758.

The instant case is readily distinguishable from *Hunt*.

First, it is apparent from the transcript that Ms. Alston did not unequivocally deny giving the prior statements to detectives on 15 March 2014. Ms. Alston testified that she "did tell law enforcement [defendant] sells [marijuana] by the ounce, but he didn't do that." As to whether or not defendant had a firearm in his possession on 14 March 2014, Ms. Alston testified, "I told them I seen him earlier that day with one, not that night. . . . Oh, yeah, I — yeah, he had one."

Moreover, the vast majority of Ms. Alston's testimony provided the State with critical information. Ms. Alston testified that defendant sold marijuana; had an ounce of marijuana in Ms. Alston's home on the night of the shooting; owned a gun; had his gun with him on the day of the shooting; left McDonald's as a passenger in a red vehicle on the night of the shooting; used the cell phone found in the victim's

vehicle as his personal cell phone; and wrote two letters to Ms. Alston from prison in which he sought to find out what she had told law enforcement.

Given her extensive testimony in support of the State's case, and the relatively insignificant portion of her testimony that was impeached, we cannot conclude that the trial court plainly erred in admitting Ms. Alston's prior statements. *See State v. Goins*, 232 N.C. App. 451, 754 S.E.2d 195, 201 (2014) (holding that impeachment by prior inconsistent statement was permissible where witness's testimony was vital to State's case).

III. Conclusion

For the reasons stated herein, and in light of the overwhelming circumstantial evidence of defendant's guilt, we hold that the trial court did not plainly err by admitting Mr. Bishop's expert opinion or Ms. Alston's prior statements. Accordingly, we decline defendant's request for a new trial.

NO PLAIN ERROR.

Judges HUNTER, JR. and DIETZ concur.

Report per Rule 30(e).