

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1349

Filed: 17 July 2018

Mecklenburg County, Nos. 15 CRS 224178-79, 224189

STATE OF NORTH CAROLINA

v.

LAURIE MARIE SOUTHERLAND

Appeal by defendant from judgments entered 29 June 2017 by Judge Carla Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 16 July 2018.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Neil Dalton, for the State.*

*Sarah Holladay for defendant-appellant.*

DAVIS, Judge.

Laurie Marie Southerland (“Defendant”) appeals from her convictions for various drug offenses. On appeal, she contends that the trial court erred in admitting certain witness testimony into evidence on grounds of relevance and undue prejudice. After a thorough review of the record and applicable law, we conclude that Defendant received a fair trial free from prejudicial error.

**Factual and Procedural Background**

The State presented evidence at trial tending to establish the following facts: On 9 July 2015, Officer Scott Blevins and Detective Jamie Garmon of the Matthews Police Department were working with the Target Enforcement Unit (“TEU”), a task force assembled to “reduce violent crime by hitting the drug areas and the prostitution areas.” Around 5:00 p.m., Officer Blevins and Detective Garmon were surveilling Defendant from separate vehicles as part of a drug investigation.

Defendant was driving a Chevrolet Impala and made stops at a McDonald’s restaurant and Microtel Hotel. After stopping at the Microtel Hotel, the officers observed a passenger in Defendant’s car. While following the vehicle on Mount Harmony Church Road, Detective Garmon saw Defendant driving erratically and swerving between lanes. Detective Garmon activated his blue lights and siren and pulled Defendant’s car over. Officer Blevins was in an undercover vehicle and stayed approximately 200 feet behind the traffic stop.

Detective Garmon approached the vehicle and observed Defendant in the driver’s seat. He asked for her driver’s license and registration. Defendant explained that she was not driving well because she was trying to simultaneously eat and drive. Detective Garmon also asked the passenger for his identification. The passenger stated that he did not have any identification with him. After obtaining Defendant’s identification, Detective Garmon returned to his vehicle to run her driver’s license.

STATE V. SOUTHERLAND

*Opinion of the Court*

Officer Blevins called for another marked unit to assist Detective Garmon, and the marked unit arrived shortly thereafter.

While waiting to obtain a response from the Department of Motor Vehicles regarding Defendant's identification and registration, Detective Garmon approached Defendant and asked if she could walk to the rear of her vehicle. As he did so, the passenger in Defendant's vehicle was moving around in his seat, leaning over the driver's seat and fumbling with one of the switches. When Detective Garmon asked him what he was doing, the passenger stated that he was trying to turn the lights on. Detective Garmon once again asked him for identification and the passenger produced a New York driver's license and social security card bearing the name "Jeff Davis." Detective Garmon then asked the passenger to step out of the car, and he exited the vehicle.

Detective Garmon asked Defendant if there were any weapons or drugs in her car, but she did not respond. Detective Garmon then began searching the Impala. He noticed a piece of tin foil with black lines on it in the driver's side door. Based on his training, Detective Garmon believed the tin foil was used to smoke heroin. There was also a black bag on the center console between the driver and passenger seats. Detective Garmon placed the black bag on the trunk of the Impala. Both Defendant and the passenger told Detective Garmon that the bag belonged to the other person. Inside the bag was a small safe disguised as a dictionary, a digital scale, a syringe,

STATE V. SOUTHERLAND

*Opinion of the Court*

three plastic bags of a crystal substance, a glass pipe used for smoking methamphetamine, some pills, a small container of marijuana wax, \$2,000 in cash, and a knife. Detective Garmon also searched Defendant's purse and found money and a pipe.

At that point, Detective Garmon decided to detain both Defendant and the passenger. However, he noticed that the passenger was gone. Officer Blevins had seen the passenger running away from the scene and decided to pull his vehicle up to the scene of the vehicle stop. Detective Garmon placed Defendant in handcuffs while other law enforcement officers searched for the passenger. Officers were unable to locate the passenger that day.

During an interview at the Matthews Police Department, Defendant informed Detective Garmon and Officer Blevins that the passenger's name was Charles Cutshaw and that she had picked him up at the Microtel Hotel. Defendant admitted that she bought methamphetamine from Cutshaw and that Cutshaw had a large quantity of methamphetamine with him. Cutshaw was on the run from a drug charge in South Carolina and was facing a 25-year prison sentence. Defendant stated that she sold heroin and methamphetamine to maintain her drug habit. Defendant also told Detective Garmon and Officer Blevins that heroin was present at her home and gave them permission to search her residence. Upon searching Defendant's home, Detective Garmon and Officer Blevins found heroin in her bedroom dresser.

STATE V. SOUTHERLAND

*Opinion of the Court*

On 20 July 2015, Defendant was indicted by a Mecklenburg County grand jury for trafficking in methamphetamine by possession, trafficking in methamphetamine by transportation, conspiracy to traffic in methamphetamine by possession, and possession of heroin. Prior to the start of Defendant's trial, Cutshaw was apprehended by law enforcement officers. A jury trial was held beginning on 26 June 2017 in Mecklenburg County Superior Court before the Honorable Carla Archie.

At trial, Miguel Cruz-Quinones, a forensic chemistry expert with the North Carolina State Crime Laboratory, testified regarding the items found in the black bag. Cruz-Quinones stated that there were 115.64 grams of methamphetamine in the plastic bags, 66 pills containing fentanyl, and 22 pills containing oxycodone. At Defendant's home, 0.5 grams of heroin had been found.

Cutshaw testified as a witness for the State and stated that on 9 July 2015, he had failed to appear at a court date in South Carolina and was avoiding law enforcement officers. Defendant picked him up from a hotel around 8:00 p.m., and Cutshaw sold her two ounces of methamphetamine for \$1,200. Cutshaw testified that he loaded the black bag with all the drugs, including those he sold to Defendant. The pair then drove to McDonald's and another hotel. Cutshaw admitted that when he and Defendant were stopped by Detective Garmon, he provided a fake ID and fled the scene.

## STATE V. SOUTHERLAND

### *Opinion of the Court*

On 29 June 2017, the jury convicted Defendant of trafficking in methamphetamine by possession, trafficking in methamphetamine by transportation, conspiracy to traffic in methamphetamine by possession, and possession of heroin. Defendant was found not guilty of trafficking in fentanyl by possession, trafficking in fentanyl by transportation, and possession of oxycodone. The trial court consolidated the trafficking and conspiracy convictions and sentenced Defendant to a term of 70 to 93 months imprisonment. With regard to the possession of heroin conviction, the trial court sentenced Defendant to a term of 6 to 17 months imprisonment, suspended the sentence, and placed her on supervised probation for 36 months. Defendant gave timely notice of appeal.

### **Analysis**

On appeal, Defendant argues that the trial court erred by (1) admitting testimony that in the weeks prior to her arrest she had been seen driving the same Impala that she was driving the night of her arrest; and (2) admitting testimony that Defendant “had been under surveillance by a specialized drug task force for weeks” prior to her arrest. Defendant contends that should this Court determine that she failed to properly object to the testimony regarding her surveillance by law enforcement, the admission of that testimony amounted to plain error.

“The admissibility of evidence is governed by a threshold inquiry into its relevance.” *State v. Griffin*, 136 N.C. App. 531, 550, 525 S.E.2d 793, 806 (citation

omitted), *appeal dismissed and disc. review denied*, 351 N.C. 644, 543 S.E.2d 877 (2000). Pursuant to Rule 401 of the North Carolina Rules of Evidence, relevant evidence means “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C. R. Evid. 401. Generally, relevant evidence is admissible unless excluded by other provisions of the Rules of Evidence. N.C. R. Evid. 402. Nevertheless, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C. R. Evid. 403.

“Whether or not to exclude evidence under Rule 403 of the Rules of Evidence is a matter within the sound discretion of the trial court and its decision will not be disturbed on appeal absent a showing of an abuse of discretion.” *State v. McCray*, 342 N.C. 123, 131, 463 S.E.2d 176, 181 (1995) (citation omitted). Conversely, “[a] trial court’s ruling on relevant evidence is not discretionary and therefore is not reviewed under the abuse of discretion standard.” *State v. Moctezuma*, 141 N.C. App. 90, 94, 539 S.E.2d 52, 55 (2000) (citation omitted). However, it is well established that “[a]lthough the trial court’s rulings on relevancy technically are not discretionary and therefore are not reviewed under the abuse of discretion standard applicable to

Rule 403, such rulings are given great deference on appeal.” *State v. Khouri*, 214 N.C. App. 389, 406, 716 S.E.2d 1, 12 (2011) (citation omitted).

**I. Testimony Regarding Use of Impala on Previous Occasions**

At trial, the following exchange occurred between the prosecutor and Officer Blevins:

[PROSECUTOR]: What type of vehicle did you see her in prior to July 9th, 2015?

[OFFICER BLEVINS]: I believe it was a burgundy four door Chevy Impala, the older squared up style.

[PROSECUTOR]: And was it the same Chevy Impala that you had seen her in on July 9th, 2015?

[OFFICER BLEVINS]: Yes. The tag was DAN1521.

[PROSECUTOR]: Was that the same tag on July 9th, 2015?

[OFFICER BLEVINS]: Yes.

[PROSECUTOR]: How many times prior to July 9th had you seen her driving that vehicle?

[DEFENSE COUNSEL]: Your Honor, I would object, Your Honor. I don't know the relevance of the dates before July 19th [sic] anytime they see her drive or walk on the sidewalk.

[THE COURT]: Overruled.

[OFFICER BLEVINS]: Approximately five times.

[PROSECUTOR]: And when did you see her driving the vehicle?



STATE V. SOUTHERLAND

*Opinion of the Court*

[OFFICER BLEVINS]: A couple times in the shopping center, you know, or a parking lot, and a couple of times during the day with her kids.

At a later point during trial, Defendant objected on relevancy grounds to the State's introduction into evidence of an aerial map of the Matthews area showing where Defendant had been seen driving the Impala on three separate days in June 2015 and where Defendant had been arrested on 9 July 2015. The trial court overruled Defendant's objection, stating that the map was relevant and probative of Defendant's control of the Impala. The court reasoned that "sometimes defendants who are charged with possession of controlled substances in a car, make the argument the car doesn't belong to me." Officer Blevins subsequently testified that not only had Defendant been driving the same Impala in June 2015 at a grocery store, bowling alley, and gas station but that she was also driving the same Impala on the day of her arrest.

Defendant argues that because ownership of the Impala was not contested at trial, Officer Blevins' testimony that she was seen driving it on prior occasions was not relevant to any issue in controversy and was more prejudicial than probative. We disagree.

Testimony that Defendant was seen driving the same Impala prior to 9 July 2015 was relevant to show that she was the custodian of the vehicle where the controlled substances were found and that she had the power to exercise dominion

and control over the contents of the car. *See State v. Hudson*, 206 N.C. App. 482, 490, 696 S.E.2d 577, 583, *disc. review denied*, 364 N.C. 619, 705 S.E.2d 360 (2010) (constructive possession can arise from evidence that a defendant was the custodian of a car); *see also State v. Dow*, 70 N.C. App. 82, 85, 318 S.E.2d 883, 885 (1984) (“A defendant has possession of a controlled substance when he has both the power and intent to control its disposition or use. Possession may be either actual or constructive.” (internal citations omitted)). Furthermore, Officer Blevins testified that he had witnessed Defendant driving the same Impala in various locations throughout Matthews. Therefore, we believe this evidence was relevant, and we hold that the trial court did not abuse its discretion in determining that the probative value of this testimony was not substantially outweighed by the danger of unfair prejudice.<sup>1</sup>

## **II. Testimony Regarding Surveillance of Defendant**

Defendant next argues that testimony from Officer Blevins and Detective Garmon that they were conducting a drug investigation related to Defendant on 9 July 2015 was both irrelevant under Rule 401 and unduly prejudicial under Rule 403 because such testimony impermissibly “suggest[ed] that [she] was a major drug dealer [and] likely tipped the jury in favor of conviction.” Once again, we disagree.

---

<sup>1</sup> For this same reason, we see no error in the trial court’s admission of the aerial map.

At trial, Officer Blevins and Detective Garmon both testified without objection that on 9 July 2015 they were working with the TEU. Officer Blevins described the TEU as “kind of like Vice and Narcotics” with its primary purpose being the reduction of “violent crime by hitting the drug areas and the prostitution areas.” Detective Garmon testified similarly. In addition, Officer Blevins and Detective Garmon both testified without objection that on 9 July 2015 they were conducting a drug investigation regarding Defendant.

Because Defendant failed to object at trial to the testimony she now challenges on appeal, our review is limited to plain error. *See* N.C. R. App. P. 10(a)(4) (“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.”).

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.

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

In other words, Defendant must “show that, absent the error, the jury probably would have returned a different verdict.” *Id.* at 519, 723 S.E.2d at 335. Moreover, to

the extent Defendant argues that the admission of this testimony violated Rule 403, it is well established that a trial court's discretionary ruling is not subject to plain error review. *See State v. Cunningham*, 188 N.C. App. 832, 837, 656 S.E.2d 697, 700 (2008) (stating that plain error review is inapplicable to issues that "fall within the realm of the trial court's discretion[,]” including a trial court's determination as to the admissibility of evidence pursuant to Rule 403 (citation omitted)).

In the present case, the testimony of Officer Blevins and Detective Garmon that they were conducting a drug investigation regarding Defendant on 9 July 2015 was relevant to explain the context surrounding her arrest. Specifically, such testimony was relevant to describe what the officers' duties were that day and why they were following Defendant in separate vehicles prior to her arrest. *See State v. Monk*, 132 N.C. App. 248, 259, 511 S.E.2d 332, 339 (evidence that defendant was on house arrest at time he committed first degree statutory rape and taking indecent liberties with a child offenses was relevant as part of the "chain of circumstances" that established the "context of the crime" (citation and quotation marks omitted)), *appeal dismissed and disc. review denied*, 350 N.C. 845, 539 S.E.2d 1 (1999). Therefore, this argument is overruled.

### **Conclusion**

For the reasons stated above, we conclude that Defendant received a fair trial free from prejudicial error.

STATE V. SOUTHERLAND

*Opinion of the Court*

NO PREJUDICIAL ERROR.

Judges CALABRIA and BERGER concur.

Report per Rule 30(e).