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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-22

Filed: 2 October 2018

Bladen County, Nos. 16 CRS 869, 51072-73

STATE OF NORTH CAROLINA

v.

JAMES AARON BRIGGS

Appeal by defendant from judgment entered 1 August 2017 by Judge Tanya T. Wallace in Bladen County Superior Court. Heard in the Court of Appeals 27 September 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Carole Biggers, for the State.*

*Winifred H. Dillon for defendant.*

DIETZ, Judge.

Defendant James Aaron Briggs appeals his convictions for two counts of obtaining property by false pretense and attaining habitual felon status. Briggs challenges certain testimony by an investigating officer during trial but, as explained below, Briggs failed to preserve his evidentiary challenges for review on appeal, and

he does not argue that we should review these issues for plain error. Accordingly, we find no error in the trial court's judgment.

### **Facts and Procedural History**

Defendant James Aaron Briggs met the victim, Joshua Hurst, approximately three times in May and June of 2016 at an auto shop owned by a mutual acquaintance, Huey Long. The shop was located at Long's residence in Bladenboro and Briggs lived across the street. With Long's permission, Hurst stored his car at the shop and worked on it there. In addition to his vehicle, Hurst kept several personal items, including a car diagnostic device, a knife collection, and tools, in the trunk of his car and around the shop. Long also kept belongings in the shop.

In June 2016, Hurst returned to the auto shop to work on his car and discovered that the door's deadbolt was broken and the door was open. Much of Hurst's property inside was missing, including the car diagnostic device, a security camera system, a television, tools, and an ammunition box containing knives and greeting cards.

Hurst reported the incident to law enforcement and told them that he suspected Briggs broke into the shop. Law enforcement recovered some of Hurst's stolen items from a nearby pawn shop. The owner of the pawn shop identified Briggs as the person who sold the stolen items to him. Law enforcement also recovered some

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items from the pawn shop that belonged to Huey Long, the owner of the auto shop from which Hurst's items were stolen.

The jury found Briggs not guilty of felonious breaking or entering and larceny after breaking or entering and guilty of two counts of obtaining property by false pretense. Briggs subsequently pleaded no contest to attaining habitual felon status, and the trial court sentenced him to 72 to 99 months in prison. Briggs appealed.

**Analysis**

Briggs argues the trial court committed prejudicial error by admitting a law enforcement officer's testimony that he recovered from the pawn shop items belonging to Huey Long, who owned the auto shop from which Hurst's items were stolen. As explained below, Briggs failed to preserve this issue for appellate review.

"[U]nder Rule 103 of the North Carolina Rules of Evidence, error may not be predicated on a ruling admitting evidence unless a timely objection or motion to strike appears in the record." *State v. Reid*, 322 N.C. 309, 312, 367 S.E.2d 672, 674 (1988); *see also* N.C. R. App. P. 10(a)(1); N.C. Gen. Stat. § 15A-1446(a). "A timely objection is one made in apt time, that is, as soon as the opponent has the opportunity to learn that the evidence is objectionable." *State v. Hyder*, 100 N.C. App. 270, 275, 396 S.E.2d 86, 89 (1990). "Failure to make an appropriate and timely motion or objection constitutes a waiver of the right to assert the alleged error on appeal." *State v. Edmonds*, 212 N.C. App. 575, 577, 713 S.E.2d 111, 114 (2011).

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In *State v. Reid*, our Supreme Court held that the defendant's objection was untimely when it was made after the prosecutor asked the witness for his opinion, the witness responded, and the prosecutor had proceeded to the next question. 322 N.C. at 312, 367 S.E.2d at 674. In *State v. Hyder*, the defendant objected after the State's witness had read into evidence the defendant's answers to an officer's questions following his arrest. 100 N.C. App. at 274–76, 396 S.E.2d at 88–89. This Court held that “[t]he objection was simply too late as the defendant was fully aware throughout the reading of the statement that it was an out-of-court statement offered for the truth of the matters contained within it.” *Id.* at 276, 396 S.E.2d at 89.

Here, Briggs did not object until after the prosecutor asked, and the officer answered, two questions revealing that law enforcement recovered items belong to Huey Long from the pawn shop:

[PROSECUTOR]: Okay. And subsequent to Mr. Hurst's property, did you also return property to another individual that you retrieved from the pawnshop?

WITNESS: Yes, sir, I did.

Q. Who was that?

A. Mr. Long, Huey Long.

Q. What did you return to Huey Long?

[DEFENSE COUNSEL]: Objection, Judge.

A. He had --

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THE COURT: All right. Hang on a minute.

A. He had a --

THE COURT: Hold a minute.

WITNESS: Oh, sorry.

THE COURT: Repeat your question, please.

Q. What items did you return to Huey Long?

THE COURT: Overruled. He can answer.

A. A camouflage backpack, a zipper backpack with miscellaneous tools, like hand tools.

Because the officer testified without objection that law enforcement recovered from the pawn shop items that belonged to Huey Long, Briggs failed to preserve his objection to this testimony.

Moreover, “[w]here evidence is admitted without objection, the benefit of a prior objection to the same or similar evidence is lost, and the defendant is deemed to have waived his right to assign as error the prior admission of the evidence.” *State v. Wilson*, 313 N.C. 516, 532, 330 S.E.2d 450, 461 (1985). Here, on redirect examination, the officer testified without objection that items retrieved from the pawn shop belonged to Long:

[PROSECUTOR]: All right. And with the exception of an actual bag -- not the tools, but a bag was given to Mr. Huey Long?

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[DEPUTY BRISSON]: Right. Assorted tools were in the bag as well.

Q. But those were --

A. Yes. When we -- when the victim and I went to Pawn South and recovered the property, he said some of the property in the bag was his, but the bag and --

[DEFENSE COUNSEL]: Objection.

A. -- the contents of --

THE COURT: Sustained.

We acknowledge that both on direct examination and redirect examination, Briggs objected to a portion of the challenged testimony. And we acknowledge that, from our review of the transcript, the prosecutor's questions may have come in quick succession, making it difficult for Briggs's counsel to object immediately after the first of those questions. But in this circumstance, defense counsel must make a record of that fact and explain to the trial court—and, in turn, this Court on appellate review—which specific questions and answers were objectionable. Without doing so, this Court, relying solely on the trial transcript, must treat objections as being directed solely at the question or answer that preceded it. Doing so here, we hold that Briggs did not preserve his objection to the testimony that some items recovered from the pawn shop belonged to Huey Long.

Having determined that Briggs did not preserve these issues for appellate review, we turn to whether we can review them for plain error. “In criminal cases, an

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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.” *State v. Maloney*, \_\_ N.C. App. \_\_, \_\_, 801 S.E.2d 656, 659 (2017). Here, Briggs has not specifically and distinctly alleged that the admission of Deputy Brisson’s testimony amounted to plain error. Indeed, Briggs’s brief contains no reference to the plain error standard at all. Accordingly, we conclude that Briggs is not entitled to plain error review. *See State v. Davis*, 202 N.C. App. 490, 498, 688 S.E.2d 829, 835 (2010). We therefore find no error in the trial court’s judgment.

**Conclusion**

We find no error in the trial court’s judgment.

NO ERROR.

Judges STROUD and MURPHY concur.

Report per Rule 30(e).