An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-631

Filed: 15 January 2019

Randolph County, No. 16CRS52805

STATE OF NORTH CAROLINA

v.

JAMES COLEMAN HUGHES, Defendant.

Appeal by Defendant from judgment entered 13 March 2018 by Judge V. Bradford Long in Randolph County Superior Court. Heard in the Court of Appeals 28 November 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tammera S. Hill, for the State.

Richard Croutharmel, for defendant-appellant.

HUNTER, JR., Robert N., Judge.

James Coleman Hughes ("Defendant") appeals following his conviction for failing to report a new address as sex offender. On appeal, Defendant argues the trial court plainly erred in allowing contradictory hearsay testimony. We find no plain error.

I. Factual and Procedural Background

On 1 May 2017, a Randolph County Grand Jury indicted Defendant for failing to report a new address, in violation of N.C. Gen. Stat. § 14-208.11(A)(2) (2017). On 12 March 2018, Defendant waived his right to a jury trial.

The court called Defendant's case for trial on 13 March 2018. The State called Catha Wright, a deputy sheriff with the Randolph County Sheriff's Office. Wright worked as the sex offender registry officer. Wright knew Defendant because he registered in the North Carolina Sex Offender Registry. Through Wright's testimony, the State admitted a certified copy of Defendant's 1995 conviction for indecent liberties with a child. The State also admitted a copy of the North Carolina Duty to Register form. Defendant initialed on the page instructing sex offenders to periodically inform the registry of his whereabouts.

Prior to March 2016, Defendant lived "[i]n various places staying with friends occasionally." On 3 March 2016, Defendant filled out a change of address form and updated his address to 2272 Woods Stream Lane in Asheboro. On 12 May 2016, Defendant certified he lived at 2272 Woods Stream Lane.

On 24 May 2016, Sergeant Brian Arrington of the Randolph County Sheriff's Office, conducted a home visit for Defendant, in an effort to confirm Defendant's whereabouts. Arrington filled out a "home verification address visit" form and stated, "Has moved out a week ago." Arrington gave this form to Wright.

To confirm Arrington's information, on 20 June 2016, Wright visited 2272 Woods Stream Lane. Wright spoke with Defendant's brother, who told her Defendant "was living outside of the home on the premises in the woods behind the house[.]" Defendant's brother also told Wright he had not seen Defendant "in a couple of weeks." Defendant's brother did not give "any indication as to where the defendant had moved to[.]"[1] Based on that conversation, Wright placed Defendant "in a status of unknown address[.]" Wright also went to a magistrate, seeking an arrest warrant. On 1 August 2016, after being released from custody, Defendant updated his address to 222 Tall Pine Street.[2] From 3 March 2016 to 1 August 2016, Defendant did not fill out a change of address form.

The State called Arthur Lucas, Jr., Defendant's half-brother. In March 2016, Defendant moved onto Lucas's property. However, Defendant did not live in Lucas's home.

On 24 May 2016, Sergeant Arrington came to Lucas's home to "do a check" on Defendant. Lucas and Arrington spoke on the front porch. Lucas told Arrington he did not know where Defendant was.

About one month later, Wright and Lieutenant Bernie Maness came to Lucas's home. Lucas "had no idea where he was at[,]" and "do[es]n't keep tabs on him."

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[1] This wording is from counsel's question.

[2] Wright did not testify as to the date officers arrested Defendant. The record shows officers arrested Defendant on 6 July 2016.

Although Defendant sometimes did "some small things" around Lucas's home, Lucas did not know where Defendant lived. He had not seen Defendant in a week. Lucas also did not know where Defendant moved after being released from jail. Lucas and Defendant did not stay in contact.

The State called Arrington. On 24 May 2016, Arrington and a U.S. Marshal went to Lucas's home. Arrington spoke with Lucas and told him they were conducting "an address verification for the registered sex offender's list." Lucas told Arrington that Defendant moved out the week before. Lucas also "stated that he and a girl friend or he had left with a girl friend and was living . . . somewhere behind the ABC store in Asheboro City."

The State next called Bernie Maness, a captain with the Randolph County Sheriff's Office. On 20 June 2016, Maness and Wright conducted a home visit for Defendant at Lucas's home. Maness and Wright spoke with Lucas, who told them that Defendant was not at the home and "that he hadn't seen him."

The State rested. Defendant moved to dismiss. The court denied Defendant's motion.

Defendant testified on his own behalf. In March 2016, Defendant moved to 2272 Woods Stream Lane in Asheboro. His brother lived in a home with his children, and Defendant "camped out" in a tent in the "[b]ack in the woods." Neither his brother nor officers came out to see Defendant in his tent. Defendant sometimes

showered at a men's shelter. Defendant "spent a night or two here and there with a girl" or with a friend. However, "not one time was [he] ever gone for a week." After officers arrested him in July, Defendant reported to Wright and listed his address as the Sheriff's Office. Defendant went to stay on Oaky Mountain, which does not have a mailing address, but he told Wright where he was. Defendant rested his case.

The State recalled Wright, as a rebuttal witness. Wright and Defendant did not enter into a "side deal" about not recording his address. If a registrant will be homeless, the registrant must still fill out an address form, and "mark it homeless[.]" However, the mailing address would be listed as the Sheriff's Office. Wright clarified Defendant listed 2272 Woods Stream Lane as his residence on 3 March 2016 and 12 May 2016, and did not change his address to 222 Tall Pine Street until 1 August 2016.

The trial court found Defendant guilty of failure to register as a sex offender. The court sentenced Defendant to 15 to 27 months imprisonment. Defendant gave oral notice of appeal.

II. Jurisdiction

Defendant has an appeal of right to this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1), 15A-1444(a) (2017).

III. Standard of Review

"[A]n issue that was not preserved by objection noted at trial . . . 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) (2017). 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) (quotation marks and citation omitted). "Under the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the [fact-finder] probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (citation omitted).

IV. Analysis

Defendant argues the trial court plainly erred by allowing Arrington to testify as to Lucas's out of court statement. We disagree.

Hearsay is generally inadmissible. N.C. R. Evid. 802 (2017). " 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. R. Evid. 801(c) (2017). Nonetheless, "[i]t is well-settled that a witness' prior consistent statements are admissible to corroborate the witness' sworn trial testimony." *State v. McGraw*, 137 N.C. App. 726, 730, 529 S.E.2d 493, 497 (2000) (citing *State v. Harrison*, 328 N.C. 678, 681, 403 S.E.2d 301, 303 (1991)). "[P]rior consistent statements are admissible even though they contain new or additional information so long as the narration of events is substantially similar to the witness' in-court

testimony." *State v. Williamson*, 333 N.C. 128, 136, 423 S.E.2d 766, 770 (1992) (citations omitted).

At trial, during the State's direct examination of Lucas, the following exchange occurred:

> Q. … If you recall, do you remember if Sergeant Arrington filled out a form in front of you?
>
> A. I'm not, I'm not sure. I don't recall that.
>
> Q. Okay. But your address is the 2272 Wood Stream?
>
> A. Yes.
>
> Q. And [Defendant] had been staying with you?
>
> A. Yes.
>
> Q. And as far as on that form it references your relationship, brother's family; is that accurate?
>
> A. Yeah, he's my half-brother, yeah.
>
> Q. And in the Comment section, "Has moved out a week ago," is that based on something you would have told him?
>
> A. *I don't know*. As I said, I don't keep tabs on him. If he was back there in the tent, I don't know.

(Emphasis added). During the State's direct examination of Arrington, Arrington testified Lucas told him that Defendant moved off of Lucas's property a week earlier, Defendant left with his girlfriend, and Defendant moved to somewhere behind the ABC store.

Defendant contends Lucas's answer on direct examination of "I don't know" "was that he did not know why Sergeant Arrington wrote on the form that Mr. Hughes had moved off the property a week ago." Defendant, thus, argues Arrington's testimony "directly and manifestly contradicted Mr. Lucas's testimony."

Even assuming the trial court erred in permitting this testimony, the error would not amount to plain error. Our review of all the evidence shows the State produced evidence, beyond Arrington's testimony, showing Defendant changed addresses without registering the change of address. Consequently, Defendant fails to "convince this Court not only that there was error, but that absent the error, the [fact-finder] probably would have reached a different result." *Jordan*, 333 N.C. at 440, 426 S.E.2d at 697 (citation omitted). *See also State v. Willard*, 292 N.C. 567, 574, 234 S.E.2d 587, 591 (1977) (explaining when the trial court is the trier of fact, we assume the trial court did not consider incompetent evidence).

V. Conclusion

For the foregoing reasons, we hold the trial court did not plainly err.

NO PLAIN ERROR.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).