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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-16

No. COA20-302

Filed: 2 February 2021

Lincoln County, Nos. 18 CRS 939, 52064

STATE OF NORTH CAROLINA

v.

PAUL EDWARD SWINO

Appeal by defendant from judgment entered 18 December 2019 by Judge Gregory B. Hayes in Lincoln County Superior Court. Heard in the Court of Appeals 12 January 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Scott T. Slusser, for the State.

BJK Legal, by Benjamin J. Kull, for Defendant-Appellant.

ARROWOOD, Judge.

¶ 1

Paul Edward Swino (“defendant”) appeals from judgment entered upon his conviction for felony larceny of a motor vehicle and of having reached the status of being a habitual felon. Defendant contends that the trial court erred in concluding that a Kelley Blue Book report had been properly authenticated and committed plain

error by admitting the Kelley Blue Book report and testimony about the value of a stolen vehicle. We hold that the trial court did not err in concluding that the report had been properly authenticated and did not plainly err in admitting the report and testimony.

I. Background

¶ 2 On 1 October 2018, a Lincoln County grand jury indicted defendant on one count of larceny of a motor vehicle and for having achieved habitual felon status, after three prior convictions for obtaining property by false pretenses, breaking and entering a motor vehicle, and breaking and entering.

¶ 3 The matter came on for trial on 18 December 2019 in Lincoln County Superior Court, the Honorable Gregory B. Hayes presiding. The State's evidence tended to show as follows.

¶ 4 In February 2017, John Adam Neal ("Neal") purchased a 1997 Honda Accord ("the Accord") for \$1,000.00. The previous owner had advertised the Accord on the Internet for \$1,300.00, but after learning that Neal only had \$1,000.00 to pay for the Accord, the owner agreed to sell the Accord for \$1,000.00. Neal testified that he believed the Accord was probably worth \$2,000.00 at the time of the transaction.

¶ 5 In June 2018, Neal was charged with trespassing after an argument with an acquaintance and spent several days in the Lincoln County Detention Center. During his detention, Neal met defendant and became friendly with him. Neal testified that

on 13 June 2018, he ran into defendant at a McDonald's in Lincolnton. Defendant had been released from the Lincoln County Detention Center earlier that day, and asked Neal if he could give defendant a ride. After making several stops, defendant and Neal went to a gas station so that Neal could buy a soft drink. Neal testified that as he entered the gas station, he noticed that defendant had jumped into the driver's seat of the Accord and was beginning to drive away. Neal chased after the Accord saying "please don't do this" but defendant continued to drive away. Neal returned to the gas station and called the police to report that his car had been stolen.

¶ 6

Lincoln County Sheriff's Deputy Daniel Hayes ("Deputy Hayes") was dispatched to the gas station and spoke to Neal to obtain information relating to the Accord and the theft. Deputy Hayes used the CJLEADS database to obtain information relating to the Accord, including the model and vehicle identification number, which he included in an incident report. The case was then assigned to Detective Matthew Burgess ("Detective Burgess") of the Lincoln County Sheriff's Office. Detective Burgess reviewed the incident report and conducted further investigation of the theft of the Accord, including an interview with Neal and review of security camera footage from the gas station.

¶ 7

As part of his investigation, Detective Burgess attempted to assign a monetary value to the Accord. Detective Burgess testified that in vehicle larceny investigations, generally a value has already been placed on the vehicle by either the original

responding officer or by the victim, which Detective Burgess compares to valuations provided by information from an online database. In this case, the investigative report, which was admitted into evidence without objection, reflected that the Accord was valued at \$1,400.00. Detective Burgess testified that he sought to confirm whether this valuation was reasonable by comparing the value with values listed in the online Kelley Blue Book.

¶ 8 Using data provided to him by Neal and contained in the investigative report, Detective Burgess entered the following into the Kelley Blue Book website: 1997 Honda Accord, LX sedan, four-door, gold color, with 147,000 miles. At trial, Detective Burgess also explained that when pricing a vehicle through the Kelley Blue Book website, a user must choose one of four different categories for the vehicle's condition: fair, good, very good, or excellent. Detective Burgess testified that he priced the Accord under the "good" category "because fair is usually it's not running at all" and "from my understanding, [Neal] drove that vehicle from where it was located after it was stolen. So, that to me would fall underneath the good category" Based on the criteria that Detective Burgess entered into the website, the Kelley Blue Book "Private Party Range" for the Accord was \$919.00 - \$2,104.00 and the "Private Party Value" was \$1,512.00.

¶ 9 Defendant objected to the admission of the Kelley Blue Book report. The trial court overruled the objection, concluding that defendant's challenge went to the

weight of the Kelley Blue Book report, not its admissibility. The Kelley Blue Book report was accepted as State's Exhibit 15. The jury was instructed that in order to find defendant guilty of felony larceny of a motor vehicle, it had to find that the Accord was worth more than \$1,000.00. During deliberations, the jury asked to see the Kelley Blue Book report. The jury found defendant guilty of felony larceny of a motor vehicle. Defendant then pled guilty to obtaining habitual felon status. Defendant gave oral notice of appeal.

II. Analysis

¶ 10 Defendant contends that the trial court erred in concluding that the report had been properly authenticated and committed plain error by admitting testimony about the value of the Accord and the Kelley Blue Book report. We disagree.

A. Authentication and Admission of the Kelley Blue Book Report

¶ 11 On appeal, the standard of review of a trial court's decision to exclude or admit evidence is that of an abuse of discretion. *Brown v. City of Winston-Salem*, 176 N.C. App. 497, 505, 626 S.E.2d 747, 753 (2006) (citing *Williams v. Bell*, 167 N.C. App. 674, 678, 606 S.E.2d 436, 439, *disc. review denied*, 359 N.C. 414, 613 S.E.2d 26 (2005)). "An abuse of discretion will be found only when the trial court's decision was so arbitrary that it could not have been the result of a reasoned decision." *Id.* (citation and internal quotation marks omitted). To establish that a trial court's exercise of discretion is reversible error, a defendant "must show harmful prejudice as well as

clear abuse of discretion.” *State v. Williams*, 361 N.C. 78, 80, 637 S.E.2d 523, 525 (2006) (citations omitted). “A defendant is prejudiced . . . when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” N.C. Gen. Stat. § 15A-1443(a) (2019). The burden of showing such prejudice is upon the defendant. *Id.*

¶ 12 We note that there appears to be a conflict in our caselaw regarding whether an abuse of discretion or *de novo* standard of review is appropriate in the context of authentication of documentary evidence. *See In re Lucks*, 369 N.C. 222, 231, 794 S.E.2d 501, 508 (2016) (Hudson, J., concurring). This conflict appears to exist due to the application of different standards of review to two separate but intertwined issues; while the *de novo* standard has been applied to whether evidence has been properly authenticated, an abuse of discretion standard is applied to a trial court’s decision to either exclude or admit evidence. In this case, we do not make a determination about which standard of review should apply because the result would be the same under either standard.

¶ 13 Authentication or identification as required by Rule 901 of our Rules of Evidence is satisfied by “evidence sufficient to support a finding that the matter in question is what its proponent claims.” N.C. Gen. Stat. § 8C-1, Rule 901(a) (2019). Authentication under Rule 901 may be satisfied through evidence “describing a

process or system used to produce a result and showing that the process or system produces an accurate result.” N.C. Gen. Stat. § 8C-1, Rule 901(b)(9). Authentication does not require strict, mathematical accuracy, and a lack of accuracy will generally go to the weight and not the admissibility of an exhibit. *Horne v. Vassey*, 157 N.C. App. 681, 686, 579 S.E.2d 924, 927 (2003) (citation omitted).

¶ 14 With respect to the admissibility of a Kelley Blue Book report, this Court has previously held that the Kelley Blue Book pricing guide falls within the Rule 803(17) hearsay exception. *State v. Dallas*, 205 N.C. App. 216, 220, 695 S.E.2d 474, 477 (2010) (citing N.C. Gen. Stat. § 8C-1, Rule 803(17)). In *Dallas*, the trial court admitted a vehicle owner’s testimony that he had looked up his Honda Accord in the Kelley Blue Book and that it was worth \$1,500.00. *Id.*

¶ 15 In this case, the trial court did not abuse its discretion in concluding that the Kelley Blue Book report was properly authenticated. Detective Burgess provided extensive testimony regarding the contents of the Kelley Blue Book report, as well as the process he utilized to produce the report. Detective Burgess testified that the report was based on information provided by the investigative report and the interview with Neal. This testimony sufficiently described the process Detective Burgess used to generate the report, and any lack of accuracy with the results of the report would go to the weight of the evidence, rather than its authentication or

admissibility. Therefore, we hold that the Kelley Blue Book report was properly authenticated.

¶ 16 Although Defendant concedes that this Court has previously applied the Rule 803(17) hearsay exception to a Kelley Blue Book report, Defendant contends that a Kelley Blue Book report is “fundamentally different from those types of market reports” covered by Rule 803(17). This argument is erroneous and fails to acknowledge that the Kelley Blue Book report admitted in *Dallas* was generated in virtually the same way as the report generated in the present case. Accordingly, we hold that the trial court did not abuse its discretion in admitting the Kelley Blue Book report under Rule 803(17).

B. Testimony Regarding the Accord’s Value

¶ 17 For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citing *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)). “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.” *Id.* (citations and quotation marks omitted). 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. *Id.* (citations and quotation marks omitted).

¶ 18

Defendant assigns error to two specific portions of Detective Burgess's testimony regarding the Accord's value: first, with respect to the value of \$1,400.00 provided by the investigative report, and second, the value provided by a preliminary Kelley Blue Book report prepared during the early stages of Detective Burgess's investigation. The investigative report was admitted into evidence without objection from defendant's trial counsel and was based on information obtained from Neal at or near the time of the incident. Deputy Hayes also testified regarding the creation of the report and Neal testified regarding his estimation of the Accord's value. Additionally, Detective Burgess's testimony regarding the preliminary Kelley Blue Book report simply illustrated that he had used the website in an attempt to determine whether the value provided by the investigative report was accurate. Detective Burgess acknowledged that he did not know the precise mileage of the Accord at the time of the preliminary valuation, and the jury was free to determine what weight, if any, to give this preliminary valuation. Because the investigative report was admitted without objection in addition to further testimony regarding the investigative report and the valuation of the Accord contained therein, defendant is unable to demonstrate that allowing Detective Burgess's testimony was a fundamental error.

III. Conclusion

¶ 19

For the foregoing reasons, we hold that the Kelley Blue Book report was properly authenticated and was therefore admissible and that the trial court did not plainly err by admitting testimony from Detective Burgess regarding valuations of the Accord made in the course of his investigation.

NO ERROR.

Judges DILLON and INMAN concur.

Report per Rule 30(e).