IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-12

No. COA20-196

Filed: 2 February 2021

Union County, Nos. 19 CRS 50564–65, 620

STATE OF NORTH CAROLINA

v.

MARCUS CHAMBERS

Appeal by defendant from judgments entered 9 October 2019 by Judge Kevin M. Bridges in Union County Superior Court. Heard in the Court of Appeals 17 November 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Rebecca E. Lem, for the State.

Patrick S. Lineberry for defendant.

DIETZ, Judge.

¶ 1 Defendant Marcus Chambers appeals his convictions for impaired driving, felony possession of cocaine, and attaining habitual felon status. He argues that the trial court committed plain error by admitting a laboratory report and accompanying expert testimony identifying the substance seized from him as cocaine. At trial,

Chambers stipulated that the expert was qualified and that the methods the expert used were reliable, and he did not object to any of the challenged evidence at trial.

¶ 2 As explained below, the trial court's decision to admit that evidence, in light of the stipulation and the expert's foundational testimony, was well within the trial court's sound discretion. We thus find no error and certainly no plain error.

¶ 3 Chambers also challenges the sentences imposed by the trial court. The State concedes that those sentences contain reversible errors, and we agree. We therefore vacate and remand for resentencing.

Facts and Procedural History

¶ 4 In February 2019, an auto shop employee saw a car drive by the auto shop and crash into a ditch. The employee then saw the driver stumble out of the car and start walking toward the shop. Defendant Marcus Chambers was the driver of that crashed car and the car's only occupant. Chambers approached the auto shop employee and asked her to call a tow truck. The employee went back inside the shop and called 911.

¶ 5 Law enforcement officers arrived roughly fifteen minutes later and found Chambers exhibiting numerous signs of intoxication. Chambers admitted to driving the vehicle, running off the road, and drinking alcohol before the crash. Chambers was unable to complete a field sobriety test because he could not maintain his balance while the officers instructed him on how to perform the tests. The officers then arrested him and transported him to the county jail.

¶ 6 At the jail, Chambers asked to go to the bathroom, and one of the officers escorted him there. While Chambers was in a bathroom stall, the officer saw Chambers reach down and put his hand in his sock. The officer then saw a "small baggy with a white substance" on the ground that was not there before. The officer believed the baggy contained a controlled substance, seized it, and later submitted it to the State crime lab for analysis.

¶ 7 The State charged Chambers with driving while impaired, driving while license revoked, possession of cocaine, and attaining habitual felon status. Before trial, the State gave notice that it intended to present expert testimony from Ashley Lancaster, a forensic scientist at the State crime lab who conducted a chemical analysis of the white substance in the baggy.

¶ 8 At trial, Chambers agreed to sign a series of written stipulations concerning Lancaster's proposed expert testimony that were "done to facilitate the presentation of the case to the jury, and to avoid confusion over uncontested matters of evidence." Chambers stipulated that the item seized from him at the time of his arrest "consisted of . . . a plastic bag corner containing a moist off-white material"; that Lancaster analyzed the seized item; that Lancaster "has sufficient training in drug chemistry and would testify as an expert in the field of forensic science as it pertains to drug chemistry of controlled substances"; that Lancaster "would testify to the methods used to analyze the seized items in this case, and that those methods are standard in

the field of drug chemistry and are considered reliable in the field"; and that Lancaster "would testify that she formed an opinion regarding the seized item in this case and recorded that opinion in her report." The State also asked Chambers to stipulate that Lancaster would testify that the seized substance was cocaine, but Chambers did not agree to that stipulation.

¶ 9 The State called Lancaster as a witness at trial and, after a brief questioning about her credentials and experience, the trial court qualified Lancaster as an expert in "the field of forensic chemistry" and "drug chemistry analysis" based on Lancaster's testimony and the contents of the stipulations. Lancaster then testified about her chemical analysis of the substance seized from Chambers and her conclusion that it contained cocaine. The State also introduced Lancaster's written laboratory report into evidence. That report indicated that the method used was "microcrystalline test, IR." Chambers did not object to Lancaster's qualification as an expert, her expert testimony, or the admission of the lab report.

¶ 10 The jury convicted Chambers on all charges. The trial court arrested judgment on the conviction for driving while license revoked. At sentencing, the trial court accepted a prior record level worksheet that listed Chambers's many prior felony and misdemeanor convictions. Chambers did not sign the worksheet or stipulate to it. The court sentenced Chambers to a term of 44 to 65 months in prison for possession of cocaine, based on his habitual felon status and prior record level. The court found the

existence of two grossly aggravating factors for the impaired driving conviction—that Chambers had been convicted of a prior DWI offense within the past seven years and that he drove with his license revoked. Based on those aggravating factors, the court imposed a sentence of 24 months in prison. Chambers appealed.

Analysis

I. Admission of lab report and expert testimony

¶ 11 Chambers first argues that the trial court committed plain error by admitting the lab report and Lancaster's expert testimony "without a basis establishing that the principles and methods used to analyze the seized item were reliable or reliably applied" as required by Rule 702 of the Rules of Evidence.

¶ 12 Chambers concedes that he did not object to the admission of this evidence and thus we review his argument solely for plain error. *State v. Hunt*, 250 N.C. App. 238, 246, 792 S.E.2d 552, 559 (2016). "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). Our Supreme Court has emphasized that we should invoke the plain error doctrine "cautiously and only in the exceptional case" where the consequences of the error seriously affect "the fairness, integrity or public reputation of judicial proceedings." *Id.*

¶ 13 A trial court's ruling to admit expert testimony under Rule 702 of the Rules of Evidence "will not be reversed on appeal absent a showing of abuse of discretion."

State v. McGrady, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016) (citation omitted). Under Rule 702, expert testimony must satisfy a "three-pronged reliability test": (1) the testimony must be based upon sufficient facts or data; (2) the testimony must be the product of reliable principles and methods; and (3) the expert must have applied the principles and methods reliably to the facts of the case. N.C. R. Evid. 702(a)(1)–(3); *McGrady*, 368 N.C. at 890, 787 S.E.2d at 9. "The precise nature of the reliability inquiry will vary from case to case depending on the nature of the proposed testimony. In each case, the trial court has discretion in determining how to address the three prongs of the reliability test." *Id.*

¶ 14 Importantly, "Rule 702 does not mandate particular procedural requirements, and its gatekeeping obligation was not intended to serve as a replacement for the adversary system." *State v. Gray*, 259 N.C. App. 351, 355, 815 S.E.2d 736, 739–40 (2018) (citation omitted). Instead, "vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof continue as the traditional and appropriate means of attacking shaky but admissible evidence." *Id.* As a result, our "jurisprudence wisely warns against imposing a *Daubert* ruling on a cold record, and we limit our plain error review of the trial court's gatekeeping function to the evidence and material included in the record on appeal and the verbatim transcript of proceedings." *Id.*

¶ 15 With these principles in mind, we turn to Chambers's unpreserved evidentiary

challenge. Chambers contends that the trial court failed to perform its gatekeeper role under Rule 702 because "Lancaster did not testify to the principles and methods she used," did not "provide any indication that she was able to explain the abstract methodology behind whatever techniques she employed," and did not give "any indication any reliable principles or methods were reliably applied to this case."

¶ 16 We reject these arguments. First, Chambers stipulated that Lancaster had "sufficient training in drug chemistry" to "testify as an expert in the field of forensic science as it pertains to drug chemistry" and that Lancaster "would testify to the methods used to analyze the seized items in this case, and that those methods are standard in the field of drug chemistry and are considered reliable in the field." Chambers stated in the written stipulation that, although these facts were incriminating, he stipulated to them to avoid "confusion over uncontested matters of evidence." The trial court was well within its sound discretion to accept that stipulation in lieu of testimony from this forensic expert, particularly on an issue like chemical analysis of narcotics that is routinely the subject of expert testimony.

¶ 17 Given the contents of the stipulation, Lancaster's testimony about her qualifications and her analysis, and Chambers's choice not to challenge Lancaster's testimony or the contents of the lab report, we hold that the trial court's admission of this expert testimony was not an abuse of discretion under Rule 702. Thus, we find no error, and certainly no plain error, in the trial court's admission of this expert

testimony.

II. Calculation of prior record level

¶ 18 Chambers next argues that the trial court erred in the sentence the court imposed for felony possession of cocaine. Chambers contends that the prior convictions used to calculate that sentence are not supported by evidence in the record and that he did not stipulate to those prior convictions. The State concedes error, and we agree.

¶ 19 "The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists." N.C. Gen. Stat. § 15A-1340.14(f). The State may prove the existence of a prior conviction by stipulation of the parties or through various records. *Id.* But, importantly, the statute "requires more than the State's unverified assertion that a defendant was convicted of the prior crimes listed on a prior record level worksheet." *State v. Briggs*, 249 N.C. App. 95, 99, 790 S.E.2d 671, 674 (2016).

¶ 20 Here, Chambers did not stipulate to the existence of the prior convictions listed on the worksheet the trial court used to calculate the sentence. The sentencing transcript indicates that the State provided a printout to the trial court which purportedly contained records of prior convictions listed on the worksheet, but that printout was not admitted into evidence and is not in the record. Additionally, the trial court did not check the box on the prior record level worksheet to indicate that it relied on "the State's evidence of the defendant's prior convictions from a computer

printout of DCI-CCH." Thus, there are prior convictions listed on the worksheet and included in the calculation of Chambers's prior record level that are not supported by the record under N.C. Gen. Stat. § 15A-1340.14(f). We therefore vacate the sentence for felony possession of cocaine and remand for resentencing.

III. Imposition of Level One sentence for impaired driving

¶ 21 Finally, Chambers argues that the trial court erred in the sentence the court imposed for impaired driving. Chambers contends that the evidence in the record does not support the trial court's finding of an aggravating factor based on a prior impaired driving offense within seven years. Again, the State concedes error, and we agree.

¶ 22 The State bears the burden of proving any grossly aggravating factor beyond a reasonable doubt. N.C. Gen. Stat. § 20-179(o). Here, the trial court imposed its sentence based on two grossly aggravating factors. One of those factors was that Chambers "has been convicted of a prior offense involving impaired driving which conviction occurred within seven (7) years before the date of this offense." But the only record evidence of prior impaired driving convictions occurred more than seven years before the offense in this case. Again, the sentencing transcript indicates that the State gave a printout to the trial court that may have included evidence of a more recent impaired driving conviction. But, again, that printout is not in the record on appeal. We therefore vacate the sentence for impaired driving and remand for

resentencing.

Conclusion

¶ 23 We find no error in the criminal convictions but vacate and remand for resentencing.

NO ERROR IN PART; VACATED IN PART AND REMANDED FOR RESENTENCING.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).