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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-718

No. COA21-82

Filed 21 December 2021

Durham County, Nos. 16 CRS 536, 51355-56

STATE OF NORTH CAROLINA

v.

EFREN ERNESTO CABALLERO

Appeal by defendant from judgment entered 24 January 2020 by Judge Michael O’Foghludha in Durham County Superior Court. Heard in the Court of Appeals 1 December 2021.

*Attorney General Joshua H. Stein, by Solicitor General Fellow Heyward Earnhardt and Solicitor General Ryan Y. Park, for the State.*

*Glover & Petersen, P.A., by James R. Glover, for defendant-appellant.*

ARROWOOD, Judge.

¶ 1 Efren Ernesto Caballero (“defendant”) appeals from his convictions for first-degree murder, attempted murder, and first-degree burglary. Defendant contends the trial court plainly erred in admitting the testimony of Reserve Deputy John Teer (“Deputy Teer”). For the following reasons, we hold defendant received a fair trial free from error.

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I. Background

¶ 2 On 22 February 2016, a Durham County grand jury indicted defendant on charges of murder, attempted murder, first-degree burglary, assault on a female, and assault on a child under 12 years of age. The State ultimately chose not to proceed on the charges of assault on a female and assault on a child under 12 years of age and voluntarily dismissed the charges prior to trial.

¶ 3 The matter came on for trial on 13 January 2020 in Durham County Superior Court, Judge O’Foghludha presiding. The evidence presented at trial tended to show as follows.

¶ 4 Around 9:00 p.m. on 13 February 2016, two phone calls came into the Durham Emergency Communication Center regarding an incident on Glenn Road. The first call, at 9:12 p.m., was from a woman who resided at 3409 Glenn Road and spoke only Spanish. After being connected with a Spanish speaking interpreter, the woman said that her husband had been assaulted by their next-door neighbor and was laying on the grass outside, and that the same neighbor had broken the window in their kitchen door and punched her in the eye. The second call, at 9:13 p.m., was from a man who resided at 3411 Glenn Road. The call was subsequently transferred to the dispatcher for the Durham County Sheriff’s Office. The man, who identified himself as defendant, told the dispatcher that “something’s wrong right here with my

neighbors[,]” with “a lot of screaming” and that it appeared that “somebody was trying to break into” his neighbor’s house.

¶ 5

Deputy Amanda Andrews (“Deputy Andrews”) was the first officer to arrive at the scene. Deputy Andrews saw two men standing in a driveway, one of whom was talking on a cell phone. The man on the phone, later identified as defendant, told Deputy Andrews that he heard a female screaming and saw two males running away from 3409 Glenn Road. Deputy Bobby Bradford and Deputy Teer arrived at the scene shortly thereafter, and all three deputies proceeded to 3409 Glenn Road to investigate. When the deputies went to the door, they met a “Hispanic female, who appeared to be injured. She had a cut approximately . . . one inch [long] and about an inch below her right eye, like a laceration.” Deputy Teer noted that there “was glass all around the doorstep[,]” and that the back door window “had been broken out[.]” The woman was later identified as Liliana Pichardo (“Pichardo”).

¶ 6

Deputy Teer attempted to use the Google Translate application to communicate with Pichardo and was eventually connected to Language Line, a translation service available to the Durham County Sheriff’s Office. After connecting to the Language Line, Pichardo told Deputy Teer that her husband, later identified as Jose Luis Yanez Guerrero (“Guerrero”), was injured outside. Shortly thereafter, defendant came into view in the carport, and Pichardo “immediately pointed straight at the defendant, eyes went wide, and she began exclaiming in Spanish . . . ‘He’s the

one that did it, it's him[.]’ ” Defendant was “cuffed for detention” but “wasn’t under arrest at that point.” Deputy Teer noted that defendant was wearing a light-colored top with stripes, which was “pristine,” but that “his legs, especially his mid thigh down, [we]re covered in mud and brown stains.”

¶ 7

The deputies found Guerrero laying on the ground behind the house. Deputy Teer “checked his pupillary reflex” and his pulse, and “[d]etermined there was nothing [he] could do for him[.]” The deputies determined, and EMS later confirmed, that Guerrero was deceased. An autopsy revealed that Guerrero had twenty stab wounds and six incised wounds, and that a sharp object had penetrated Guerrero’s carotid artery, both of his lungs, his liver, and his diaphragm. At trial, the State’s medical examiner testified that the cause of Guerrero’s death was “[m]ultiple strike force injuries” and that the manner of death was homicide.

¶ 8

After checking on Guerrero, Deputy Teer went back inside to speak with Pichardo and “gain additional information about the scene.” Using the translation service, Pichardo told Deputy Teer “the story from start to finish[.]” Pichardo stated that while she was preparing baby formula, defendant knocked on her door and asked Guerrero for help starting defendant’s car. Guerrero agreed to help, got dressed, and went outside. Shortly thereafter, Pichardo heard screaming from the backyard, went out to the carport to investigate, and saw defendant “apparently hitting,

fighting . . . her husband.” After Pichardo went back inside, defendant attempted to gain entry to Pichardo’s home.

¶ 9

When asked to describe the person that attacked her husband, Pichardo “said it was her neighbor,” and “referred to him by name multiple times[.]” Pichardo stated that the assailant had been wearing “a dark jacket or a dark hoodie with a zipper.” Deputy Teer responded that “he was wearing a white hoodie with stripes on it[.]” to which Pichardo “immediately said he changed his clothes, or he changed out of it. There was no hesitation.” At trial, Deputy Teer explained that Pichardo’s description stuck out to him:

Q. So why did -- so why did that stick in your head? Why did you push her on that?

A. I pushed her on that because frequently, based on my training and experience, I know that if you’re talking to a witness and they will change your story as you suggest things. I mean, it reduces their credibility if you say, well, this -- how about this; and they go with that. Oh yeah, it could have been that, yeah I think he was wearing that. That’s a red flag right there for the credibility of that person.

But this stuck out because she stuck to her story. She was resolute and rock solid, never wavered, never changed what she was saying. She knew who her attacker was. She knew what he was wearing. And when I tried to say, hey, it couldn’t be that, he’s not wearing what you just told me, she said, well, obvious, he changed. He changed his clothing.

The same thing, I also pressed her did you see a weapon; did you see a gun; did you see a knife; was he maybe

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holding it and you can barely see it. I was trying to give her an opportunity to say, yeah, yeah, I think I saw a knife, I think I saw a gun. She didn't. She said she never saw a weapon. At one point she said, well, his hand was in his pocket, but there -- she did not say that she saw a gun or a knife when I was talking with her.

Despite multiple attempts to give her the opportunity to expand her story, she didn't. Her story stayed entirely 100 percent consistent, resolute and solid.

Defendant's trial counsel did not object to this portion of Deputy Teer's testimony.

¶ 10 Defendant was eventually charged and transported to the Durham County Detention Facility to be interviewed and served with warrants.

¶ 11 At trial, Pichardo testified that on the night of 13 February 2016 at around 8:45 p.m., she was preparing baby formula when she and Guerrero heard a loud noise outside. Pichardo testified that Guerrero looked through the window blinds and saw that defendant was knocking on their door. Pichardo stated that defendant "insisted" that Guerrero go outside to help him start his car. Although Pichardo wanted to go outside with Guerrero because she was "afraid," Guerrero told Pichardo to stay inside with their baby because it was "too cold[.]" Pichardo testified that when she saw defendant at the door, he was wearing "a black sweatshirt . . . ." Shortly after Guerrero went outside, Pichardo heard him shouting for help "in a painful way," and when Pichardo went outside, she "saw [defendant] on top of [Guerrero]." Pichardo testified that she shoved defendant off of Guerrero and could see defendant's face and

that he was wearing “[a] black sweatshirt and some light-colored pants.”

¶ 12 On 23 January 2020, the jury found defendant guilty of first-degree murder, attempted first-degree murder, and first-degree burglary. The trial court consolidated the convictions into a single judgment on 24 January 2020 sentencing defendant to a term of life imprisonment without the possibility of parole. Defendant gave notice of appeal in open court.

## II. Discussion

¶ 13 Defendant contends the trial court committed plain error by admitting Deputy Teer’s testimony regarding Pichardo’s statements made on 13 February 2016. We disagree.

### A. Standard of Review

¶ 14 Because defendant did not object to Deputy Teer’s testimony at trial, we review for plain error. N.C.R. App. P. 10(a)(4). “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 affect[s] the fairness, integrity, or public reputation of judicial proceedings.’” *Id.* (alteration in original) (citations omitted).

B. Deputy Teer’s Testimony

¶ 15 Generally, a party may not “s[ee]k to have the witnesses vouch for the veracity of another witness.” *State v. Warden*, 376 N.C. 503, 507, 852 S.E.2d 184, 188 (2020) (alteration in original) (citations and quotation marks omitted). “The jury is the lie detector in the courtroom and is the only proper entity to perform the ultimate function of every trial—determination of the truth.” *State v. Kim*, 318 N.C. 614, 621, 350 S.E.2d 347, 351 (1986) (citations omitted). Based upon this principle, this Court held “[i]t is fundamental to a fair trial that the credibility of the witnesses be determined by the jury.” *State v. Hannon*, 118 N.C. App. 448, 451, 455 S.E.2d 494, 496 (1995) (citation omitted).

¶ 16 Although vouching for another witness’s credibility is generally impermissible, “[p]rior consistent statements of a witness are admissible for purposes of corroboration even if the witness has not been impeached.” *State v. Swindler*, 129 N.C. App. 1, 4-5, 497 S.E.2d 318, 320 (citation omitted), *aff’d*, 349 N.C. 347, 507 S.E.2d 284 (1998). “When so offered, evidence of a prior consistent statement must in fact corroborate a witness’s later testimony.” *Id.* at 5, 497 S.E.2d at 320. “However, there is no requirement that the rendition of a prior consistent statement be identical to the witness’s later testimony[,]” and “[s]light variances in the corroborative



testimony do not render it inadmissible.” *Id.*, 497 S.E.2d at 320-21 (citation omitted). Our Supreme Court has recognized that a “wide latitude” is “grant[ed] to the admission of this type of evidence . . . .” *State v. Martin*, 309 N.C. 465, 476, 308 S.E.2d 277, 284 (1983).

¶ 17 Although defendant places significant emphasis on Deputy Teer’s statement that Pichardo was “rock solid,” the transcript reflects that Deputy Teer testified regarding the consistency of Pichardo’s account and recollection, not the credibility or truthfulness of her statements. Deputy Teer stated that “[d]espite multiple attempts to give [Pichardo] the opportunity to expand her story,” her account “stayed entirely 100 percent consistent, resolute and solid.” Deputy Teer’s testimony did in fact corroborate Pichardo’s testimony at trial, and Deputy Teer did not express any other opinion about the credibility of Pichardo’s statements made on 13 February 2016 or at trial.

¶ 18 Because Deputy Teer’s testimony was limited to corroborating Pichardo’s statements and testimony, defendant has failed to show that he was prejudiced. Accordingly, we hold that the trial court did not commit plain error in admitting Deputy Teer’s testimony.

### III. Conclusion

¶ 19 For the foregoing reasons, we hold that the trial court did not err in admitting Deputy Teer’s testimony.

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NO ERROR.

Judges TYSON and GRIFFIN concur.

Report per Rule 30(e).