IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-84

No. COA20-607

Filed 1 February 2022

McDowell County, No. 18 CRS 50648, 49, 50

STATE OF NORTH CAROLINA,

v.

JAMES WESLEY SANFORD, Defendant.

Appeal by Defendant from judgments entered 19 September 2019 by Judge Marvin P. Pope, Jr. in McDowell County Superior Court. Heard in the Court of Appeals 25 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Gail E. Carelli, for the State.

Sandra Payne Hagood, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Defendant James Wesley Sanford ("Defendant") appeals from his convictions of felony larceny, felony breaking and entering, and injury to real property. On appeal, Defendant contends the trial court erred by granting the State's motions to preclude Defendant from making certain arguments and using photographs for illustrative purposes; failing to instruct the jury on his theory of defense; and allowing

the State's witness to testify over objection. Defendant further contends the trial court deprived him of the right to put forth a defense. After careful review of the record and applicable law, we grant Defendant's petition for writ of certiorari to conduct appellate review and hold Defendant received a fair trial, free from prejudicial error.

I. Factual and Procedural Background

¶ 2 Defendant completes renovations and remodeling work as a trade. In spring 2017, Defendant and David Patneaude ("Patneaude") entered into a verbal agreement in which Defendant would renovate an office building owned by Patneaude, and Patneaude would provide the materials required for completion of the renovations. In exchange for his labor, Patneaude agreed to permit Defendant to showcase and advertise the renovation work in Patneaude's building. The work was scheduled to be competed in October 2017.

¶ 3 Defendant began the renovations in September 2017. In October 2017, Patneaude described Defendant's progress as "slow." Defendant testified that Patneaude failed to provide materials in a timely manner so that he often had to purchase materials for the project out of pocket and wait for Patneaude to reimburse him for the cost later in the month. Defendant also described how Patneaude's delay in purchasing materials needed to finish certain projects caused delays.

¶ 4 In or around February 2018, Patneaude discovered that the renovations had

not been completed, and Defendant did not provide an updated projected completion date. Patneaude called Defendant to ask when the renovations would be completed. Defendant responded that he did not know when the work would be completed, as he had to prioritize various remodeling jobs. Thereafter, Patneaude "started thinking about [his] alternatives" and asked Curtis Grant ("Grant"), another contractor, to complete the renovations.

¶ 5 On March 19, 2018, Patneaude changed the locks to the building so that Defendant could no longer enter the building and posted a letter on the back door of the building, because Defendant usually parked his personal vehicle "by the back door or the back porch." In the letter, Patneaude terminated Defendant's services because he "ha[d] lost all confidence in [Defendant's] ability to complete this project in a professional manner, and certainly . . . in a timely manner." The letter also referenced two missed project completion dates, specifically October 2017 and November 2017, that had been previously discussed with Defendant. In addition to changing the locks, Patneaude instructed Grant to "put two by fours down into the plywood or bead board and so forth." Patneaude and Grant boarded up the door so that Defendant "couldn't shoulder in." Patneaude did not speak with Defendant about terminating their agreement. When asked to explain why he wrote a note, Patneaude said, "I had no way of really contacting him at that point because I wasn't getting any response." Defendant stated that he had not heard from Patneaude since the second week in

March when he changed the locks.

¶ 6 On March 25, 2018, Defendant returned to the building to retrieve some tools he had left there. Defendant testified he used several keys to attempt to unlock the back door but did not see the letter Patneaude had taped there. Failing to gain entry through the back door, Defendant then walked around the building to try to gain access through the front door.

¶ 7 Defendant described the front door of the building as "an old door built in the 1800s." Although there was a lockbox, Defendant did not attempt to use it as he previously had trouble using the lockbox. Defendant knew, however, that he could "just pick[] the door up," "without turning the knob." Defendant testified he believed he still "had complete authority to enter that building." Defendant intended to retrieve a saw he had left in the building. Once inside, Defendant noticed someone else had been working there. Defendant testified that "it was dark back there, but as [he] walked through" it looked as though "[t]hings had changed just a little bit." Defendant went on to say that when he reached the back of the building, he "looked over in the bathroom . . . where [he] was wanting to put a piece of marble threshold [and saw] somebody had taken a piece of tile and set it there like they was [sic] going to try to finish that shower up. All it needed was that threshold." He retrieved his tools and exited through the back door, where he then saw the letter.

¶ 8 After reading the letter, Defendant became concerned he could not finish the

renovation work, because he knew there were faults in the completed work that had not been fixed. He thought, "Well, if I'm not going to be able to fix it, I'm going to make it where somebody else has to fix it, and you can't say that's my work because it wasn't finished." Defendant proceeded to damage the property and to take a "hot water heater, [a] toilet, [a] sink, and a partial box of tiles." Defendant testified at trial that he took those items from the building because he "thought that would be the only pay [he] got."

¶ 9 On March 26, 2018, Patneaude received an urgent phone call from Grant who had arrived at the building early that morning to begin the renovations and discovered the building "had been broken into." Grant told Patneaude there was "lots of damage, lots of – seems like there's a lot of stuff – a lot of damage and . . . 'major vandalism.' " According to Patneaude, a desk was "busted, just destroyed"; "[t]he phone system was busted out"; "[t]here was chemical or water . . . poured out on, on top of stuff and going throughout the building"; and "the Sheetrock was just hit with a hammer up and down . . . where you couldn't just fix it." Patneaude also discovered several items were missing, including doors, interior locks, and a water heater.

¶ 10 On August 6, 2018, Defendant was indicted for injury to real property, felony larceny, and felony breaking and entering. Defendant's trial began on September 16, 2019. That same day, the State moved to preclude Defendant from arguing as a defense that Patneaude should not have engaged in self-help eviction. The trial court

granted the State's motion *in limine*, stating that Defendant "didn't own the property. And the key didn't work. And it's a commercial property, so he needs to go by the regular civil action to find out, you know, why he's being locked out of the building." The following morning, the trial court reiterated its stance on the State's motion but allowed defense counsel to make arguments for a mistake defense.

¶ 11 During defense counsel's direct examination of Defendant, defense counsel moved to introduce photographs for illustrative purposes. The State objected, arguing that the photographs were not produced during discovery. Defense counsel acknowledged he had not produced the photographs during discovery. Defense counsel explained that he did not plan to publish the photographs to the jury, but they were "recently developed" and he planned to use them "for illustrative purposes." Thereafter, the trial court granted the State's motion to exclude the photographs.

¶ 12 Defendant was convicted of injury to real property, felony larceny, and felony breaking and entering on September 19, 2019. On September 20, 2019, Defendant filed a *pro se* notice of appeal. Because Defendant's notice of appeal did not comply with Rule 4 of our rules of appellate procedure, Defendant filed a petition for writ of certiorari on November 12, 2020. In our discretion, we grant Defendant's petition for writ of certiorari and consider the merits of his appeal.

II. Analysis

¶ 13 On appeal, Defendant contends the trial court erred by precluding Defendant

"from arguing his theory of defense and by granting the State's motion to preclude [Defendant's] use of photographs for illustrative purposes"; plainly erred by failing to adequately instruct the jury; and plainly erred by allowing Patneaude to testify on a pure question of law.

A. The State's Motion *in Limine*

¶ 14 Defendant first argues the trial court erred by allowing the State's motion to preclude Defendant from arguing Patneaude could not engage in self-help eviction.[1] We disagree.

¶ 15 Defendant contends the standard of review is *de novo* and asks this Court to review for plain error in the event that Defendant's assignment of error is not preserved for appellate review. *See* N.C. R. App. P. 10. However, the appropriate standard of review of a decision to grant or deny a motion *in limine* is an abuse of discretion. *Smith v. Polsky*, 251 N.C. App. 589, 594, 796 S.E.2d 354, 358 (2017); *State v. Wilkerson*, 223 N.C. App. 195, 198, 733 S.E.2d 181, 183 (2012). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323

[1] "Self-help eviction" is a term used to describe when a landlord forces a tenant from the rental property without utilizing the proper judicial process. *See* "Don't Try This At Home: Self-Help Evictions," UNC School of Government, https://civil.sog.unc.edu/dont-try-this-at-home-self-help-evictions/. One such example of "self-help eviction" would be a landlord changing the locks to a rental property without notice.

N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

¶ 16 To properly preserve an argument relating to a motion *in limine*, the "party objecting to the grant of a motion *in limine* must attempt to offer the evidence at trial to properly preserve the objection for appellate review." *State v. Reaves*, 196 N.C. App. 683, 687, 676 S.E.2d 74, 77 (2009) (citation and emphasis omitted); *see also State v. Hill*, 347 N.C. 275, 293, 493 S.E.2d 264, 274 (1997); *Steele v. Bowden*, 238 N.C. App. 566, 582, 768 S.E.2d 47, 60 (2014); *State v. Conaway*, 339 N.C. 487, 521, 453 S.E.2d 824, 845-46 (1995) (citations omitted).

¶ 17 Here, Defendant did not attempt to introduce any evidence regarding the self-help eviction. Patneaude testified about changing the locks in the building, and briefly spoke of leases. Defense counsel inquired as to the leasing agreement but did not raise self-help eviction during Patneaude's testimony. Accordingly, we hold the issue of whether Patneaude could engage in self-help eviction was not preserved for appellate review. *See Reaves*, 196 N.C. App. at 687, 676 S.E.2d at 77.

¶ 18 Failure to attempt to introduce this evidence at trial, requires that "[D]efendant must show that the trial court committed plain error" by granting the State's motion *in limine*. *Conaway*, 339 N.C. at 521, 453 S.E.2d at 846 (citing *State v. Syriani*, 333 N.C. 350, 376, 428 S.E.2d 118, 132 (1993)). "For error to constitute plain error, a defendant must show that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted).

Fundamental error is prejudicial error, or an error that "had a probable impact on the jury's finding that the defendant was guilty." *Id.* (citation omitted).

¶ 19 In the present appeal, Defendant was not prejudiced by the trial court's decision to preclude him from arguing that Patneaude could not engage in self-help eviction. Defendant testified that he did not intend to cause damage or take items from the building at the time he entered, and that he believed he had "every right" to enter the building. Because Defendant was still permitted to argue his theory of the case, we hold the trial court did not err by granting the State's motion *in limine*. *See id.* at 518, 723 S.E.2d at 334.

B. Motion to Exclude Photographs

¶ 20 Next, Defendant argues that the trial court erred by granting the State's motion to preclude Defendant from using certain photographs for illustrative purposes. We disagree.

¶ 21 Under N.C. Gen. Stat. § 15A-910, the trial court has discretion to prohibit a party from introducing evidence that was not disclosed during discovery. N.C. Gen. Stat. § 15A-910(a)(3) (2020). A trial court's decision to exclude evidence is reviewed for an abuse of discretion. *See State v. Elder*, ___ N.C. App. ___, 2021-NCCOA-350, ¶ 46 (citation omitted); *State v. Pender*, 218 N.C. App. 233, 240, 720 S.E.2d 836, 841 (2012); *State v. Misenheimer*, 304 N.C. 108, 119, 282 S.E.2d 791, 798 (1981) (citation omitted). To constitute an abuse of discretion, the court's ruling must be "so arbitrary

that it could not have been the result of a reasoned decision." *State v. Carson*, 320 N.C. 328, 336, 357 S.E.2d 662, 667 (1987) (citation omitted).

¶ 22 Defendant contends the photographs "were crucial to [Defendant's] defense because they could illustrate [Defendant's] claim that the amount of time it had been taking to complete the renovation was reasonable." However, the length of time of the renovation has little bearing on whether Defendant was criminally liable for the offenses charged. Appellate counsel for Defendant offers no argument as to how these photographs were "crucial" to Defendant's theory of defense. Moreover, Defendant's trial counsel conceded that these photographs were not disclosed during discovery.[2] Accordingly, we hold the trial court did not err by excluding Defendant's illustrative photographs.

C. Jury Instructions

¶ 23 Next, Defendant contends the trial court erred by failing to adequately instruct the jury on his theory of defense. We disagree.

¶ 24 Specifically, Defendant argues the trial court erred by "failing to adequately instruct the jury on [Defendant's] theory of defense and the specific intent required to convict [Defendant] of breaking and entering or larceny." As Defendant did not

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[2] The State objected to the use of the photographs for illustrative purposes, arguing that the State filed a motion requesting reciprocal discovery and that, "To date, [the State] ha[d] not received anything produced by the defendant in this case." After inquiring as to whether defense counsel produced these photographs, defense counsel conceded, "No, sir."

object during the charge conference, we review the trial court's jury instructions for plain error. *See* N.C. R. App. P. 10; *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983).

> [I]t is the duty of the trial court to instruct the jury on all of the substantive features of a case. This is a duty which arises notwithstanding the absence of a request by one of the parties for a particular instruction. All defenses arising from the evidence presented during the trial constitute substantive features of a case and therefore warrant the trial court's instruction thereon.

State v. Loftin, 322 N.C. 375, 381, 368 S.E.2d 613, 617 (1988) (internal citations omitted); *State v. Yelverton*, 274 N.C. App. 348, 351-52, 851 S.E.2d 434, 437 (2020) (citations omitted); *State v. Shaw*, 322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988).

¶ 25 In *State v. Spratt*, 265 N.C. 524, 144 S.E.2d 569 (1965), our Supreme Court noted, "[t]he comprehensiveness and specificality of the definition and explanation of 'felonious intent' required in a charge depends on the facts in a particular case. There must be some explanation in every case." 265 N.C. at 526, 144 S.E.2d at 571 (citing *State v. Lawrence*, 262 N.C. 162, 136 S.E.2d 595 (1964)). "[W]here the evidence relied on by [the] defendant tends to admit the taking but to deny that it was with felonious intent, it is essential that the court fully define the 'felonious intent' contended for by the State and also explain [the] defendant's theory as to the intention and purpose of the taking . . . ." *Id.* at 526, 144 S.E.2d at 571.

¶ 26 Here, Defendant contends that had the trial court fully instructed the jury on

the specific intent requirement, he would not have been convicted of felony breaking and entering as he lacked the requisite intent. Jury instructions may incorporate lesser included charges where all the elements are the same, and the two offenses are clearly delineated. *See State v. Hull*, 236 N.C. App. 415, 422-23, 762 S.E.2d 915, 920-21 (2014); *State v. Corbett*, 227 N.C. App. 226, No. COA12-1122, 2013 WL 1899167 (N.C. Ct. App. May 7, 2013) (unpublished). Instructions will be considered sufficient so long as they are adequate in the explanation of "each essential element of the offense." *State v. Fletcher*, 370 N.C. 313, 325, 807 S.E.2d 528, 537 (2017) (quoting *State v. Walston*, 367 N.C. 721, 731, 766 S.E.2d 312, 319 (2014).

¶ 27 In *State v. Corbett*, 227 N.C. App. 226, No. COA12-1122, 2013 WL 1899167 (N.C. Ct. App. May 7, 2013) (unpublished), this Court recognized that the "jury instructions were a proper explanation of the law" where the court provided the following instructions:

> Felonious breaking and entering differs from burglary in that both a breaking and entry are not necessary. Either is enough. The building involved need not have been a sleeping apartment, and the breaking and entering need not have been in the nighttime . . . . Nonfelonious breaking and entering differs from felonious breaking and entering in that it need not be done with the intent to commit a felony so long as the breaking and entering was wrongful, that is, without any claim of right.

Id. at *2-3.

¶ 28 Here, the trial court's instructions mirror those in *Corbett*. The jury was

instructed on felonious breaking and entering and the trial court incorporated by reference the lesser charge of nonfelonious breaking and entering:

> If you find, find from the evidence beyond a reasonable doubt . . . the defendant broke into and/or entered a building without the consent of the owner, intending at that time to commit larceny, it would be your duty to return a verdict of guilty of felonious breaking or entering. . . . Non-felonious breaking or entering differs from felonious breaking or entering in that it need not be done with the intent to commit a larceny at the time of the breaking and/or entry, so long as it was wrongful; that is, without any claim of right.

The trial court then instructed the jury on larceny.

¶ 29 Although the trial court defined larceny, Defendant contends the trial court failed to "instruct the jury that a reasonable belief, even though incorrect, that the defendant either had consent or a claim of right would be a defense to felonious breaking and entering and felonious larceny." *See State v. Tolley*, 30 N.C. App. 213, 215, 226 S.E.2d 672, 674 (1976) ("A person entering a residence with the good faith belief that he has the consent of the owner or occupant or his authorized agent is not chargeable with the offense of breaking and entering." (citation omitted)).

¶ 30 When the charge as a whole can be construed as contextually clear, isolated portions that may be unclear do not amount to prejudicial error on appeal. *See State v. McWilliams*, 277 N.C. 680, 684-85, 178 S.E.2d 476, 479 (1971); *State v. Chambers*, 52 N.C. App. 713, 721, 280 S.E.2d 175, 180 (1981); *State v. Boykin*, 310 N.C. 118, 125,

310 S.E.2d 315, 319 (1984). In applying this principal, where there is insufficient evidence to support a jury instruction of claim of right defense, this Court has historically held that portion need not be issued as part of the instruction. *See State v. Simpson*, 299 N.C. 377, 384, 261 S.E.2d 661, 665 (1980) (finding that without evidence to support that the taking of a television was temporary, there was no claim of right); *State v. McMillan*, 272 N.C. App. 378, 387, 846 S.E.2d 575, 581 (2020) (holding that omitting the "claim of right" language from the Pattern Jury Instruction was not prejudicial to the defendant because undisputed evidence indicated he lacked the owner's consent).

¶ 31 A review of the record indicates that statements made by Patneaude contradicted the theory that Defendant had consent to be on the premises at the time of the incident. Patneaude had terminated the contract with Defendant, leaving a note on the door and changing the locks. The note specifically stated Defendant was not to enter the building and that he could contact Patneaude about arranging a way to get his property back. Patneaude then hired a new contractor, Grant, to complete the renovations. While Defendant was on the premises, he discovered he was locked out of the building and forcibly gained entry. Defendant further admitted that he intentionally caused damage after he saw the note, and took a box of floor tile, a hose bib, a water heater, and several other items from the building. Defendant further conceded that it took "several trips" for him to remove the items from the building

and load them into his vehicle.

¶ 32 Accordingly, we decline to hold that the trial court committed plain error in instructing the jury when it distinguished between felonious breaking and entering and misdemeanor breaking and entering.

D. Patneaude's Testimony

¶ 33 Defendant next argues the trial court erred by allowing Patneaude, the complaining witness, to testify on a pure question of law. We disagree.

¶ 34 Under the invited error doctrine "a defendant who invites error . . . waive[s] his right to all appellate review concerning the invited error, including plain error review." *State v. Barber*, 147 N.C. App. 69, 74, 554 S.E.2d 413, 416 (2001); *see also State v. Wilkinson*, 344 N.C. 198, 235-36, 474 S.E.2d 375, 396 (1996) (holding that it was invited error when the defendant did not contest the manner in which jury instructions were provided). "Statements elicited by a defendant on cross-examination are, even if error, invited error, by which a defendant cannot be prejudiced as a matter of law." *State v. Gobal*, 186 N.C. App. 308, 319, 651 S.E.2d 279, 287 (2007) (citations omitted); *see also State v. Daughtridge*, 248 N.C. App. 707, 719, 789 S.E.2d 667, 674 (2016).

¶ 35 Notably, defense counsel was examining Patneaude when counsel asked about the parties' agreement. Specifically, defense counsel was asking about the parties' lease, when counsel asked, "Isn't it true that verbal leases are enforceable?"

Accordingly, we hold Defendant's argument is without merit.

E. Right to Present a Defense

¶ 36 Lastly, Defendant argues that the trial court's rulings, taken together, denied Defendant his due process right to put on a defense. We disagree.

¶ 37 Here, Defendant concedes he entered the building, caused damage, and took property, but argues that the trial court's decisions collectively deprived Defendant of presenting his theory of defense. However, a review of the transcript reveals Defendant was permitted to testify that he lacked the requisite intent for felonious breaking and entering and was allowed to present evidence in his defense. Therefore, this argument is overruled.

III. Conclusion

¶ 38 After careful review of the record and applicable law, we hold Defendant received a fair trial, free from error.

NO ERROR.

Judges INMAN and JACKSON concur.

Report per Rule 30(e).