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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-634

Filed 21 March 2023

Union County, No. 20 CRS 50552

STATE OF NORTH CAROLINA

v.

TIFFANY ADONNIS CAMPBELL, Defendant.

Appeal by Defendant from judgment entered 3 March 2022 by Judge Jonathan Wade Perry in Union County Superior Court. Heard in the Court of Appeals on 7 February 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Lisa M. Taylor, for the State.*

*Wyatt Early Harris Wheeler LLP, by Stanley F. Hammer, for Defendant-Appellant.*

CARPENTER, Judge.

Tiffany Adonnis Campbell (“Defendant”) appeals from judgment after a jury convicted her of misdemeanor assault with a deadly weapon. On appeal, Defendant argues the trial court erred by: (1) overruling Defendant’s objection to the State asking a police officer whether Defendant’s description of the events matched the

officer's perception; (2) not intervening *ex mero motu* during the State's cross-examination of Defendant; and (3) amending Defendant's sentence after Defendant appealed because the trial court lacked subject-matter jurisdiction. After careful review, we discern no error.

### **I. Factual & Procedural Background**

Prior to 5 February 2020, Defendant and Edward Rann were in an "off and on" relationship. At around 1:00 a.m. on 5 February 2020, Defendant and Rann engaged in a physical altercation in Rann's home. Defendant and Rann gave competing testimony about the event, both claiming the other was the aggressor. Immediately after the altercation, Rann called 911, and Sergeant Stitt of the Union County Sheriff's Office arrived at Rann's home at around 1:30 a.m.

At trial, Sergeant Stitt testified for the State as follows: On arrival, Sergeant Stitt met Rann in his driveway. Rann told Sergeant Stitt he was looking for a female who attacked him; Rann said she fled from his home. Sergeant Stitt then heard a female's voice across the street from Rann's driveway saying, "help me, help me." Sergeant Stitt asked Rann to go inside. Sergeant Stitt asked the female to come out, and Defendant exited the bushes across the street from Rann's home. Defendant provided her name and told Sergeant Stitt a man tried "to rape her or pull her clothes down." Defendant's clothes did not appear disheveled, and she had no observable scratches or marks on her body.

After speaking with Defendant, Sergeant Stitt entered Rann's home to speak

with Rann. Rann told Sergeant Stitt that Defendant attacked him with a knife, and Defendant was still armed with the knife. Sergeant Stitt then exited Rann's house to speak with Defendant again. Defendant denied having a knife. Sergeant Stitt, however, observed a knife in the bushes where Defendant was previously located.

Sergeant Stitt did not charge Rann or Defendant with a crime. Sergeant Stitt informed Rann, who called 911, that he could file a report at the Union County Magistrate's Office, which is a typical instruction for Sergeant Stitt to give under these circumstances. At around 11:00 a.m. on 5 February 2020, Rann filed a report with the Union County Magistrate's Office, and the Magistrate issued a warrant for Defendant's arrest. On 5 February 2020, Defendant was arrested and charged with misdemeanor assault with a deadly weapon, in violation of N.C. Gen. Stat. § 14-33(c)(1) and second-degree trespass, in violation of N.C. Gen. Stat. § 14-159.13.

On 14 July 2020 in the Union County District Court, Defendant was tried and convicted of misdemeanor assault with a deadly weapon and second-degree trespass. Defendant appealed, and her case was tried at the 21 February 2022 session of Criminal Superior Court in Union County.

On 25 February 2022, the jury found Defendant guilty of misdemeanor assault with a deadly weapon. On 3 March 2022, the trial court entered a suspended sentence, placed Defendant on probation, and ordered Defendant to serve thirty days of active confinement in the Union County Jail as a special probation sentence. Defendant orally appealed on 3 March 2022.

On 22 March 2022, the trial court amended the judgment, in which it modified the original sentence of 30 days of imprisonment to 120 days of imprisonment, suspended subject to the regular terms and conditions of probation and included as a as a special probation sentence that Defendant serve 30 days active confinement in the Union County Jail. Defendant's requirement to serve 30 days of active confinement in the Union County Jail as a term of special probation was unchanged from the original judgment entered by the trial court. In other words, the trial court adjusted the "suspended sentence" to 120 days so the active confinement would be no more than one quarter of the maximum imprisonment. During the 22 March 2022 hearing, the trial court noted the sentence was amended in order to comply with statutory sentencing requirements. Defendant orally appealed the amended judgment.

## **II. Jurisdiction**

This Court has jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2021).

## **III. Issues**

The issues on appeal are whether the trial court erred by: (1) overruling Defendant's objection to the State asking a police officer whether Defendant's description of the events matched the officer's perception; (2) not intervening *ex mero motu* during the State's cross-examination of Defendant; and (3) amending Defendant's sentence after Defendant appealed for lack of subject-matter jurisdiction.

## **IV. Analysis**

**A. Sergeant Stitt's Testimony**

In her first argument, Defendant contends the trial court erred by overruling her objection to the State asking Sergeant Stitt whether Defendant's description of the events matched Sergeant Stitt's perception. We disagree.

"[W]hether a lay witness may testify as to an opinion is reviewed for abuse of discretion." *State v. Washington*, 141 N.C. App. 354, 362, 540 S.E.2d 388, 395 (2000). "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. Elliott*, 360 N.C. 400, 419, 628 S.E.2d 735, 748 (2006) (citation and quotations omitted).

"[Nonexpert] testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue." N.C. Gen. Stat. § 8C-1, Rule 701 (2021). A law enforcement officer may testify about his perception of an investigation, as such testimony is "helpful to the fact-finder in presenting a clear understanding of his investigative process." *State v. O'Hanlan*, 153 N.C. App. 546, 563, 570 S.E.2d 751, 762 (2002).

At Defendant's trial on 21 February 2022, the State called Sergeant Stitt to testify. Defendant asserts Sergeant Stitt's testimony was improper because it allowed him to opine on Defendant's credibility, and his testimony "invad[ed] the province of the jury." The challenged testimony is as follows:

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**Q.** Okay. Did you ask Ms. Campbell what she was doing between the bushes and the house that she was at?

**A.** I did, and her comment was “he tried to rape me or he pulled my clothes down.”

**Q.** Did she indicate who that was?

**A.** She didn’t. She just said, “him” at that point.

**Q.** Okay. Did you make any observations about her?

**A.** I did. Her clothes, even though she was in the bushes, didn’t appear at that point to be disheveled or anything.

**Q.** Did she appear to have been in any kind of physical altercation?

**A.** Not of my observation, no sir.

**Q.** Did you observe any kind of scratches or marks on her body?

**A.** I did not.

**Q.** Did she indicate to you whether or not she had been in a physical altercation?

**A.** She did. She had made the comment that he pulled her pants down or pulled her blouse up and that she was scratched on the chest area or maybe in her face. Using a flashlight, I didn’t observe any injury at that point.

**Q.** Was it your observations that her state at that time was not consistent with what she was telling you?

**DEFENSE COUNSEL.** Objection, your Honor.

**THE TRIAL COURT.** Overruled.

**A.** That’s correct.

Defendant’s counsel did not state her grounds for objecting to the State’s questioning of Sergeant Stitt. The question that prompted objection was this: “Was it your observation that [Defendant’s] state at the time was not consistent with what she was telling you?” This question could be interpreted as the State’s attempt to ascertain whether: (1) Defendant was lying; or (2) Defendant’s appearance, as observed by Sergeant Stitt, indicated to him that she was in a physical altercation.

Prior to the disputed question, the State asked Sergeant Stitt whether

“[Defendant] appear[ed] to have been in any kind of physical altercation[.]” Sergeant Stitt testified that Defendant’s appearance *did not* indicate Defendant was in a physical altercation. Considering the context of the question, the State was not inquiring into Defendant’s character for truthfulness, and Sergeant Stitt did not opine on Defendant’s character for truthfulness. Rather, Sergeant Stitt’s testimony was his opinion concerning a fact at issue: whether it appeared Defendant had been in a physical altercation. *See* N.C. Gen. Stat. § 8C-1, Rule 701.

Here, Sergeant Stitt personally perceived Defendant’s appearance at the incident scene on 5 February 2020. Thus, Sergeant Stitt’s testimony was “rationally based on [his] perception” and “helpful to a clear understanding of . . . the determination of [whether Defendant had been in a physical altercation.]” *See id.* Because a law enforcement officer may testify about his perception in order to present the factfinder with a “clear understanding of his investigative process[.]” Sergeant Stitt’s testimony was admissible. *See O’Hanlan*, 153 N.C. App. at 563, 570 S.E.2d at 762; N.C. Gen. Stat. § 8C-1, Rule 701.

As the trial court’s ruling complied with the North Carolina Rules of Evidence, the trial court’s ruling was not “manifestly unsupported by reason” and therefore not an abuse of discretion. *See Elliott*, 360 N.C. at 419, 628 S.E.2d at 748. Accordingly, the trial court did not err in permitting Sergeant Stitt’s testimony. *See Washington*, 141 N.C. App. at 362, 540 S.E.2d at 395.

#### **B. The State’s Cross-Examination of Defendant**

In her second argument, Defendant contends the trial court erred by not intervening *ex mero motu* during the State's cross-examination of Defendant. We disagree.

The North Carolina Supreme Court “has elected to review unpreserved issues for plain error when they involve either (1) errors in the judge’s instructions to the jury, or (2) rulings on the admissibility of evidence.” *State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996). To find plain error, this Court must determine that an error occurred at trial. *State v. Towe*, 366 N.C. 56, 62, 732 S.E.2d 564, 568 (2012). The defendant must then demonstrate the error was “fundamental,” which means the error “had a probable impact on the jury’s finding that the defendant was guilty” and “seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” *State v. Grice*, 367 N.C. 753, 764, 767 S.E.2d 312, 320–21 (2015). “[T]he plain error rule . . . is always to be applied cautiously and only in the exceptional case[.]” *State v. Odom*, 307 N.C. 655, 660–61, 300 S.E.2d 375, 378 (1983) (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982)).

North Carolina “adheres to the ‘wide-open’ rule of cross-examination[.]” *State v. Penley*, 277 N.C. 704, 708, 178 S.E.2d 490, 492 (1971). “A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.” N.C. Gen. Stat. § 8C-1, Rule 611(b) (2021). Specific instances of a witness’s conduct may be examined on cross-examination to attack the witness’s credibility. N.C. Gen. Stat. § 8C-1, Rule 608(b) (2021). Credibility is “[t]he quality that makes something (as a



witness or some evidence) worthy of belief.” *Credibility*, Black’s Law Dictionary (11th ed. 2019).

Here, Defendant challenges the trial court’s failure to intervene *ex mero motu* during the State’s cross-examination. Specifically, Defendant argues that “were-they-lying” questions are impermissible. Defendant, however, offers no rule of evidence or binding case law to support her position. The challenged portion of her cross-examination is as follows:

**Q.** But you told Deputy Stitt that you didn’t have any weapons; you didn’t have that knife with you, correct?

**A.** I had a bottle of spray, and I had the smaller knife.

**Q.** But you told Deputy Stitt you didn’t, correct?

**A.** I didn’t tell Deputy Stitt anything because he didn’t ask me anything.

**Q.** You were sitting there when Deputy Stitt testified, and he testified that you told him that you didn’t have any weapons on you, correct?

**A.** No, because when I actually walked out and walked up to Mr. Stitt, I didn’t have weapons on me.

**Q.** That’s not my question. You were sitting there when Deputy Stitt testified that he asked you if you had any weapons, and your response was no. You heard that, right?

**A.** I didn’t have weapons on me when I talked to Deputy Stitt. So, I was telling the truth.

**Q.** You didn’t think about telling him, “well there’s a knife in the bush?”

**A.** I did tell him that; that’s how they found it.

**Q.** So Deputy Stitt is lying about that?

**A.** I don’t know what Deputy Stitt is doing, but I told Deputy Stitt that the knife was over there. Otherwise, how would he have found it?

**Q.** Okay. So, my question to you is: Was Deputy Stitt lying on the stand when he gave his answer to my question about whether or not you told him you had a weapon?

**A.** I think it was just miscommunication. I can’t say he

was lying.

Defendant's counsel did not object to this line of questioning.

The specific question at issue is this: The State asked Defendant if “[Sergeant] Stitt [was] lying on the stand when he gave his answer . . . about whether or not [Defendant] told him [Defendant] had a weapon?” Prior to this question, Defendant testified that she told Sergeant Stitt she *was armed*, but Sergeant Stitt testified that Defendant told him she was *unarmed*. In other words, in order to examine Defendant's credibility as a witness, the State asked Defendant who was lying: she or Sergeant Stitt.

As the State questioned whether Defendant lied to Sergeant Stitt and thus whether Defendant was “worthy of belief[,]” the State's question examined Defendant's credibility. Therefore, the State's question about what Defendant told Sergeant Stitt was permissible because specific instances of a witness's conduct may be examined on cross-examination to attack the witness's credibility. *See* N.C. Gen. Stat. §§ 8C-1, Rules 611(b), 608(b); *Penley*, 277 N.C. at 708, 178 S.E.2d at 492.

Accordingly, because the State's question was permissible under the North Carolina Rules of Evidence, the trial court did not plainly err in allowing the State's question. *See Odom*, 307 N.C. at 660–61, 300 S.E.2d at 378; *Towe*, 366 N.C. at 62, 732 S.E.2d at 568.

### **C. Subject-Matter Jurisdiction to Amend Defendant's Sentence**

In her final argument, Defendant contends the trial court lacked subject-

matter jurisdiction to amend her sentence after Defendant gave notice of appeal. We disagree.

“Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal.” *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010) (citation omitted).

After a notice of appeal, a trial court retains jurisdiction to correct a defendant’s sentence when “correcting an error in sentencing in order to comply with a statutorily mandated sentencing requirement.” *State v. McMillan*, 272 N.C. App. 378, 391, 846 S.E.2d 575, 584 (2020). The “statutorily mandated sentencing requirement” in this case is as follows:

[T]he total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed one-fourth the maximum sentence of imprisonment imposed for the offense, and no confinement other than an activated suspended sentence may be required beyond two years of conviction.

N.C. Gen. Stat. § 15A-1351(a) (2021).

Here, the trial court originally sentenced Defendant to thirty days of imprisonment, all of which to be served in active confinement in the Union County Jail. The trial court imposed the thirty days of active confinement as a special probation. At Defendant’s amended judgment hearing on 22 March 2022, the trial court amended the original sentence, noting the sentence was amended to comply with statutory sentencing requirements. Specifically, the trial court amended the

original sentence to impose a term of 120 days of imprisonment with an active confinement of 30 days. The trial court explained the 30 days of active confinement remained unchanged; the change was to the maximum, suspended sentence, which was increased from 30 days to 120 days. The trial court amended the original sentence so the active confinement would be no more than one quarter of the maximum imprisonment.

Because Defendant's sentence of 30 days of active confinement was "imposed as an incident of special probation," the maximum prison sentence had to be at least 120 days in order for the active confinement to be no more than "one-fourth the maximum sentence of imprisonment imposed for the offense[.]" *See* N.C. Gen. Stat. § 15A-1351(a). Therefore, the trial court retained jurisdiction to amend Defendant's sentence, despite the amendment occurring after Defendant's notice of appeal, because the trial court was "correcting an error in sentencing in order to comply with a statutorily mandated sentencing requirement." *See McMillan*, 272 N.C. App. at 391, 846 S.E.2d at 584.

Accordingly, the trial court did not err in exercising jurisdiction to amend Defendant's sentence after Defendant's notice of appeal. *See id.* at 391, 846 S.E.2d at 584.

## **V. Conclusion**

We hold the trial court did not err by overruling Defendant's objection to the State asking Sergeant Stitt whether his perception of the events was consistent with

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Defendant's description. *See Washington*, 141 N.C. App. at 362, 540 S.E.2d at 395. Next, we hold the trial court did not plainly err in failing to intervene *ex mero motu* during the State's cross-examination of Defendant. *See Odom*, 307 N.C. at 660–61, 300 S.E.2d at 378. Lastly, we hold the trial court had subject-matter jurisdiction to amend Defendant's sentence after Defendant gave notice of appeal from the original judgment. *See McMillan*, 272 N.C. App. at 391, 846 S.E.2d at 584.

NO ERROR.

Chief Judge STROUD and Judge RIGGS concur.

Report per Rule 30(e).