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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-566

Filed 18 April 2023

Richmond County, Nos. 18 CRS 51541, 19 CRS 1062

STATE OF NORTH CAROLINA

v.

HOWARD MAURICE HARRIS

Appeal by defendant from judgments entered 15 November 2021 by Judge Nathan H. Gwyn, III, in Richmond County Superior Court. Heard in the Court of Appeals 7 March 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Alex R. Williams, for the State.

Leslie Rawls for defendant.

ARROWOOD, Judge.

Howard Maurice Harris (“defendant”) appeals from judgments following convictions of failure to notify a change of address as a registered sex offender and attaining the status of habitual felon. For the following reasons, we find defendant received a fair trial free from error.

I. Background

On 11 April 2018, defendant, as a registered sex offender, met with Felicia Roller (“Ms. Roller”) of the Richmond County Sheriff’s Office to report that he had moved to a new residence in Hamlet. Once defendant left, Ms. Roller recognized the address as being “in the vicinity of a daycare” and “right behind” an elementary school. Ms. Roller was also concerned that defendant’s PO box was located outside of Richmond County in Carthage, which is located in Moore County.

When defendant returned a few days later, Ms. Roller explained that he could not live at the residence in Hamlet as it was within one thousand feet of the daycare and school. Defendant stated that “he just moved” and would not “mov[e] again unless” the sheriff’s office paid for his moving expenses. Defendant signed the verification form confirming his address, but also stated “he does not live there” nor can he “provide an address or a new PO box.” Ms. Roller asked defendant again what his address was to which he responded, “he didn’t have one[.]” Thereafter, Ms. Roller explained “[t]hat even if you do not have an address to give me, then some form of location . . . or where you will be close to” will suffice. Defendant was unable to provide a new address and “left shortly after that.”

On 19 June 2018, Ms. Roller emailed Lieutenant Christopher Monroe (“Lieutenant Monroe”) to express her concerns pertaining to defendant’s address. Lieutenant Monroe “immediately” went to defendant’s registered address but was unable to make contact with him. Lieutenant Monroe stated that the apartment “sounded hollow” and he “could hear a fire alarm chirping inside.” Lieutenant Monroe

“made several attempts that day[,] . . . left, [and] c[a]me back multiple times [throughout the day] in an attempt to locate [defendant][.]” Lieutenant Monroe also noted that “[t]here was no evidence of a vehicle belonging to [defendant]” at that location. For the next two days, Lieutenant Monroe attempted to locate defendant at the Hamlet residence but was unable to do so.

Next, Lieutenant Monroe “resort[ed] to other options” to try to locate defendant. Using state database resources, he found an address in Southern Pines associated with defendant and proceeded to that location, but defendant was not there. Lieutenant Monroe’s next stop was a location in Carthage.

Upon arriving at the location in Carthage, Lieutenant Monroe spoke with an individual who identified herself as defendant’s mother-in-law, Irene. Over defense counsel’s objection, Lieutenant Monroe testified that Irene said defendant “had been living at that address[.]” Lieutenant Monroe left his contact information with Irene and “told her to have [defendant] get in contact with [him].” Defendant subsequently called Lieutenant Monroe that day at 2:07 p.m. and he was asked to come to the Richmond County Sheriff’s Office the next day to discuss his “whereabouts” as Lieutenant Monroe was not “able to find him” at his reported residence.

When they met the following day, Lieutenant Monroe asked to speak with defendant in an interview room and explained that their conversation would be audio and video recorded. Lieutenant Monroe went over the *Miranda* rights waiver with

STATE V. HARRIS

Opinion of the Court

defendant, “and after reading each individual right” to defendant, defendant advised that he understood and signed the waiver.

In the interview, defendant stated “that he stayed two nights” in a Walmart parking lot, and that “he had been staying” in Carthage with his wife “two years prior to that.” Lieutenant Monroe explained to defendant how “that was not proper” and in order to be in compliance he needs to be at the address he reported. Following the interview, defendant was charged with failing to notify a change of address. Defendant was indicted by a grand jury on 6 August 2018 for this offense and subsequently indicted for being a habitual felon on 3 September 2019. The matters came on for trial on 8 November 2021, Judge Gwyn presiding.

Prior to trial, defendant filed a motion to suppress the statements he made to Lieutenant Monroe. Defendant alleged he “was not in a position to make a valid waiver of his Miranda rights[,] . . . [and] was confused” on why he had to appear at the sheriff’s office, and “d[id] not . . . understand that . . . he was not required to speak with [Lieutenant Monroe].” On 8 November 2018, following a hearing on the motion to suppress, the trial court denied the motion and rendered its ruling and findings in open court.

Defendant was found guilty of failing to register a change of address on 15 November 2021 and pleaded guilty to attaining the status of habitual felon. Defendant timely appealed on 18 November 2021.

II. Discussion

Defendant contests the denial of his motion to suppress, testimony repeatedly referring to him as a recidivist, and the purported inadmissible hearsay statement of Irene. Defendant argues that without this evidence, a reasonable possibility exists that the jury would have reached a different verdict. We disagree.

A. Motion to Suppress

Defendant contends the trial court erred in denying his motion to suppress the statements he made to Lieutenant Monroe. Specifically, defendant contends that the trial court's lack of factual findings illustrate that the court did not adequately consider "the issues regarding his mental state and confusion." Defendant asserts "he was confused, did not understand he could decline to speak with the deputy, and spoke slowly and haltingly[,] thus, "he did not knowingly and voluntarily waive his Miranda rights." We disagree.

The standard of review of a motion to suppress is "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence," which are "conclusively binding on appeal," and whether those facts "support the judge's ultimate conclusions of law." *State v. Washington*, 193 N.C. App. 670, 672, 668 S.E.2d 622, 624 (2008) (citation and internal quotation marks omitted), *appeal dismissed and disc. review denied*, 674 S.E.2d 420 (Mem) (2009).

When the competency of evidence is challenged and the trial judge conducts a voir dire to determine admissibility, the general rule is that he should make findings of fact to show the bases of his ruling. If there is a material conflict in the evidence on voir dire, he must do so in order to

STATE V. HARRIS

Opinion of the Court

resolve the conflict. *If there is no material conflict in the evidence on voir dire, it is not error to admit the challenged evidence without making specific findings of fact[.] . . .* In that event, the necessary findings are implied from the admission of the challenged evidence.

State v. Rollins, 200 N.C. App. 105, 110, 682 S.E.2d 411, 415 (2009) (emphasis added) (citation and internal quotation marks omitted).

Here, there were no material conflicts in the evidence as the trial court watched the video interview with Lieutenant Monroe prior to determining that defendant knowingly and voluntarily waived his *Miranda* rights. The trial court's ruling, in pertinent part, stated:

[Defendant], as a result of th[e] communication [that Lieutenant Monroe was looking for him][,] came to see Lieutenant Monroe voluntarily at the Richmond County sheriff's department. . . .

That prior to any questions being asked of . . . [defendant], a standard *Miranda* rights form used routinely by the Richmond County sheriff's office was used[.] . . .

Thereafter, several different occasions during the interview, [Lieutenant Monroe] expressed that [he] was not there to violate [defendant's] rights in any way, then began by, in section one, saying, before we ask you any questions, you must understand your rights. [Defendant] initialed his understanding of that. Secondly, you have the right to remain silent. [Defendant] initialed his understanding of that. Thirdly, that anything you say can be used against you in court. [Defendant] initialed his understanding of that. Fourthly, that you have the right to talk to a lawyer and have the lawyer present with you while you are being questioned. [Defendant] initialed his understanding of that. Fifthly, that if you cannot afford an attorney, one will be appointed to represent you before any

STATE V. HARRIS

Opinion of the Court

questioning, if you wish. [Defendant] initialed his understanding of that. And finally, that he was told, you can decide at anytime [sic] to use these rights and not answer questions or make a statement. [Defendant] initialed his understanding of that.

....

... [Defendant], on the video that the court has seen, signed that voluntarily, [and] dated it the correct date[.] ...

That at no point did the interview or the rights waiver process include any threats, promises or coercion upon [defendant]. That it appeared to the court that [defendant] was speaking in logical response to the questions and communication put to him. He never asked Lieutenant Monroe to stop. All the documents were initialed in the officer's presence. And therefore, based upon those foregoing findings of fact, the court will conclude as a matter of law that [defendant's] waiver of June 22, 2018 was done voluntarily, knowingly and intelligently. . . .

We disagree with defendant's contention that the trial court did not properly consider "his confusion and lack of understanding" in denying his motion to suppress. The trial court's observation that defendant "was speaking in logical response to the questions and communication put to him" signify that the trial court did not consider defendant confused. Furthermore, Lieutenant Monroe expressed repeatedly, and defendant initialed to that understanding, that defendant did not have to answer questions and could terminate the interview at any time.

Accordingly, "[t]here were no material conflicts in the evidence[,] [r]ather, the conflict occurred between how [d]efendant and the trial court interpreted" the facts

set forth. *State v. Shelly*, 181 N.C. App. 196, 205, 638 S.E.2d 516, 523, *disc. review denied*, 361 N.C. 367, 646 S.E.2d 768 (Mem) (2007). Here, the absence of specific findings is not error as “the trial court provided its rationale from the bench[.]” *Id.* Defendant’s argument is overruled.

B. References to Defendant as “Recidivist”

Defendant next argues it was plain error and highly prejudicial for witnesses and the State to refer to defendant as a recidivist because it was “irrelevant” to whether or not he committed the offense of “willfully fail[ing] to notify the sheriff of a change of address.” We disagree.

Because defendant failed to object during trial, we review defendant’s assertion for plain error. N.C.R. App. P. 10(a)(4) (2023).

For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. 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. 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.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citations, brackets, and internal quotation marks omitted).

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less

probable than it would be without the evidence.” N.C. Gen. Stat. § 8C-1, Rule 401 (2022).

The first time defendant was referred to as a recidivist was during Holly Foster’s (“Ms. Foster”) testimony. Ms. Foster explained that as an employee of the “sex offender unit” within the Moore County Sheriff’s Office, she is “responsible for the administrative part of registering a sex offender when they are convicted of a registerable offense.” Ms. Foster also explained that part of her job is to distribute a “Duty to Register packet” and make sure registrants understand how long they are expected to register for: “[t]here is a 30-year registration, which is a regular offender[,] [t]hose folks can petition to come off after ten years. And then there [are] the lifetime registrants, who are recidivists, sexually violent predators, aggravated offenders. They are lifetime and they can never come off.”

Ms. Foster continued to testify that defendant first registered with the Moore County Sheriff’s Office in 2008, moved to Virginia, then returned to Moore County on 17 March 2017 and was given a new registration packet. She also noted the other times defendant changed his address:

[h]e came in to change his address to Virginia in 2008, and then when he came back from Virginia in 2017 in March, he came in. He also came in this February of 2018 and changed his address. He came in this April of 2018 and changed his address to Hamlet. Then he came back in June of 2018 and changed his address back to Carthage.

To illustrate further defendant's duty to register, Ms. Foster stated "[defendant] is classified as a recidivist, so he is on lifetime. He has to do this for his whole life."

Thus, defendant's classification as a recidivist was relevant and probative as it illustrated how long he would be required to register with the corresponding county each time he changed his address. Defendant does not present case law or applicable legal precedent to establish how being classified as a recidivist for purposes of registration is unduly prejudicial or rises to the level of plain error. Defendant's argument is overruled.

C. Hearsay

Finally, defendant asserts the trial court erred in allowing Lieutenant Monroe to testify to Irene's statements about defendant living with her and his wife at the residence in Carthage. Defendant argues this testimony was error as it "was used to establish an element of the charged offense and was prejudicial." We disagree.

We review the admission of evidence over a hearsay objection *de novo*. *State v. Johnson*, 209 N.C. App. 682, 692, 706 S.E.2d 790, 797 (2011) (citation omitted). Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2022). "[S]tatements are not hearsay if they are made to explain the subsequent conduct of the person to whom the statement was directed." *State v. Gainey*, 355 N.C. 73, 87, 558 S.E.2d 463, 473 (citation omitted), *cert. denied*, 537 U.S. 896, 154 L. Ed. 2d 165 (2002).

Here, Lieutenant Monroe's testimony was not offered to prove the truth of the matter asserted, but rather to explain the actions he took in locating defendant and leaving his contact information with Irene. The testimony also illustrated defendant's subsequent conduct in going to the sheriff's office to meet with Lieutenant Monroe the following day. Whether or not defendant actually lived at the residence was irrelevant as he was indicted for reporting a residence and subsequently "mov[ing] from that address without reporting his new address" to the sheriff's office in Richmond County.

Assuming *arguendo*, that the admission of this statement was error, "[a]n erroneous admission of hearsay necessitates a new trial only if the defendant shows that there is a reasonable possibility that without the error the jury would have reached a different result." *State v. Roberts*, 268 N.C. App. 272, 276, 836 S.E.2d 287, 291 (2019) (citation omitted), *disc. review denied*, 374 N.C. 269, 839 S.E.2d 350 (Mem) (2020). In this case, there was overwhelming evidence that defendant did not reside at the residence in Hamlet and that he failed to report a new address where he could be reached. Therefore, any error would not have been prejudicial. Defendant's argument is overruled.

III. Conclusion

For the foregoing reasons, we conclude defendant received a fair trial free from prejudicial error.

NO ERROR.

STATE V. HARRIS

Opinion of the Court

Judge RIGGS concurs.

Judge MURPHY concurs in Parts II-A and II-C, and concurs in result only as to Part II-B.

Report per Rule 30(e).