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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-248

Filed 5 December 2023

Martin County, Nos. 20CRS50284, 50294

STATE OF NORTH CAROLINA

v.

JERMAINE L. SPRUILL, Defendant.

Appeal by defendant from judgment entered 29 March 2022 by Judge Wayland J. Sermons Jr. in Martin County Superior Court. Heard in the Court of Appeals 18 October 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Rory Agan, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Anne M. Gomez, for defendant-appellant.

FLOOD, Judge.

Defendant Jermaine L. Spruill (“Defendant”) appeals from the trial court’s judgment entered upon a jury verdict of first-degree burglary. Defendant argues the trial court erred in denying his Motion to Dismiss for insufficient evidence and plainly erred by allowing inadmissible lay opinion testimony when an officer commented on Defendant’s guilt. As explained in further detail below, the trial court did not err or

plainly err.

I. Factual and Procedural Background

On 4 May 2020, Veronica McMurren (“McMurren”), her boyfriend Apprentice Wilkins (“Wilkins”), and their two children were in their shared apartment. That evening, Wilkins had three people over in the apartment: Glizzoe, Tyrek, and Rico, all of whom, including Wilkins himself, were affiliated with a gang called the Gangster Disciples. The men were engaging in drug transactions and other gang-related conduct.

McMurren testified that she heard the men in the living room become “rowdy” and went in to see what was happening. The apartment visitors had become upset because Glizzoe could not locate the gun he had brought into the apartment and were now searching throughout the apartment. After the visitors refused to leave until they found the gun, McMurren began trying to force them out. As she managed to push the three men out, she tried to lock the door and became aware of “eight or nine” more individuals now outside of the apartment.

Additional members of the Gangster Disciples had been called, readying themselves to “confront someone about a gun.” Several of the members, including Defendant, were driven to the apartment by Nyla Brown (“Brown”), who claimed the men in the car had discussed that “things would pop off.” When McMurren saw Defendant outside of her apartment, she recognized him as “the Big Homie,” the gang member who oversaw the younger members of the Gangster Disciples.

The additional gang members then entered the apartment by force. McMurran was struck by one of the members and fell over a couch. McMurran exclaimed aloud that she intended to call the police if everyone did not vacate the apartment. Everyone started running as she grabbed the phone. She then called the police and went outside.

As the men ran towards the cars waiting outside, several shots were fired in the direction of the apartment. While McMurran could not see who had the gun, she testified a bullet struck a pole only two or three feet from where she stood outside.

Defendant was arrested the next day and charged with first-degree burglary, discharging a firearm into an occupied dwelling, assault with a deadly weapon with intent to kill McMurran and Wilkins, assault on a female, and simple assault of Wilkins. First-degree burglary is the only relevant charge on this appeal.

At trial, the State presented a surveillance video of the 4 May incident. Brown testified the video showed Defendant at the scene with a gun in his hand. Detective Wibbeler (“Wibbeler”), who worked the case, also testified that the video showed Defendant with a weapon.

When Wibbeler was asked why Defendant was charged with the specific crimes at hand, he testified,

[b]ecause it’s clear interviewing the witness or interviewing the witnesses, interviewing the suspect, watching the video, it’s **absolutely clear** that they went there as a gang working together to accomplish this. And we have laws that prevent you from doing that or working

as part of a group to commit violence against individuals. In this particular case, it was **abundantly clear** that [Defendant] was part of the group that went up there with the intent to commit this crime, that **they clearly committed these crimes**, and fled the scene afterwards with no regard of what happened to the people that they shot at.

(emphasis added). Defendant did not object to this testimony. At the close of the State's evidence, Defendant moved to dismiss the case based on insufficient evidence, and the trial court denied Defendant's motion.

The trial court instructed the jury on first-degree burglary, stating that, in order to find Defendant guilty, the jury must find the State presented substantial evidence that:

(1) [D]efendant broke and entered a dwelling house; (2) that the breaking and entering was during night time; (3) that at the time of the breaking and entering, the dwelling house was occupied; (4) that the occupier of the dwelling did not consent to the breaking and entering; and, (5) at the time of the breaking and entering, [D]efendant intended to commit the felony of assault with a deadly weapon with intent to kill within the dwelling house.

The trial court also included instructions for first-degree burglary on the doctrine of concert. The jury returned a guilty verdict, and the trial court entered judgment. Defendant timely appealed.

II. Jurisdiction

Appeal to this Court lies of right from the final judgment of a superior court. N.C. Gen. Stat. § 7A-27(b) (2021).

III. Analysis

On appeal, Defendant first contends the trial court erred in denying his Motion to Dismiss because there was insufficient evidence of first-degree burglary. Second, Defendant contends the trial court plainly erred by allowing Wibbeler to testify that it was “absolutely clear” Defendant was guilty. For the foregoing reasons, we hold the trial court neither erred nor plainly erred.

A. Sufficiency of First-Degree Burglary Evidence

Defendant argues the trial court erred in denying Defendant’s Motion to Dismiss the first-degree burglary charge because the State failed to prove there was intent to commit the offense of assault with a deadly weapon with intent to kill within the apartment.

A trial court’s denial of a motion to dismiss for insufficient evidence is reviewed de novo. *State v. Chekanow*, 370 N.C. 488, 492, 809 S.E.2d 546, 550 (2018). “Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Holmes v. Moore*, 384 N.C. 426, 433, 886 S.E.2d 120, 128 (2023) (citation omitted).

“In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator.” *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (citation omitted). “Substantial evidence is [the] amount . . . necessary to persuade a rational juror to accept a conclusion.” *State v. Golder*, 374 N.C. 238, 249,

839 S.E.2d 782, 790 (2020) (alteration in original) (citation omitted). “In evaluating the sufficiency of the evidence to support a criminal conviction, the evidence must be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom.” *Id.* at 249–50, 839 S.E.2d at 790 (citation omitted).

First-degree burglary requires “(i) the breaking (ii) and entering (iii) in the nighttime (iv) into the dwelling house or sleeping apartment (v) of another (vi) which is actually occupied at the time of the offense (vii) with the intent to commit a felony therein.” *State v. Singletary*, 344 N.C. 95, 101, 472 S.E.2d 895, 899 (1996). The intent to commit a felony must exist at the time of breaking and entering. *Id.* at 101, 472 S.E.2d at 899. Additionally, the doctrine of concert provides that “when two or more persons act together in pursuance of a common plan or purpose, each is guilty of *any crime committed by any other in pursuance of the common plan or purpose.*” *State v. Facyson*, 367 N.C. 454, 460, 758 S.E.2d 359, 363 (2014) (emphasis added) (citation omitted).

Here, for Defendant to have been properly found guilty of first-degree burglary, the State must have proved Defendant, or any person with whom he was in concert, had the intent to commit assault with a deadly weapon with intent to kill when entering the apartment. *See Singletary*, 344 N.C. at 101, 472 S.E.2d at 899.

The evidence showed Defendant and the other associated gang members came to the apartment armed with guns to retrieve what was believed to be a stolen gun.

There was testimony at trial that things were going to “pop off.” Drawing all inferences in favor of the State, this evidence is substantial enough such that a rational juror may accept the conclusion that Defendant, or one with whom he was in concert, had the intent to assault with a deadly weapon with intent to kill at the time of breaking and entering into the apartment. *See Golder*, 374 N.C. at 249, 839 S.E.2d at 790. The trial court, therefore, did not err in denying Defendant’s Motion to Dismiss as there was substantial evidence to submit the issue to the jury. *See Winkler*, 368 N.C. at 574, 780 S.E.2d at 826.

B. Detective Wibbeler’s Testimony

Defendant contends the trial court plainly erred by allowing Wibbeler to testify that it was both “absolutely” and “abundantly clear” Defendant and the other associated gang members “clearly committed these crimes.” Defendant argues he is therefore entitled to a new trial.

This challenge comes after Defendant made no objection at trial to the admission of this testimony, and thus, must be reviewed for plain error. N.C.R. App. P. 10(a)(4) (“In criminal cases, an issue that was not preserved by objection noted at trial . . . nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.”).

“Under a plain error analysis, [a] defendant is entitled to a new trial only if the error was so fundamental that, absent the error, the jury probably would have

reached a different result.” *State v. Jones*, 355 N.C. 117, 125, 558 S.E.2d 97, 103 (2002). “The necessary examination is whether there was a ‘*probable* impact’ on the verdict, not a *possible* one.” *State v. Carter*, 366 N.C. 496, 500, 739 S.E.2d 548, 551 (2013).

North Carolina Rule of Evidence 701 requires that when a witness is testifying as himself and not as an expert, the witness’s opinions or inferences be limited to those “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.R. Evid. P. 701. “Opinion evidence is generally inadmissible whenever the [officer] can relate the facts so that the jury will have an adequate understanding of them, and the jury is as well qualified as the [officer] to draw inferences and conclusions from the facts.” *State v. Lindley*, 286 N.C. 255, 257, 210 S.E.2d 207, 209 (1974) (citation omitted).

To qualify for admission, “the opinion must be helpful to the jury,” rather than testifying as to one’s guilt. *State v. Elkins*, 210 N.C. App. 110, 124, 707 S.E.2d 744, 754 (2011). Furthermore, error in allowing inadmissible testimony is not sufficient grounds for a new trial unless the exclusion of an erroneous statement would likely have produced a different result. *See State v. Watson*, 294 N.C. 159, 165, 240 S.E.2d 440, 445 (1978).

In *Elkins*, the officer testified, “[the defendant] was, indeed, the offender in this case.” 210 N.C. App. at 125, 707 S.E.2d at 755. This Court held this testimony was

STATE V. SPRUILL

Opinion of the Court

inadmissible opinion testimony by the officer, and its admission was error. *Id.* at 126, 707 S.E.2d at 755. This Court reasoned the statement was not helpful to the jury, but instead was “solely and simply an opinion of the ultimate issue of [the] [d]efendant’s guilt[.]” *Id.* at 126, 707 S.E.2d at 755. This Court, however, went on to hold that, regardless of the admission error, the admission did not amount to plain error. *Id.* at 126, 707 S.E.2d at 755. We stated there was “plenary evidence incriminating [the] [d]efendant,” including a surveillance video and other witness testimony, “such that the admission of [the officer’s] statement did not prejudice [d]efendant’s trial,” and did not support that the jury would probably have reached a different result. *Id.* at 126, 707 S.E.2d at 755.

In the present case, Wibbeler first testified it was “absolutely clear” Defendant and the other associated gang members were working together. Wibbeler next claimed, “it was abundantly clear” Defendant was a part of the group, and “they clearly committed these crimes.” Like the officer in *Elkins*, Wibbeler’s testimony was “solely and simply an opinion of the ultimate issue of Defendant’s guilt,” and not helpful to the jury. The jury may draw their own inferences from the *facts* Wibbeler relayed to them, but Wibbeler’s *opinion* of guilt is inadmissible. *See Lindley*, 286 N.C. at 257, 210 S.E.2d at 209.

Despite the inadmissible testimony, there is no plain error. Like in *Elkins*, there was other incriminating evidence against Defendant, such as other witness testimony and the surveillance video. Exclusion of Wibbeler’s testimony does not

support a finding that the jury would probably have reached a different result. Thus, we hold the trial court did not plainly err. *See Elkins*, 210 N.C. App. at 126, 707 S.E.2d at 755.

IV. Conclusion

As there was sufficient evidence for the trial court to deny Defendant's Motion to Dismiss and because exclusion of Wibbeler's testimony does not support a finding that the jury would probably have reached a different result, the trial court neither erred nor plainly erred.

NO ERROR.

Judges COLLINS and GORE concur.

Report per Rule 30(e).