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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-611

Filed 5 March 2024

Davidson County, Nos. 19CRS1000, 19CRS50961, 19CRS50972

STATE OF NORTH CAROLINA

v.

NICHOLAS TITO LAWSON, Defendant.

Appeal by defendant from judgments entered 20 January 2023 by Judge W. Taylor Browne in Davidson County Superior Court. Heard in the Court of Appeals 24 January 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Christine M. Ryan, for the State-appellee.*

*Randolph & Fischer, by J. Clark Fischer, for defendant-appellant.*

GORE, Judge.

In this case, an indictment was issued on 19 May 2019 charging defendant Nicholas Tito Lawson with possession with intent to sell or distribute (“PWISD”) cocaine on 4 December 2018. A superseding indictment alleged PWISD cocaine on 15 February 2019, as well as possession of drug paraphernalia. A subsequent indictment alleged that defendant had attained habitual felon status.

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These cases were called for trial during the 17 January 2023 Criminal Session of the Superior Court, Davidson County. A unanimous jury found defendant guilty of all charges, and further found defendant to have attained the status of habitual felon. The trial court sentenced defendant to two concurrent presumptive range sentences of 111–146 months. Defendant gave oral notice of appeal in open court. This Court has jurisdiction pursuant to N.C.G.S. § 7A-27(b).

Defendant raises two issues on appeal: (i) whether the trial court plainly erred by allowing the State to present inadmissible hearsay from a law enforcement officer about statements made by confidential informants (“CIs”); and (ii) whether defense counsel’s failure to object to the hearsay testimony at issue constituted ineffective assistance of counsel (“IAC”). Upon review, we discern no error.

**I.**

At trial, the State presented testimony from Detective Travis Clodfelter of the Thomasville Police Department. Det. Clodfelter testified his investigation involved two different CIs—CI 107 and CI 508. Det. Clodfelter identified defendant in court as the dealer he investigated.

Det. Clodfelter used CI 107 previously in cases that resulted in arrests and the seizure of drugs. On 4 December 2018, CI 107 approached Det. Clodfelter to provide information that there was an individual named “Tito” who they knew was someone who sold crack cocaine. Det. Clodfelter and another police officer met with CI 107 at an undisclosed location on 4 December 2018 to conduct a “pre-search,” and they

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confirmed CI 107 did not possess any illegal narcotics. An undercover police vehicle was used to transport CI 107. Police monitored a phone call that CI 107 placed to defendant, and CI 107 scheduled a drug buy to take place at the Family Dollar in Thomasville. Defendant had selected the location of the transaction, and CI 107 had ordered \$60.00 of crack cocaine.

Det. Clodfelter stated he observed CI 107 approach defendant's car and give him money, and CI 107 returned with crack cocaine. No arrest was made that day because Det. Clodfelter did not want to name, i.e. "burn," his informant. The drugs purchased in this first "controlled buy" by CI 107 were admitted into evidence as Exhibit 1.

Det. Clodfelter testified that a second controlled buy took place on 15 February 2019. He used the informant designated CI 508 to call defendant and place an order for \$15.00 of crack cocaine. Defendant agreed to meet CI 508 in an Enterprise Rental parking lot in Thomasville. Det. Clodfelter had already obtained warrants for defendant's arrest. Det. Clodfelter observed what appeared to be a meeting between CI 508 and defendant. Det. Clodfelter later met with CI 508 and received crack cocaine.

Approximately 10–15 minutes after the second controlled buy, police conducted a traffic stop of defendant's rental vehicle. Officers recovered two medium-sized bags of suspected cocaine from defendant during a search incident to arrest, which were admitted as Exhibit 3 at trial. They also retrieved a cell phone and digital scale from

the back floorboard of defendant's vehicle. Det. Clodfelter stated digital scales are a normal tool of the drug trade and used to weigh narcotics. The scale had a white powdery substance on it.

After defendant was transported to the police station, officers searched the patrol vehicle. They discovered a bag of suspected cocaine and a bag of suspected marijuana located in the back seat footwell where defendant's feet would have been. Det. Clodfelter testified that defendant had \$1,040.00 on him when he was arrested, including five banknotes with serial numbers that matched those used by police for the second buy.

Directly at issue on appeal, Det. Clodfelter testified—without objection by defendant—about CI statements made during his investigation:

[PROSECUTOR]: On December 4, 2018 — and just so I don't have to say that every time, can we call that the first buy? Is that fair?

[DET. CLODFELTER]: Yes.

[PROSECUTOR]: All right. First buy. You employed the use of CI 107?

[DET. CLODFELTER]: I did.

[PROSECUTOR]: Can you describe what interaction you had with CI 107 back on December 4 of 2018 at the first buy?

[DET. CLODFELTER]: Yes. So prior to this date, this informant is a reliable informant, has done work for us in the past that has resulted in seizures of drugs and arrests. We were approached, explained that they knew an individual by Tito that they knew to [s]ell crack cocaine. . .

And again, without objection:

[PROSECUTOR]: And you testified earlier that you used a different CI; CI 508?

[DET. CLODFELTER]: I did.

[PROSECUTOR]: I'm going to direct your attention to the second buy. What, if any, interaction did you have with 508 on February 15?

[DET. CLODFELTER]: Well, the process is the same. This individual, for whatever reason, was an informant for us, and they too advised an individual by the name Tito, who they identified as Tito Lawson, was in the business of selling crack cocaine in Thomasville. After obtaining that information, we decided to use that informant to make another controlled buy of crack cocaine from Mr. Lawson.

Defendant argues the trial court plainly erred by allowing the State to present inadmissible hearsay to the jury—specifically—CI statements to Det. Clodfelter that characterize him as a drug dealer. In the alternative, defendant argues his counsel's failure to object to the testimony at issue amounts to IAC.

Additionally, defendant elected to testify on his own behalf at trial. He stated he used to sell drugs but stopped in May of 2018. Regarding the first controlled buy that occurred on 4 December 2018, defendant testified he went to Family Dollar to meet a friend. His stated purpose for the meeting was because “[s]he owed me money in the time I was selling drugs. And now I’m not selling drugs no more, I’m kind of broke” and was “calling people who owed me money for my money.” When he arrived at the store, the friend gave defendant \$60.00. Defendant denied giving the friend

anything in exchange for the money.

Regarding the 15 February 2019 second controlled buy, defendant stated he was driving a rental van to visit Charlotte with a friend. He denied having any drugs in his possession when the van was stopped because, “[i]f I had anything on me, sir, I’m running. I’m getting away.” Defendant denied any knowledge of the baggies that were found on the ground where he was searched incident to arrest, and he stated that arresting officers “never said nothing about no baggies.” Defendant testified, “if there was a scale in the car, someone put it in the car.” He stated the currency found on his person came largely from his employment at Tyson Foods. Defendant denied putting drugs on the floorboard of the patrol car that officers used to transport him.

According to defendant, CI 508 was a long-time friend who owed him \$500.00 from prior drug transactions. His purpose in meeting the informant was to collect the preexisting debt. Defendant claimed CI 508 paid him \$100.00 and then left. Defendant denied giving CI 508 any drugs.

On cross-examination, defendant admitted he had sold crack cocaine most of his life, until he allegedly quit five months before the first controlled buy. He denied selling powder cocaine during his time as a drug dealer. Defendant stated he quit selling drugs because he “couldn’t make any money. Everybody owe[s] me money. I couldn’t make no money.” He reiterated that he would have fled if he had possessed illegal narcotics at the time of the 15 February 2019 traffic stop.

## II.

Turning now to our discussion of the issues presented on appeal, defendant first argues the trial court committed plain error by allowing the State to present inadmissible hearsay that prejudicially characterized him as a drug dealer. We disagree.

Because defendant did not object to the admission of Det. Clodfelter's testimony at trial, this Court must review under the plain error standard. *See* 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 this standard of review, defendant "has the burden of showing: (i) that a different result probably would have been reached but for the error or (ii) that the error was so fundamental as to result in a miscarriage of justice or denial of a fair trial." *State v. Jones*, 358 N.C. 330, 346 (2004) (internal quotation marks and citation omitted). "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 (2013).

First, our Rules of Evidence define the term "Hearsay" 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.G.S. § 8C-1, Rule 801(c) (2022). "Out-of-court statements that are offered for purposes other than to prove the truth of the matter asserted are not considered hearsay." *State v. Gainey*, 355 N.C. 73, 87 (2002) (citation omitted). "Specifically, statements of one person to another

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are admissible to explain the subsequent conduct of the person to whom the statement was made.” *State v. Coffey*, 326 N.C. 268, 282 (1990) (internal quotation marks and citation omitted). “Furthermore, the declarations of one person are frequently admitted to evidence a particular state of mind of another person who heard or read them to explain his subsequent conduct.” *State v. Gray*, 55 N.C. App. 568, 573 (1982) (cleaned up).

Here, Det. Clodfelter’s testimony offered by the State at trial was not offered to prove that defendant sold drugs in December 2018 or February 2019, but to prove the Det. Clodfelter *was told* by both informants that defendant was selling drugs. That is to say, the State’s evidence tended to show that Det. Clodfelter “had received information which would justify his forming a reasonable suspicion that defendant was involved in criminal activity. As such, the evidence was not hearsay.” *Id.* Defendant was not charged with any violations based on CI statements, and the statements were not offered to prove that defendant had—in fact—sold the drugs to both CIs in the later controlled buys. The testimony at issue only explains why law enforcement subsequently arranged two controlled buys from defendant.

Assuming, *arguendo*, it was error to admit Det. Clodfelter’s testimony, defendant fails to demonstrate the admission of the testimony at issue amounts to plain error. The State presented significant evidence detailing defendant’s participation in the two controlled buys with CIs, as well as defendant’s possession of a large amount of cocaine powder and cocaine base at the time of his arrest.



Additionally, defendant testified on his own behalf, and against the advice of counsel, that he has previously sold crack cocaine in the Thomasville area. Defendant admitted on cross-examination:

[DEFENDANT]: To be honest, I been selling crack almost all my life. About 15 years, 20 years.

[PROSECUTOR]: About 20 years, you've been selling crack —

[DEFENDANT]: Yes, sir.

Defendant maintains that at the time of both controlled buys he was merely trying to collect money from prior drug deals, and he was no longer an active drug dealer during Det. Clodfelter's investigation. The jury was free to assess defendant's testimony and weigh his credibility accordingly. Omitting any consideration of the challenged testimony at issue on appeal, the State still presented overwhelming evidence of defendant's participation in both drug transactions on 4 December 2018 and 15 February 2019.

In the alternative, defendant asserts his trial counsel's failure to object to the testimony at issue amounts to IAC. Defendant acknowledges that IAC claims are generally not cognizable on direct appeal, and this Court will only reach the merits of IAC claims brought on direct appeal "when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing." *State v. Fair*, 354 N.C. 131, 166 (2001).

Initially, defendant appropriately cites the two-prong test for resolving IAC claims as articulated in *Strickland v. Washington*, 466 U.S. 668 (1984) and *State v. Braswell*, 312 N.C. 553 (1985). Yet defendant does not develop his analysis beyond delivering a single conclusory statement at the end of his brief that “dispassionate review of the record before the Court reveals no reasonable strategic basis for counsel not to object to the disputed testimony and/or request a limiting instruction, thus showing prima facie IAC on the record before the Court.” Defendant begins with an accurate presentation of basic legal principles, but his argument ultimately verges on abandonment. *See* N.C.R. App. P. 28(b)(6).

Regardless, “defendant’s burden to demonstrate prejudice on plain error review is very similar to the defendant’s burden to demonstrate prejudice on direct appeal of an IAC claim . . . .” *State v. Rivera*, 264 N.C. App. 525, 537 (2019).

In reviewing an appeal based on ineffective assistance of counsel, this Court must first determine whether there was a reasonable probability that without counsel’s alleged errors, the outcome of the trial would have been different. If we were to conclude there was a reasonable probability that the outcome would have been different, this Court must consider whether counsel’s actions were in fact deficient. As we have already determined, defendant has failed to show that a different outcome at trial would have occurred if defense counsel had objected to this testimony.

*State v. Carrillo*, 164 N.C. App. 204, 211 (2004) (citation omitted). Here too, notwithstanding our determination that the testimony in question was properly admitted in our analysis above, we discern no reasonable probability that the outcome

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at trial would have been different had the testimony at issue been excluded. Accordingly, defendant's IAC claim is decidedly without merit.

**III.**

For the foregoing reasons, we determine that defendant received a fair trial, free of prejudicial error.

NO ERROR.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).