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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-988

Filed 18 June 2024

Columbus County, No. 20CRS051837

STATE OF NORTH CAROLINA

v.

BETTY BRYANT

Appeal by Defendant from judgment entered 20 April 2023 by Judge James G. Bell in Columbus County Superior Court. Heard in the Court of Appeals 28 May 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Teresa M. Postell, for the State-Appellee.*

*Sam J. Ervin, IV, for Defendant-Appellant.*

COLLINS, Judge.

Defendant Betty Bryant appeals from judgment entered upon a guilty verdict of first-degree arson. Defendant argues that the trial court plainly erred by admitting certain testimony at trial and erred by excluding certain testimony during sentencing. We find no error in part and no plain error in part.

## **I. Background**

Defendant was indicted for first-degree arson. The matter came on for trial on 19 April 2023. The evidence at trial tended to show the following:

Kenneth Pierce and Defendant were in a relationship. Pierce owned a three-bedroom, two-bathroom, double-wide trailer in Tabor City. Pierce and Defendant lived in the trailer with Pierce's stepson, Michael Hill, and his stepson's fiancée, Cornelia Johnson.

On the evening of 25 August 2020, Hill and Johnson pulled into the driveway and heard Defendant and Pierce arguing "really loud" inside the trailer. Hill and Johnson sat in the car for a few minutes until it "seem[ed] like everything [was] trying to calm down[.]" At that point, Johnson went inside the trailer through the side door, and Hill remained in his car to speak with his mother on the phone. After Johnson went inside the trailer, Pierce got into the car with Hill and joined the phone conversation with Hill's mother. Defendant walked up to the car during the conversation and heard that they were speaking with Hill's mother, who is Pierce's ex-wife. Defendant "was very upset" and went back inside the trailer.

Defendant was "cussing and ranting" when Pierce and Hill went inside the trailer a few minutes later, and Pierce told Defendant, "You can just leave[.]" At that point, Defendant "started beating the [kitchen] countertop with a hammer" and said, "If nobody can have this house, I'll burn it down[.]" Defendant then went into the master bedroom and closed the door.

Pierce went into the living room to lie down on the couch, and Hill went into his bedroom where Johnson was resting. Less than fifteen minutes later, Johnson asked Hill whether he smelled smoke. Hill did not smell smoke, but he heard “something just start crackling and popping.” Hill opened the bedroom door and saw that the trailer was “engulfed in smoke[,]” and that black smoke was coming from the master bedroom. Pierce, Hill, and Johnson escaped the trailer through the side door, but Defendant was “nowhere to be found.”

Daniel Vogel, a volunteer firefighter with the Tabor City Fire Department, arrived on scene and determined that there were “smoke-showing flames[,]” and the fire “was visibly showing from the rear right of the structure,” which is where the master bedroom was located. The fire department extinguished the fire, but the trailer was “totally destroyed.” Deputy Fire Marshall Chase Lancaster arrived on scene to investigate the fire and observed that the “right-hand, right-rear corner of the structure had the heaviest damage.” Lancaster determined that the “area of origin,” which is “the area in which the fire started and had the heaviest burn,” was the master bedroom closet.

Detective Adam Sellers with the Columbus County Sheriff’s Office interviewed Defendant the following day. The video recording of that interview was played for the jury. During the interview, Defendant admitted to lighting a piece of paper on fire in the master bedroom closet and then leaving the trailer:

[DEFENDANT]: I was -- well, I was angry with him.

. . . .

[SELLERS]: Okay. And what did you do?

[DEFENDANT]: And I did it.

[SELLERS]: What did you do?

[DEFENDANT]: I got a piece of paper and --

[SELLERS]: You got a piece of paper and then what?

[DEFENDANT]: I -- I light it.

[SELLERS]: You lit it?

[DEFENDANT]: Yeah.

[SELLERS]: Okay. Did you light it at -- where did you light it at? In the bathroom, or did you light it in the bedroom?

[DEFENDANT]: In the closet.

[SELLERS]: In the closet? Okay.

[DEFENDANT]: (indiscernible)

[SELLERS]: Alright. Did you -- you got out of there pretty quick -- out of that -- didn't you?

[DEFENDANT]: I, um -- I left.

[SELLERS]: Yeah. Where did you go when you left?

[DEFENDANT]: I went to my niece house.

After the close of the evidence, the jury deliberated for 18 minutes before returning a guilty verdict. The trial court sentenced Defendant to 56 to 80 months' imprisonment, and Defendant appealed.

## **II. Discussion**

### **A. Trial Testimony**

Defendant first argues that the trial court plainly erred by admitting certain testimony at trial.

“For error to constitute plain error, a defendant must demonstrate that a

fundamental error occurred at trial.” *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). “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.” *Id.* (quotation marks and citations omitted). “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[.]” *Id.* (quotation marks, brackets, and citations omitted).

### ***1. Witness Statements During the Fire***

Defendant argues that the trial court plainly erred by “allowing the admission of evidence that various witnesses asked each other during the fire why Ms. Bryant burned Mr. Pierce’s mobile home.” (capitalization altered).

“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter.” N.C. Gen. Stat. § 8C-1, Rule 602 (2023). “Yet, the Rule’s official commentary states that personal knowledge is not an absolute but may consist of what the witness thinks he knows from personal perception.” *State v. Watkins*, 181 N.C. App. 502, 508, 640 S.E.2d 409, 414 (2007) (quotation marks, brackets, and citations 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) (2023). Hearsay is inadmissible unless

the statement falls within one of the recognized hearsay exceptions. *Id.* § 8C-1, Rule 802 (2023). The “excited utterance” exception permits the admission of statements “relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” *Id.* § 8C-1, Rule 803(2) (2023). For a statement to qualify as an excited utterance, “there must be (1) a sufficiently startling experience suspending reflective thought and (2) a spontaneous reaction, not one resulting from reflection or fabrication.” *State v. Maness*, 321 N.C. 454, 459, 364 S.E.2d 349, 351 (1988) (quotation marks and citation omitted).

*a. Johnson’s testimony*

Here, Johnson testified as follows:

[THE STATE]. Okay. Well, let me ask you this.

Ms. Johnson, you said that you were standing outside with [Hill] and [Pierce], and you said, “We were saying, ‘Why did Betty do this?’”

[JOHNSON]. Right.

[THE STATE]. Okay. And that was you and Mr. Hill?

[JOHNSON]. Yes.

Although Johnson did not know who started the fire, Johnson had sufficient personal knowledge to testify that Defendant started the fire because her testimony consisted of what she thought she knew based on her personal perception of the prior altercation between Defendant and Pierce. *Watkins*, 181 N.C. App. at 508, 640 S.E.2d at 414. Furthermore, Johnson’s statement falls within the excited utterance exception because it was made in response to the fire, and it was made immediately

after escaping from the trailer. N.C. Gen. Stat. § 8C-1, Rule 803(2); *see also State v. Kerley*, 87 N.C. App. 240, 242-43, 360 S.E.2d 464, 465-66 (1987) (holding that a witness's statement that defendant started the fire fell within the excited utterance exception). Accordingly, the trial court did not err by admitting Johnson's testimony.

*b. Vogel's testimony*

Defendant argues that Vogel's testimony was inadmissible because "law enforcement officers may not express any opinion that they believe a defendant to be guilty of the crimes for which the defendant is on trial." (quotation marks, brackets, and citations omitted).

Here, Vogel testified as follows:

[THE STATE]. Okay. All right. So what happens when you get there?

[VOGEL]. Got there, there's smoke-showing flames. It was a double-wide structure. When we got out of the vehicle, getting our gear on, people were outside yelling, "She set the house on fire. She set the house on fire." We made our assessment, decided --

....

[THE STATE]. Do you know who anyone was talking about?

[VOGEL]. The only person, or I say, there was people there in the group. I do not recall exactly who said it.

[THE STATE]. Okay. And did you have any idea who they were talking about at the time?

[VOGEL]. I did not.

Contrary to Defendant's assertions, Vogel did not testify that he believed Defendant to be guilty of the crime for which she was on trial. Rather, he testified that people

were outside yelling, “She set the house on fire. She set the house on fire.” As further discussed above, this statement falls squarely within the excited utterance exception because it was made in response to a startling event while under the stress of excitement caused by the event. N.C. Gen. Stat. § 8C-1, Rule 803(2). Accordingly, the trial court did not err by admitting this testimony.

## ***2. Defendant’s Absence from Trailer***

Defendant argues that the trial court plainly erred by “allowing the admission of evidence that Ms. Bryant had never returned to the scene of the fire and asked ‘what’s going on?,’ thereby suggesting that Ms. Bryant had started the fire.” (capitalization altered).

Even assuming *arguendo* that the trial court erred by admitting the testimony, Defendant cannot establish prejudice in light of the overwhelming evidence of her guilt. The evidence at trial tended to show that Defendant and Pierce were arguing “really loud” inside the trailer on the evening of 25 August 2020. Hill and Johnson pulled into the driveway but remained in the car until it “seem[ed] like everything [was] trying to calm down[.]” At that point, Johnson went inside the trailer through the side door, and Hill remained in his car to speak with his mother on the phone. After Johnson went inside the trailer, Pierce got into the car with Hill and joined the phone conversation with Hill’s mother. Defendant walked up to the car during the conversation and heard that they were speaking with Hill’s mother, who is Pierce’s ex-wife. Defendant “was very upset” and went back inside the trailer.



Defendant was “cussing and ranting” when Pierce and Hill went inside the trailer a few minutes later, and Pierce told Defendant, “You can just leave[.]” At that point, Defendant “started beating the [kitchen] countertop with a hammer” and said, “If nobody can have this house, I’ll burn it down[.]” Defendant then went into the master bedroom and closed the door.

Less than fifteen minutes later, Johnson asked Hill whether he smelled smoke. Hill did not smell smoke, but he heard “something just start crackling and popping.” Hill opened the bedroom door and saw that the trailer was “engulfed in smoke[.]” and that black smoke was coming from the master bedroom. Pierce, Hill, and Johnson escaped the trailer through the side door, but Defendant was “nowhere to be found.”

Vogel determined that there were “smoke-showing flames[.]” and the fire “was visibly showing from the rear right of the structure,” where the master bedroom was located. Deputy Fire Marshall Lancaster observed that the “right-hand, right-rear corner of the structure had the heaviest damage.” Lancaster determined that the “area of origin,” which is “the area in which the fire started and had the heaviest burn,” was the master bedroom closet.

Detective Sellers interviewed Defendant the following day; Defendant admitted that she lit a piece of paper on fire in the master bedroom closet and then left the trailer because she was angry with Pierce.

In light of this evidence, Defendant cannot show that any error had a probable impact on the jury’s finding that she was guilty. *Lawrence*, 365 N.C. at 518, 723

S.E.2d at 334. Accordingly, the trial court did not plainly err by admitting testimony that Defendant did not return to the trailer during the fire.

### **B. Sentencing Testimony**

Defendant next argues that the trial court erred by “sustaining the State’s objection to a question posed during the sentencing hearing inquiring if Mr. Pierce believed that Ms. Bryant posed a threat to the community.” (capitalization altered).

“A judgment will not be disturbed because of sentencing procedures unless there is a showing of abuse of discretion, procedural conduct prejudicial to defendant, circumstances which manifest inherent unfairness and injustice, or conduct which offends the public sense of fair play.” *State v. Jackson*, 302 N.C. 101, 111, 273 S.E.2d 666, 673 (1981) (quotation marks and citation omitted).

The trial court “shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court.” N.C. Gen. Stat. § 15A-1340.16(a) (2023). Mitigating factors that the trial court may consider include:

(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.

(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.

....

(21) Any other mitigating factor reasonably related to the purposes of sentences.

*Id.* § 15A-1340.16(e)(11)-(12), (21) (2023).

Here, the following exchange took place while Pierce was testifying during the sentencing hearing:

[DEFENSE COUNSEL]: Okay. Do you think that she's a threat to the community?

[THE STATE]: Objection. Judge, this does not go to any mitigating factors.

[DEFENSE COUNSEL]: Well, Judge, I know --

[THE STATE]: This is an active block sentence. This is -- this has absolutely nothing to do with any of the numerated mitigating factors that the Court can consider.

[DEFENSE COUNSEL]: Judge, I would argue that, depending -- saying someone should be in custody, say, 38 months or 64 months, it's important to know where they are going to, when they do get out, commit more crimes or not and hurt people. So that's why it would be relevant. But again, I --

[THE COURT]: I'm gonna sustain the objection.

[DEFENSE COUNSEL]: I understand.

Although the trial court excluded this testimony, the trial court considered testimony from Pierce that he had forgiven Defendant. Moreover, the trial court considered testimony from Defendant's niece that Defendant is a "sweet lady" and a "good helper." Another witness also testified that Defendant is a "nice person" and will "help anybody." The trial court ultimately found that there were no mitigating factors present in this case and sentenced Defendant within the presumptive range to 56 to 80 months' imprisonment. As the trial court considered evidence of mitigating factors

present in this case, it did not abuse its discretion by excluding testimony as to whether Defendant posed a threat to the community.

**III. Conclusion**

For the foregoing reasons, we find no error in part and no plain error in part.

NO ERROR IN PART; NO PLAIN ERROR IN PART.

Judge ZACHARY and STADING concur.

Report per Rule 30(e).