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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1040

Filed 18 June 2024

Pitt County, Nos. 22 CRS 53319-20

STATE OF NORTH CAROLINA

v.

CASSANDRA DESHAWN HEGWOOD

Appeal by defendant from judgments entered 11 April 2023 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 2 April 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Frank McQuade, for the State.

Wyatt Early Harris Wheeler LLP, by Stanley F. Hammer, for defendant-appellant.

THOMPSON, Judge.

Appeal by defendant from judgment entered 11 April 2023 by Judge Jeffery B. Foster in Pitt County Superior Court. On appeal, defendant argues that the trial court erred in denying defendant's motions to dismiss the charges of assault inflicting serious bodily injury and conspiracy to commit assault inflicting serious bodily injury, committed plain error in failing to intervene *ex mero motu* during the State's

references to defendant's refusal to speak with police, and committed plain error by failing to instruct the jury on the lesser offense of accessory after the fact to assault inflicting serious bodily injury. After careful review, we conclude that defendant received a fair trial, free from prejudicial error.

I. Factual Background and Procedural History

Defendant and victim were briefly engaged in a relationship in early 2022. In late May of 2022, the relationship ended. On the evening of 7 June 2022, surveillance footage recorded the victim parked in a then-unoccupied parking lot, accompanied by a woman who was not defendant. Approximately five minutes after the victim arrived in the parking lot, security footage captured defendant driving her vehicle into the parking lot, where she parked her vehicle behind defendant's vehicle, blocking his exit route.

Defendant is then seen exiting her vehicle, approaching the driver's side of the victim's vehicle, where she proceeds to talk to an unspecified person inside of the vehicle; the victim then emerged from the passenger side of his vehicle, opened his trunk, and began unloading items from his trunk. While the victim was removing the items from the trunk, an unidentified man in a blue shirt emerged from the rear-passenger side of defendant's car and approached the victim. The unidentified man then attacked the victim, striking him in the face multiple times and knocking him to the ground. Once the victim was on the ground, the unidentified man proceeded to repeatedly strike the victim for approximately twenty seconds. Immediately

thereafter, defendant and the unidentified assailant returned to defendant's vehicle and drove away. The entire incident was over within three minutes. The victim was ultimately hospitalized for nearly a week due to injuries he sustained in the attack, including problems with his vision due to a broken bone below his eye and his inability to eat properly. The victim testified that it took nearly two months to regain vision in his eye, and that his vision "still goes in and out."

Defendant was indicted upon a true bill of indictment by a Pitt County Grand Jury on 12 September 2022 for assault inflicting serious bodily injury, conspiracy to commit assault inflicting serious bodily injury, and communicating threats. The matter came on for trial on 10 April 2023 in Pitt County Superior Court, and on 11 April 2023, the jury returned unanimous verdicts of guilty for the charges of felonious assault inflicting serious bodily injury, felonious conspiracy to commit assault, and guilty of communicating threats. Pursuant to the jury's guilty verdicts, the court sentenced defendant to a term of thirteen to twenty-five months' imprisonment for the assault inflicting serious bodily injury charge, and a ten- to twenty-one-month sentence to follow the initial sentence, suspended on probation for twenty-four months. From these judgments, defendant entered timely oral notice of appeal at trial.

II. Discussion

On appeal, defendant raises the following issues:

I. Whether the trial court erred in denying defendant's

motion to dismiss the charge of assault inflicting serious bodily injury?

II. Whether the trial court committed plain error in failing to instruct the jury on a lesser offense of accessory after the fact to assault inflicting serious bodily injury[?]

III. Whether the trial court erred by failing to intervene *ex mero motu* when the district attorney elicited testimony that defendant refused to speak with police, and when the district attorney argued that defendant's pre-arrest silence was evidence of guilt?

IV. Whether the trial court erred in denying defendant's motion to dismiss the charge of conspiracy to assault inflicting serious bodily injury?

We will address each of these issues in the analysis to follow.

A. Motion to dismiss

On appeal, defendant argues that the trial court "committed reversible error in denying defendant's motion to dismiss the charge of assault inflicting serious bodily injury" because "the State failed to produce sufficient evidence that [d]efendant and an unidentified male acted with a common purpose to commit an illegal act." We do not agree.

1. Standard of review

A motion to dismiss on the ground of insufficiency of the evidence "presents a question of law and is reviewed *de novo* on appeal." *State v. Norton*, 213 N.C. App. 75, 78, 712 S.E.2d 387, 390 (2011). "The question for this Court is whether there is substantial evidence of each essential element of the offense charged and of the

defendant being the perpetrator of the offense.” *Id.* “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (citation omitted). “In order to overcome a motion to dismiss, the State must introduce more than a scintilla of evidence of each essential element of the offense and that the defendant was the perpetrator of the offense.” *State v. Davy*, 100 N.C. App. 551, 556, 397 S.E.2d 634, 636–37 (1990). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted).

a. Assault inflicting serious bodily injury

To convict a defendant of assault inflicting serious bodily injury requires that the State prove “(1) an intentional assault on another person[,] (2) resulting in serious bodily injury.” *State v. Williams*, 154 N.C. App. 176, 180, 571 S.E.2d 619, 622 (2002). Moreover, “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” pursuant to the doctrine of acting in concert. *State v. Wilkerson*, 363 N.C. 382, 424, 683 S.E.2d 174, 200 (2009) (citation omitted).

“[I]t is not necessary for a defendant to do any particular act constituting a part of the crime in order to be convicted of that crime under the principle of acting in concert, so long as he is present at the scene” *State v. Forney*, 310 N.C. 126,

134, 310 S.E.2d 20, 25 (1984). “[I]t is nevertheless necessary that there be sufficient evidence to show he is acting together with another or others pursuant to a common plan or purpose to commit the crime.” *Id.*

In the present case, the State admitted security footage into evidence that captured the entire incident in the parking lot on 7 June 2022. That evidence shows that defendant *drove her own vehicle* to a secluded location, which she was aware of from her previous liaisons with the victim, parked her vehicle in a way so as to obstruct the victim’s ability to flee the scene, verbally engaged with the victim while the unidentified assailant approached the victim, and stood by while the assailant brutally attacked the victim for approximately thirty seconds. During the assault of the victim by the unidentified assailant, defendant also physically blocked the woman in the vehicle with the victim from interfering and verbally threatened the woman to prevent her from interfering. When the assault was over, defendant then fled the scene with the unidentified assailant in her vehicle. Testimony from the victim at trial established that he suffered severe injuries due to the attack, and both the victim and the woman also testified that defendant was the person seen on the security footage.

Upon our careful review, “consider[ing] all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor[.]” *Rose*, 339 N.C. at 192, 451 S.E.2d at 223 (citation omitted), we are satisfied

that the State met its burden of “introduc[ing] more than a scintilla of evidence of each essential element of the offense charged[,]” and “that the defendant was the perpetrator of the offense[,]” *Davy*, 100 N.C. App. at 556, 397 S.E.2d at 636–37 (citation omitted), and that defendant was acting together with the unidentified assailant, “pursuant to a common plan or purpose[,]” *Forney*, 310 N.C. at 134, 310 S.E.2d at 25, to commit assault inflicting serious bodily injury against the victim. For this reason, we conclude that the trial court did not err in denying defendant’s motion to dismiss the charge of assault inflicting serious bodily injury.

b. Conspiracy to commit assault inflicting serious bodily injury

Defendant also contends that “the trial court committed reversible error in denying defendant’s motion to dismiss the charge of conspiracy to [commit] assault inflicting serious injury” because “the State failed to present sufficient evidence from which rational jurors could conclude that [defendant] and an unidentified male reached a meeting of the minds to assault [the victim].” Again, we do not agree.

A criminal conspiracy is defined as “an agreement, express or implied, between two or more persons, to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means.” *State v. Gell*, 351 N.C. 192, 209, 524 S.E.2d 332, 343 (2000). “A conspiracy generally is established by a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy.” *State v. Sanders*, 208 N.C. App. 142, 145–46, 701 S.E.2d 380, 383 (2010) (internal quotation marks and citation omitted).

“Criminal conspiracy is complete upon a meeting of the minds . . . when the parties to the conspiracy” both “(1) give sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy, the objective to be achieved or the act to be committed,” and “(2) whether informed by words or by gesture, understand that another person also achieves that conceptualization and agrees to cooperate in the achievement of that objective or the commission of the act.” *Id.* (internal quotation marks and citation omitted). “A mutual, implied understanding is sufficient” *State v. Lawrence*, 352 N.C. 1, 24–25, 530 S.E.2d 807, 822 (2000) (internal quotation marks and citation omitted).

In the present case, after “consider[ing] all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor[.]” *Rose*, 339 N.C. at 192, 451 S.E.2d at 223 (citation omitted), we are persuaded that the State did proffer a “scintilla” of evidence—testimony and the security footage—that “point[s] unerringly to the existence of a conspiracy” to assault the victim. *Sanders*, 208 N.C. App. at 145–46, 701 S.E.2d at 383 (internal quotation marks and citation omitted).

Again, the State established that defendant drove the unidentified assailant—in her own vehicle—to an abandoned parking lot at approximately 10 p.m. in the evening, where the victim was engaged with another woman. Defendant parked her

vehicle in a way that prevented the victim from escaping in his vehicle; defendant verbally engaged with the victim while the unidentified assailant approached the victim and failed to intervene or stop the assault of the victim by the unidentified assailant—despite the victim having lost consciousness after the attack. Defendant physically prevented, and verbally threatened, the only other person who could interfere with the assault, the woman in the vehicle, and when the assault was over, defendant calmly left the scene with the unidentified assailant in her vehicle.

Again, to establish a conspiracy, “[a] mutual, implied understanding is sufficient[.]” *Lawrence*, 352 N.C. at 24–25, 530 S.E.2d at 822 (internal quotation marks and citation omitted), and defendant engaged in “a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy[.]” *Sanders*, 208 N.C. App. at 145–46, 701 S.E.2d at 383 (internal quotation marks and citation omitted), to confront and assault the victim in an abandoned parking lot late at night.

For this reason, we conclude that the trial court did not err in denying defendant’s motion to dismiss the charge of conspiracy to commit assault inflicting serious bodily injury for insufficiency of the evidence.

B. Lesser-included offense jury instructions

Next, defendant contends that the trial court “committed plain error in failing to instruct the jury on a lesser offense of accessory after the fact to assault inflicting serious bodily injury.” We do not agree, because accessory after the fact is not a lesser-

included offense of assault inflicting serious bodily injury.

“The crime of accessory after the fact is codified in section 14-7 of our General Statutes[,]” *State v. Cole*, 209 N.C. App. 84, 89, 703 S.E.2d 842, 846 (2011), and provides that

[i]f any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute made, or to be made, such person shall be guilty of a crime, and may be indicted and convicted together with the principal felon

N.C. Gen. Stat. § 14-7 (2023).

In *State v. McIntosh*, our Supreme Court observed that, “[a] comparison of [N.C. Gen. Stat. §] 14-5, defining accessory before the fact, and [N.C. Gen. Stat. §] 14-7, accessory after the fact, clearly indicates the necessity of holding the latter [accessory after the fact] is a substantive crime—not a lesser degree of the principal crime.” 260 N.C. 749, 753, 133 S.E.2d 652, 655 (1963). “A participant in a felony may no more be an accessory after the fact than one who commits larceny may be guilty of receiving the goods which he himself had stolen.” *Id.* Indeed, “[h]ow may an accessory after the fact render assistance to the principal felon if he himself is the principal felon?” Therefore, “[t]he crime of accessory after the fact has its beginning *after the principal offense has been committed*[.]” *id.* (emphasis added), and “the offense of accessory after the fact is not a lesser[-]included offense of the principal crime.” *State v. Brown*, 21 N.C. App. 87, 89, 202 S.E.2d 798, 799 (1974).

Because defendant’s argument rests on the incorrect assertion that the crime

of accessory after the fact pursuant to N.C. Gen. Stat. § 14-7 is a lesser-included offense of assault inflicting serious bodily injury pursuant to N.C. Gen. Stat. § 14-32.4, we conclude that the trial court did not commit plain error in failing to instruct the jury on a lesser offense of accessory after the fact to assault inflicting serious bodily injury.

C. Defendant's right against self-incrimination

Finally, defendant argues that the “trial court committed plain error in failing to intervene *ex mero motu* when the [State] elicited testimony about defendant's pre-arrest silence, and when the [State] argued in closing that [d]efendant refused to be interviewed by an investigating officer” because “the references to defendant's pre-arrest silence violated [defendant's] right against self-incrimination as protected by federal and state constitutions.” We disagree.

1. Standard of review

At the outset, we note that defendant did not object to either of the State's references to defendant's refusal to speak with law enforcement officers at trial; therefore, the issue is unpreserved for appellate review. *See* N.C.R. App. P. 10(a)(1) (requiring “a timely request, objection, or motion” in order to preserve an argument for appellate review).

“[T]he North Carolina plain error standard of review applies only when the alleged error is unpreserved, and it requires the defendant to bear the heavier burden of showing that the error rises to the level of plain error.” *State v. Lawrence*, 365 N.C.

506, 516, 723 S.E.2d 326, 333. “To have an alleged error reviewed under the plain error standard, the defendant must ‘specifically and distinctly’ contend that the alleged error constitutes plain error.” *Id.*, see also N.C.R. App. P. 10(a)(4) (same). “For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial.” *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. “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.* (internal quotation marks and citation omitted).

2. Defendant’s pre-arrest silence

“Whether the State may use a defendant’s silence at trial depends on the circumstances of the defendant’s silence and the purpose for which the State intends to use such silence.” *State v. Boston*, 191 N.C. App. 637, 648, 663 S.E.2d 886, 894 (2008). “For example, a defendant’s decision to remain silent following her arrest cannot be used as substantive evidence of her guilt of the crime charged.” *Id.* “Similarly, a defendant’s decision not to testify at trial cannot be used as substantive evidence of her guilt.” *Id.* “However, if the defendant is not yet under arrest, the State may use the defendant’s pre-arrest silence for impeachment purposes at trial.” *Id.*

Here, “[t]he situation presented by the current case, however, does not fit into any of the factual scenarios presented above.” *Id.* at 649, 663 S.E.2d at 894. As in *Boston*, “the State used [defendant]’s pre-arrest silence not to impeach her testimony, but rather as substantive evidence of her guilt.” *Id.* At trial, the prosecutor asked the

law enforcement officer who investigated the incident whether he had “ever ha[d] a chance to talk to [defendant]? Did [defendant] ever come in to be interviewed or talk with you?” The law enforcement officer testified that he “spoke to [defendant] over the phone one time. [The law enforcement officer] advised [defendant] that I needed her to come and speak with me . . . [a]nd she told me that she did not want to talk to me” The law enforcement officer then told defendant he would be in contact with her, to which she allegedly replied, “[n]o, you won’t.”

Similarly, in his closing argument, the district attorney again referenced defendant’s refusal to speak with police about the incident prior to her arrest:

[Defendant] didn’t call [the victim] and say, [l]ook[,] I’m so sorry, I didn’t mean for this to happen. This should have never happened. She never did that. Think about what happened when [the law enforcement officer] contacted her . . . and said, ‘[c]ome see me, we need to talk about this.’ She had the perfect opportunity to say, [h]ey, I didn’t know this was going down like this. I had no clue that this guy was going to get out of the car and start beating on him. But she didn’t do that. What did she say? You’re not going to see me. Why? Because things happened exactly the way she wanted them to.

Upon our careful review of the transcript, we conclude that the trial court “erred by allowing introduction of [the witness]’s testimony regarding [defendant]’s refusal to speak with police prior to her arrest.” *Id.* at 652, 663 S.E.2d at 896. “The United States Supreme Court has directed that the Fifth Amendment privilege against self-incrimination must be accorded liberal construction in favor of the right it was intended to secure.” *Id.* (internal quotation marks and citation omitted). “We

have found no case in which the Supreme Court has construed the Fifth Amendment privilege against self-incrimination to allow the government's use of a defendant's silence as substantive evidence of h[er] guilt, and we decline to adopt such a construction in the present case." *Id.*

However, because this issue was unpreserved for appellate review, and is therefore subject to a plain error standard of review, "defendant must demonstrate that a fundamental error occurred at trial." *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. "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.* (internal quotation marks and citation omitted).

Our review of the record leads us to conclude that the trial court did not commit plain error in failing to intervene in closing arguments *ex mero motu*. Indeed, as established at length above, the State presented ample evidence that defendant drove the unidentified assailant—in her own vehicle—to an abandoned parking lot, late in the evening, where the victim was engaged with another woman. Defendant parked her vehicle in such a way as to obstruct the victim's ability to escape in his vehicle; verbally engaged with the victim while the unidentified assailant approached the victim, failed to intervene or stop the assault of the victim by the unidentified assailant—despite the victim's loss of consciousness during the attack. Defendant also physically prevented, and verbally threatened, the only other person who could

interfere with the assault, the woman in the vehicle. Again, when the assault was over, defendant calmly left the scene with the unidentified assailant in her vehicle.

“In light of th[is] overwhelming and uncontroverted evidence, defendant cannot show that, absent the error, the jury probably would have returned a different verdict.” *Lawrence*, 365 N.C. at 519, 723 S.E.2d at 335. “Thus, [s]he cannot show the prejudicial effect necessary to establish that the error was a fundamental error.” *Id.* “In addition, the error in no way seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* For this reason, we conclude that the trial court did not commit plain error by failing to intervene *ex mero motu* during the improper remarks by the State on defendant’s refusal to speak with police at trial.

III. Conclusion

We conclude that the trial court did not err in denying defendant’s motions to dismiss, declining to give an accessory after the fact instruction, and did not commit plain error by failing to intervene during the State’s improper remarks at trial. For the aforementioned reasons, we conclude that defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).