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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-76

Filed 17 September 2024

Montgomery County, No. 23 CRS 1012

STATE OF NORTH CAROLINA

v.

PANDORA ANN SMITH DUMAS

Appeal by defendant from judgments entered 10 August 2023 by Judge Matthew Brian Smith in Montgomery County Superior Court. Heard in the Court of Appeals 5 September 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Kristen Mallett, for the State.

Heather L. Rattelade for defendant-appellant.

PER CURIAM.

Following a jury trial, Defendant Pandora Ann Smith Dumas was convicted of abduction of a child and second-degree kidnapping for an incident at a superstore in Biscoe. The event was largely caught on one of the store's surveillance cameras.

The evidence tended to show as follows: On 19 December 2022, Defendant saw her co-worker in a check-out lane at a superstore in Biscoe. The co-worker

(henceforth referred to as “the mother”) was accompanied by her teenage son, preschool-age son, and six-month-old baby. The baby was in a car seat inside a grocery cart.

While the mother was scanning items at the self-checkout station, Defendant snuck behind the mother and her sons and took the baby from their shopping cart. Defendant then hid with the baby behind another checkout counter. Over a minute later, when the mother noticed her baby was missing, she panicked and searched for the baby. Defendant (who was recording the incident on her iPhone) soon emerged from behind the checkout counter and returned the baby to the mother. Defendant and the mother embraced, and Defendant then left the store. Later that day, the mother filed a police report.

Defendant contends that she took the baby in good humor to “prank” the mother. However, another witness (Defendant and the mother’s manager at work) testified that Defendant called her shortly after the incident occurred and told her, “You’re not going to believe what just happened. I’m here at Walmart. [The mother]’s involved. I was here, noticed that she wasn’t paying attention to her baby, so I had to teach her a lesson. I went and took her baby and hid. You should see the video.”

On the video recorded by Defendant, Defendant laughs while saying, “I’ve had

that baby three minutes.”¹ And as Defendant and the mother go their separate ways, Defendant tells the mother to “stop turning [her] back off the baby.”

The testimonies of the mother and the manager tending to show the degree of fear and apprehension mother experienced for the short time her baby was with Defendant. Further, they tended to show that Defendant recorded the incident and that the mother feared Defendant would share the recording with others to demean her reputation as a caring mother, all as part of her plan to teach the mother a lesson.

A jury convicted Defendant on both charges referenced above. The trial court suspended Defendant’s prison sentences and imposed only a period of supervised probation. As both convictions involve a crime against a minor child, Defendant must register as a sex offender.

Defendant argues that the trial court erred in allowing trial testimony from a police officer who testified regarding Defendant’s failure to provide a written statement about the incident. Specifically, Defendant argues this testimony violated her Fifth Amendment privilege against self-incrimination by “admitting her pre-arrest silence.” Indeed, “[w]hether 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 (2008).

¹ Based on the surveillance footage (the State’s Exhibit 1), Defendant had possession of the baby for less than one-and-a-half minutes. Defendant took the baby from the shopping cart at 8 minutes, 30 seconds into the footage; the mother noticed the baby was missing at approximately 9 minutes, 20 seconds; and Defendant returned the baby to the mother’s arms at 9 minutes, 49 seconds.

For instance, the State may generally present a defendant's pre-arrest silence for impeachment purposes but may not present it as substantive evidence of a defendant's guilt. *See id.* at 648–51.

Here, the officer's testimony tended to show that Defendant voluntarily made some statements about the incident to the officer and had indicated that she would elaborate more on her side of the story through a written statement, but that Defendant never followed through. Specifically, the officer testified that on 28 December 2022, nine days after the incident, Defendant voluntarily went to the police department to ask if she was being charged with any crimes related to the incident. She explained to the officer that the incident was intended to be a joke, and she showed the officer the iPhone video of the incident. The officer asked Defendant to send the video and, if Defendant wanted to do so, to send a written statement. Defendant agreed to do both. However, Defendant only sent the video and a message which the officer described as "just a short little few sentences thanking me for the opportunity to speak to me and that she was just baffled that, you know, it wasn't nothing more than just good laughter and a joke on her part."

The officer followed up a few weeks later, and Defendant again agreed to send a written statement. But she did not. The officer checked in the next week, and Defendant said she had written a statement but first wanted to "run it by legal." Defendant also inquired about the purpose of the statement and what she was being charged with and/or accused of. The officer told Defendant that she was not being

charged with anything and emphasized that submitting a written statement was “completely voluntary.” Defendant never submitted a written statement.

Because Defendant’s counsel failed to object to the officer’s testimony at trial concerning Defendant’s refusal to provide a written statement, we review only for plain error. *See State v. Lawrence*, 365 N.C. 506, 518 (2012).

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.

Id. (cleaned up). “[T]he analysis is whether, without [the contested] evidence, the jury probably would have reached a *different* result.” *State v. Reber*, 386 N.C. 153, 159 (2024).

We conclude that, even if the admission of the officer’s testimony concerning Defendant’s pre-trial silence was error, this error did not rise to the level of plain error. Specifically, here, the jury had a video of the incident. Though reasonable minds could reasonably infer from the video that Defendant intended the incident to be a “joke” and/or Defendant’s way to teach her co-worker a lesson, we cannot say the jury probably would have reached a different verdict had they not heard the officer’s testimony that Defendant did not follow through on her promise to provide a written statement. The jury had already heard the officer’s testimony that Defendant had stated that she intended the incident as a joke. Again, this is not to say that the video

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evidence and other evidence was overwhelming in showing Defendant's guilt. Rather, we merely hold that Defendant has failed to meet her burden on appeal of showing that *this* jury "probably" would have reached a different result had they *not* heard the officer's testimony about Defendant's failure to provide a written statement.

Accordingly, we conclude that Defendant received a fair trial, free of reversible error.²

NO ERROR.

Panel consisting of Chief Judge DILLON and Judges MURPHY and STADING.

Report per Rule 30(e).

² We note that after all briefing was completed in this matter Defendant filed a motion to allow her to amend her brief to assert an additional argument regarding the sufficiency of the evidence offered by the State. In our discretion, we deny the motion.