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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1066

Filed 3 December 2024

Robeson County, No. 20 CRS 52764

STATE OF NORTH CAROLINA

v.

TERRY DALE HUNT

Appeal by Defendant from Judgment entered 15 February 2023 by Judge James G. Bell in Robeson County Superior Court. Heard in the Court of Appeals 10 September 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Mia B. Bass, for the State.

Sean P. Vitrano for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Terry Dale Hunt (Defendant) appeals from a Judgment entered upon jury verdicts finding her guilty of Misdemeanor False Imprisonment and Felony Conspiracy to Commit Second Degree Kidnapping. The Record before us tends to

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reflect the following:

On 2 August 2021, Defendant was indicted for Second Degree Kidnapping, Assault with a Deadly Weapon with Intent to Kill (ADWIK), and Felony Conspiracy. The matter came on for trial on 13 February 2023.

At trial, Dexter Locklear, the alleged victim, testified that on the evening of 16 July 2020, Defendant and her sister, Keysha, drove up and stopped in front of his home. Keysha was driving, and Defendant was in the passenger seat. Dexter recognized Defendant because they were close childhood friends. Dexter testified that Defendant identified herself and called out to him to get in the car and “go for a ride.” Dexter entered the car, and Keysha began driving fast and recklessly. The doors and windows to the car were locked and Dexter could not open them. Defendant was upset because she believed Dexter had withheld information from her about the murder of her nephew, Justin Cody Hunt (Cody), whom she had raised like her own son. Defendant turned around and pointed a gun at Dexter, threatening to shoot him if he did not tell her everything he knew about Cody’s murder. Dexter denied knowing anything about the murder.

Dexter further testified the women drove him to a remote location in Midway, North Carolina. Defendant let Dexter out and instructed him to put his head on the car and his hands behind his back. When she opened the door, she said, “welcome to your graveyard.” Defendant handed Keysha the gun and said, “you do it, I can’t.” Keysha said, “[l]et’s play Russian Roulette,” and fired the gun four or five times in

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total, twice directly at Dexter, and other times in the air or at Dexter's feet. The encounter ended when Keysha told Dexter he was "not worth it" and the women drove away, leaving Dexter to walk home without his phone, keys, or wallet.

The next day, on 17 July 2020, Dexter reported the incident to the Robeson County Sheriff's Office. Dexter testified he did not contact law enforcement until the following day because it had been late at night, and he did not have his phone or money on him. On 20 July 2020, Detective Joseph Thompson took Dexter's statement. Detective Thompson transcribed the statement and Dexter signed each page. The written statement contained an abbreviated version of Dexter's testimony at trial; nothing in the written statement diverted from Dexter's trial testimony. Detective Thompson also testified that Dexter's trial testimony was consistent with his written statement. However, the written statement also contained two additional statements allegedly made by Defendant that the sisters "already took care of" two others and "since the law can't handle their job, we will do it for them." At trial, the State questioned Dexter about these specific statements, although Dexter had not testified that Defendant made these statements. The State also cross-examined Defendant about the same portion of the written statement.

The State moved to introduce the written statement into evidence. Defendant objected on the grounds there was "some hearsay" in the statement. After a bench conference, the trial court admitted a redacted version of the statement into evidence

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with no further objections from Defendant.¹ Defendant did not make any objections to the specific statements attributed to her within Dexter’s written statement. Neither the State nor the trial court specified the purpose for which it was admitting the statement, nor did Defendant request a limiting instruction.

On 15 February 2023, the jury returned verdicts finding Defendant guilty of False Imprisonment, a lesser-included offense of Kidnapping, and Conspiracy to Commit Second-Degree Kidnapping. The trial court sentenced Defendant to ten to twenty-one months of imprisonment. That sentence was suspended, and Defendant was placed on supervised probation for twenty-four months. In addition to the regular conditions of probation, the trial court also imposed special conditions, including the payment of court costs, attorney fees, and attorney appointment fees; the trial court indicated these costs were to be assessed against Defendant as a civil judgment. The trial court also ordered Defendant may be transferred to unsupervised probation after twelve months if she “abid[es] by [the] laws of North Carolina.” The trial court entered the Judgment on 15 February 2023. The trial court entered a Corrected Judgment the same day. Defendant timely filed Notice of Appeal on 27 February 2023.

Issues

The issues on appeal are whether the trial court: (I) plainly erred in admitting

¹ The redacted portion contained statements made by Keysha’s husband when he returned Dexter’s personal belongings to him the day after the alleged encounter took place.

Dexter Locklear’s written statement; and (II) made errors in the Judgment requiring correction.

Analysis

I. Admission of Dexter Locklear’s Written Statement

On appeal, Defendant challenges the trial court’s admission of Dexter Locklear’s written statement. As she acknowledges, Defendant failed to object to the admission of Dexter’s written statement; thus, our review is limited to plain error. N.C. R. App. P. 10(a)(1) (2023) (“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion”) and N.C. R. App. P. 10(a)(4) (2023) (“In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action 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.”). *See also State v. Reber*, 386 N.C. 153, 157, 900 S.E.2d 781, 785 (2024) (citation omitted) (“Without an objection, that [evidentiary or instructional] error is deemed unpreserved, and the issue is therefore waived on appeal.”).

Our Supreme Court has articulated a three-prong test for determining whether an error constitutes plain error:

First, the defendant must show that a fundamental error occurred at trial. Second, the defendant must show that the error had a “probable impact” on the outcome, meaning that “absent

the error, the jury probably would have returned a different verdict.” Finally, the defendant must show that the error is an “exceptional case” that warrants plain error review, typically by showing that the error seriously affects “the fairness, integrity or public reputation of judicial proceedings.”

Id. at 158, 900 S.E.2d at 786 (citations omitted) (quoting *State v. Lawrence*, 365 N.C. 506, 518-19, 723 S.E.2d 326, 334 (2012)).

A. *Preservation of Plain Error Review*

The State contends, however, Defendant has waived appellate review of even her plain error argument because she failed to expressly argue the third prong of the test and failed to compare or contrast her case to other plain error review cases. We disagree.

It is true this Court will not hold plain error exists without a showing that the case at issue is an “exceptional” one, but no such limitation exists as a threshold barrier to review. *See State v. Bradley*, 279 N.C. App. 389, 398-99, 864 S.E.2d 850, 859 n.3 (2021) (“[T]he State suggests that plain error review is entirely unavailable because ‘[d]efendant fails to show exceptional circumstances warranting plain error review.’ This statement inverts our application of the plain error standard . . .”). To receive plain error review, a defendant must “specifically and distinctly contend[]” her case warrants such review. N.C. R. App. P. 10(a)(4) (2023); *see also State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996) (“In limited situations, this Court may elect to review such unpreserved issues for plain error, if specifically and distinctly contended to amount to plain error in accordance with Rule 10(c)(4) [sic].”).

Defendant has specifically and distinctly argued the trial court plainly erred in admitting Dexter's written statement and that admission of his statement had a probable impact on the outcome of her case. Furthermore, Defendant has not made an "empty assertion of plain error, without supporting argument or analysis of prejudicial impact[.]" See *State v. Hester*, 224 N.C. App. 353, 357, 736 S.E.2d 571, 574 (2012) (quoting *State v. Cummings*, 352 N.C. 600, 637, 536 S.E.2d 36, 61 (2000)). Accordingly, we will review for plain error. See *Gregory*, 342 N.C. at 584, 467 S.E.2d at 31; cf. *State v. Robinson*, 292 N.C. App. 355, 359, 897 S.E.2d 545, 549 (2024) (declining to exercise plain-error review where defendant "failed to explain the plain-error standard in his brief; indeed, [d]efendant never even mentioned 'plain error' in his brief.").

B. Hearsay

Hearsay is "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 generally inadmissible in a criminal case, "except as provided by statute or by [the evidentiary] rules." N.C. Gen. Stat. § 8C-1, Rule 802 (2023).

"[A] prior consistent statement of a witness is admissible to corroborate the testimony of the witness whether or not the testimony of the witness has been impeached." *State v. Caballero*, 383 N.C. 464, 476, 880 S.E.2d 661, 669 (2022) (citation omitted). Corroborating statements are those that "tend to add weight or

credibility to the witness's testimony.” *Id.*, 880 S.E.2d at 670 (citation omitted). Prior statements admitted for corroborative purposes are not hearsay because they are not offered for the truth of the matter asserted. *See State v. Thompson*, 250 N.C. App. 158, 163, 792 S.E.2d 177, 181 (2016) (citations omitted). “[T]he statements offered as prior consistent statements need not align precisely with the testimony of the witness whose credibility will be strengthened. The prior statement may contain new or additional information when it tends to strengthen and add credibility to the testimony which it corroborates.” *State v. Jones*, 280 N.C. App. 241, 253, 866 S.E.2d 509, 519 (2021) (citations and quotation marks omitted); *State v. Harrison*, 328 N.C. 678, 682, 493 S.E.2d 301, 304 (1991) (“[A] statement that merely contains additional facts is not automatically barred.”).

Defendant argues admission of Dexter’s written statement was erroneous because it was hearsay not subject to any exception. The State contends that the statement was used for the permissible, non-hearsay purpose of corroborating Dexter’s testimony. Dexter’s written statement is nearly identical to his testimony at trial; as far as Dexter’s trial testimony comports with his written statement, it is admissible as corroborative evidence. *See Harrison*, 328 N.C. at 684, 493 S.E.2d at 305 (holding trial court did not err in admitting witness’s out-of-court statement for corroborative purposes because “notwithstanding the minor inconsistencies between the prior statement and [the witness’s] testimony at trial, the accounts . . . were substantially the same.”).

However, the State did question Dexter about a portion of his statement that he had not previously testified to at trial. The State asked Dexter who specifically said, “we already took care of the two.” This language was not part of Dexter’s trial testimony, but instead came directly from his written statement to the police. The State used the language from Dexter’s written statement on re-direct:

[State]: I think you mentioned on direct about [Defendant] and Keysha saying that they had dealt with two people already. Who was it who specifically said that?

. . . .

[State]: Who said, we already took care of the two?

[Dexter]: [Defendant] did.

[State]: [Defendant] did.

. . . .

[State]: During that ride did [Defendant] tell you who they had already taken care of?

[Dexter]: All she said was two other people.

[State]: Okay. Did she tell you how they had taken care of the two other people?

[Dexter]: No, she didn’t. And I have no clue what she was even talking about.

[State]: Okay.

[Dexter]: I was clueless.

[State]: How was your mental state as you were walking home that night?

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[Dexter]: Like the worse feeling in the world. When I was walking home every car come by, like, get in a ditch or lay down on the ground in a field or something.

[State]: Why?

[Dexter]: I was scared it would be them coming back by to, like, ambush me or something.

The testimony regarding the content of Dexter's written statement attributing the remark to Defendant that: "we already took care of two and since the law can't handle their job we will do it for them" was new information not introduced by prior testimony. However, this alone does not necessarily render the out-of-court statement inadmissible. *See Jones*, 280 N.C. App. at 253-54, 866 S.E.2d at 519; *Harrison*, 328 N.C. at 682-84, 493 S.E.2d at 304-05. Rather, the evidence "add[s] weight" to Dexter's testimony that he had not foreseen the events of the evening and had generally felt terrorized and threatened. *Thompson*, 250 N.C. App. at 165-66, 792 S.E.2d at 182-83 (citation omitted). As such, it is admissible as corroborative evidence. Admission of any part of the statement that fell outside of Dexter's testimony on direct examination was not so different or contradictory as to constitute error. *See Jones*, 280 N.C. App. at 253-54, 866 S.E.2d at 519; *Harrison*, 328 N.C. at 682-84, 493 S.E.2d at 304-05.

The State's questioning of the Detective who took Dexter's written statement further evidences the statement's use for corroborative purposes:

[State]: Okay. Are you the detective who took [Dexter's] written statement that was just put into evidence?

[Detective]: Yes, sir.

[State]: And have you reviewed that?

[Detective]: I have. I have it here in front of me, as well.

[State]: And, in fact, you heard his testimony today?

[Detective]: I have, yes, sir.

[State]: Has he been consistent with his testimony?

[Detective]: Yes, sir.

This portion of the testimony further highlights the use of the written statement to corroborate Dexter's trial testimony, rather than for substantive purposes.

C. Plain Error Prejudice

Even if the trial court erred in admitting Dexter's statement, we are not convinced admission of the statement rises to the level of plain error. It is not apparent that "absent the error, the jury probably would have returned a different verdict." *Reber*, 386 N.C. at 158, 900 S.E.2d at 786 (citation omitted). The second prong of plain error requires a defendant to show, absent the trial court's error, a different result "is significantly more likely than not." *Id.* at 159, 900 S.E.2d at 787. In other words, a defendant must show acquittal is "almost certain[]," "presumabl[e]," or "doubtless." *Id.* (citations omitted).

Defendant contends Dexter's statement was prejudicial because it improperly suggested to the jury that Defendant and Keysha intended to restrain Dexter by

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locking the car doors and windows, already intended to kill Dexter when they picked him up, and had already “took care of” two others. Specifically, Defendant points to the statements “we come to kill you” and “we already took care of two” as providing evidence upon which the jury likely based its Conspiracy to Commit Second Degree Kidnapping conviction. Defendant argues, had these statements not been admitted, the jury likely would have voted to acquit her of Conspiracy. We disagree.

Even without these statements, Dexter’s trial testimony provided ample evidence Defendant had threatened him with violence and serious bodily harm, if not death. Dexter testified that Defendant said, “today is your day to die” and “welcome to your graveyard.” He testified she was “mad, angry . . . upset[,]” held him at gunpoint, and he was “begging for [his] life.” He believed Defendant would “kill [him] for not talking.” Additionally, he testified that “[t]he doors automatically locked” and Defendant accosted him almost immediately after he entered the car.

Based on Dexter’s testimony, the jury could have reached the same conclusion on the Conspiracy charge, i.e., that Defendant had agreed to confine, restrain, or remove Dexter from one place to another, without his consent, for the purpose of facilitating the commission of a felony, doing serious bodily harm, or terrorizing him, even if the written statement was not admitted into evidence. *See* N.C. Gen. Stat. § 14-39 (2023) (elements of kidnapping). Thus, Defendant cannot establish that admission of Dexter’s written statement rises to the “exacting” level of plain error prejudice and “without that evidence, the jury probably would have reached a

different result.” *Reber*, 386 N.C. at 159-60, 900 S.E.2d at 787-88. Therefore, admission of the statement was not plain error.

II. Errors in the Corrected Judgment

Defendant also argues the case should be remanded for correction of “clerical and statutory errors.” Specifically, Defendant contends the trial court erred by imposing a Special Condition assessing costs as a civil judgment, imposing a Special Condition allowing for her transfer to unsupervised probation “after [twelve] months as long as abiding by [the] laws of North Carolina,” and failing to impose Monetary Conditions.

“When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth.” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696-97 (2008) (citation and quotation marks omitted). A clerical error is “an error resulting from a minor mistake or inadvertence, [especially] in writing or copying something on the record, and not from judicial reasoning or determination.” *Id.*, 656 S.E.2d at 696 (citation and quotation marks omitted). A challenge to a trial court’s decision to impose a condition of probation is generally reviewed on appeal for abuse of discretion. *See State v. Chadwick*, 271 N.C. App. 88, 89, 843 S.E.2d 263, 264 (2020) (citation omitted). Statutory errors in sentencing, however, are reviewed de novo. *See State v. Allen*, 249 N.C. App. 376, 379, 790 S.E.2d 588, 591 (2016) (citation omitted).

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The State contends we lack jurisdiction to review the Special Condition imposing costs as a civil judgment. The State is correct that we would lack jurisdiction to review a civil judgment that is not final or available in the Record. *See e.g., State v. Wright*, 284 N.C. App. 178, 203-04, 875 S.E.2d 552, 669 (2022) (no jurisdiction over appeal to civil judgment that appears in record but is not filed with clerk of court); N.C. R. App. P. 9(a) (2023) (“In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal.”). However, this Court has jurisdiction to review Conditions of Probation that appear in a final criminal judgment. *See Chadwick*, 271 N.C. App. at 89-90, 843 S.E.2d at 264-265 (reviewing special condition of probation for abuse of discretion); *State v. Barrett*, 228 N.C. App. 655, 669, 746 S.E.2d 413, 421 (2013) (remanding for correction of clerical error in special conditions); *State v. Jackson*, 291 N.C. App. 116, 120-21, 894 S.E.2d 263, 266-67 (2023) (finding statutory error in special condition of probation). Here, the contested “civil judgment” is really a Special Condition of Probation. It appears in the “Special Conditions of Probation” section of the Corrected Judgment alongside the Special Condition allowing for Defendant’s transfer to unsupervised probation. Therefore, we have jurisdiction to review it as a Special Condition of Probation. *See Chadwick*, 271 N.C. App. at 89, 843 S.E.2d at 264.

The trial court ordered two Special Conditions of Probation. First, that a civil judgment be imposed for court costs, attorney fees, and appointment fees, and second,

that Defendant may be transferred from supervised probation to unsupervised probation after twelve months if she “abid[es] by [the] laws of North Carolina.”

First, we address the “civil judgment.” Under the “Special Conditions of Probation” section, the trial court imposed court costs, attorney fees, and appointment fees “to be a civil judgment.” This is not a Special Condition of Probation permitted by statute. *See* N.C. Gen. Stat. § 15A-1343(b1) (2023). Thus, it was error to include this Condition as a Special Condition of Probation.

However, the requirement to pay court costs and fees is, of course, a Regular Condition of Probation. *See* N.C. Gen. Stat. § 15A-1343(b) (2023). Under N.C. Gen. Stat. § 7A-455(c), any such unpaid costs or fees become a civil judgment upon the expiration, revocation, or termination of probation.

Moreover, the “Monetary Conditions” section of the judgment form already includes sections to be filled out for various costs, including court costs, attorney fees, and appointment fees. Thus, we conclude the trial court’s placement of these costs under “Special Conditions of Probation” instead of “Monetary Conditions” was a mere oversight amounting to a clerical error that is appropriate for correction. *See Smith*, 188 N.C. App. at 845, 656 S.E.2d at 696. Correction of this clerical error also resolves Defendant’s contention that the trial court erred by failing to complete the “Monetary Conditions” section of the judgment form, because correction of this error requires the trial court to complete the “Monetary Conditions” section on remand.

Next, we review de novo the Condition that Defendant may be transferred to unsupervised probation following twelve months of abiding by the laws of North Carolina. *See Jackson*, 291 N.C. App. at 120, 894 S.E.2d at 266 (citation omitted) (“Although a challenge to a trial court's decision to impose a condition of probation is generally reviewed on appeal for abuse of discretion, an alleged error in statutory interpretation is an error of law, which we review de novo.”). Intermediate punishment is “[a] sentence in a criminal case that places an offender on supervised probation.” N.C. Gen. Stat. § 15A-1340.11(6) (2023). Defendant was convicted of Conspiracy to Commit Second Degree Kidnapping, a Class F felony, which, by statute, requires the imposition of either active or intermediate punishment. *Id.* § 15A-1340.17(c) (2023). The trial court chose to impose an intermediate punishment, and the “Intermediate Punishment” box was appropriately marked on the Corrected Judgment. Since Defendant is serving an intermediate punishment, her probation must be supervised. *See id.* § 15A-1340.11(6) (2023).

Both the State and Defendant agree there is no statutory provision permitting a defendant to be transferred to unsupervised probation based on a defendant’s compliance with state laws. As such, both agree that this Special Condition is invalid. However, a “court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk.” N.C. Gen. Stat. § 15A-1343(g) (2023). We acknowledge this may have been the trial court’s intent in both setting out monetary terms and a provision permitting a transfer to

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unsupervised probation as Special Conditions of Probation. On remand, the trial court should either clarify its intent or strike this Condition permitting transfer to unsupervised probation entirely.

Finally, we note Conspiracy to Commit ADWIK was improperly included as one of Defendant's convictions on the Corrected Judgment and Findings of Aggravating and Mitigating Factors. The verdict form for the Felony Conspiracy charge gave the jury the option to convict Defendant of Conspiracy to Commit Second Degree Kidnapping "and/or" Conspiracy to Commit ADWIK. The jury found Defendant guilty of Conspiracy to Commit Second Degree Kidnapping but not of Conspiracy to Commit ADWIK. The trial court filed a Judgment which correctly listed Defendant's convictions as Misdemeanor False Imprisonment and Felony Conspiracy to Commit Second Degree Kidnapping. The trial court subsequently filed a Corrected Judgment and corresponding Findings of Aggravating and Mitigating Factors. The Corrected Judgment lists Defendant's convictions as False Imprisonment and Conspiracy to Commit Second Degree Kidnapping *and ADWIK*. Likewise, the Corrected Findings of Aggravating and Mitigating Factors lists Defendant's Conspiracy conviction as Conspiracy to Commit Second Degree Kidnapping *and Conspiracy to Commit ADWIK*. Defendant was not convicted of Conspiracy to Commit ADWIK, so that offense should be removed from both forms.

Consequently, we remand this matter to the trial court to correct these clerical errors on the Corrected Judgment and Corrected Findings of Aggravating and Mitigating Factors.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error at trial. We remand this matter for the correction of errors set forth above in the Corrected Judgment.

NO ERROR AT TRIAL; REMANDED FOR CORRECTION OF ERRORS ON THE JUDGMENT.

Judges STROUD and GORE concur.

Report per Rule 30(e).