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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-321

Filed 3 December 2024

Mecklenburg County, Nos. 19CR24446, 19CR24448

STATE OF NORTH CAROLINA

v.

LOUIS C. BROWN, Defendant.

Appeal by defendant from judgment entered 28 July 2023 by Judge Matthew B. Smith in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 October 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Amalia Mercedes Restucha, for the State-appellee.

Assistant Public Defender Max E. Ashworth, III for defendant-appellant.

GORE, Judge.

Defendant was charged in two indictments with attempted second-degree rape and first-degree burglary. The jury found defendant guilty of both offenses. The trial court sentenced defendant to an active imprisonment term of 15 years followed by a consecutive active imprisonment term of 3 years. Defendant entered oral notice of appeal in open court. This Court has jurisdiction to hear and decide defendant's

appeal pursuant to N.C.G.S. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

Defendant presents one issue for review: whether the trial court committed plain error when it admitted a deceased victim's statements as substantive evidence. Upon review, we discern no prejudicial error in this case.

On 19 October 1991, at around 2:30 a.m., then 83-year-old Connie Graham¹ awoke to find defendant naked in her bed. He attempted to penetrate her vagina. Mrs. Graham fought him off, suffering rib and facial injuries. After defendant fled, she called the police.

The investigation began at 2:56 a.m. after Mrs. Graham reported the attack. Officer Kim Spaulding responded and recorded Mrs. Graham's statement. Mrs. Graham, unable to identify her attacker, described him as a small man, approximately 5'5". Mrs. Graham was taken to Presbyterian Hospital for treatment, where Dr. Edwin Holloway conducted a sexual assault exam, noting a possible rib fracture, facial injuries, and blunt trauma to her vulva. Mrs. Graham described her assailant to Dr. Holloway as a small, young black male who had choked and hit her.

Crime scene technician Ron Peak collected evidence from Mrs. Graham's home, including linens, a nightgown, and palm prints from her kitchen. The attacker appeared to have entered through a kitchen window, which showed signs of disturbance. Palm prints were preserved in the Automated Fingerprint

¹ A pseudonym.

Identification System (“AFIS”) database, and forensic serologist Dr. Patricia Jo Meyer confirmed the presence of semen and blood on the linens. These samples were preserved, while other evidence was destroyed in 1994.

In 2018, the preserved samples were retested, identifying a distinct male DNA profile. In 2019, the DNA matched defendant. Further investigation revealed defendant lived near Mrs. Graham’s home in 1991. His palm prints, collected after his arrest, matched those from Mrs. Graham’s kitchen. A DNA comparison confirmed defendant’s DNA matched the profile from the semen and blood on the linens, with a probability which ranged from one in 59 septillion to one in 250 septillion.

At trial, the State presented ten witnesses. Christa Brown, Mrs. Graham’s great-granddaughter, testified that Mrs. Graham, who lived alone in 1991, had no romantic partners and passed away in 2009. Seven witnesses testified about the investigation, including Dr. Holloway (examining physician), Officer Spaulding (responding officer), Ron Peak (crime scene technician), Dr. Meyer (forensic serologist), Lt. Anderson (DMV officer), and Detective Owens (cold case investigator). The State concluded by presenting biometric evidence linking defendant to the crime scene. Examiner Trantham testified that defendant’s palm prints matched those found in Mrs. Graham’s kitchen. Analyst Howley confirmed the DNA from blood and semen on Mrs. Graham’s bed linens matched defendant’s DNA.

Officer Spaulding’s report and potential hearsay were discussed twice outside the jury’s presence. Initially, the State proposed redactions to the report, which

defense counsel reviewed but later declined, requesting that the report be read in full. The State agreed, and defense counsel confirmed no objections. Officer Spaulding read her unredacted report, including Mrs. Graham's description of her attacker. Defense counsel did not object as the report and Mrs. Graham's witness statement were entered into evidence. In closing arguments, defense counsel highlighted Mrs. Graham's description of the attacker as small and 5'5", contrasting it with defendant's current appearance. The jury found defendant guilty of attempted second-degree rape and first-degree burglary.

Defendant did not object to the admission of Spaulding's report and Mrs. Graham's written statement into evidence, so his claim that the trial court erred is not preserved for appellate review. *State v. Grice*, 367 N.C. 753, 764 (2015). Unpreserved evidentiary errors are subject to plain error review, which requires defendant to show a fundamental error occurred. *State v. Lawrence*, 365 N.C. 506, 518 (2012). To demonstrate fundamental error, the defendant must prove the error likely impacted the jury's guilty verdict. *Id.*

It is well established that when a declarant "is unable to be present or to testify at the hearing because of death[,] the trial court can make an exception and admit a deceased declarant's statements that would have otherwise been inadmissible as hearsay. N.C.G.S. § 8C-1, Rule 804(a)(4) (2023). Here, Officer Spaulding's report was admitted under the hearsay exception that allows for past recorded recollections. *See* N.C.G.S. § 8C-1, Rule 803(5). Officer Spaulding's report included statements by the

victim, and a “victim statement” signed by Mrs. Graham the night of her attack and prior to her death several years later.

To the extent that any potential error occurred in admitting the victim’s statements in Officer Spaulding’s report, defendant arguably invited the error he now complains of on appeal. When given multiple opportunities, defense counsel did not object to the admission of these statements, but instead: specifically requested the full report be read into evidence in full and later relied on the victim’s statement during his closing argument. *See* N.C.G.S. § 15A-1443(c) (2023) (“A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.”). “Thus, a defendant who invites error has waived his right to all appellate review concerning the invited error, including plain error review.” *State v. Bice*, 261 N.C. App. 664, 670 (2018) (citation omitted).

Moreover, defendant argues the State’s case relied on Mrs. Graham’s statement, but the core of the State’s case was the biometric evidence: defendant’s palm print and sperm containing his DNA found at the crime scene. Even without the victim’s statement, it is highly probable the jury would have convicted defendant based on the biometric evidence alone. Scientific experts presented palm prints near the entry point and defendant’s sperm on the victim’s bed sheets, conclusively tying defendant to the crime scene. If the trial court erred in admitting the victim’s statement—which we do not affirmatively decide on appeal—any error was harmless due to the overwhelming evidence of defendant’s guilt. *See State v. Jones*, 280 N.C.

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Opinion of the Court

App. 241, 261 (2021) (“Overwhelming evidence of guilt can defeat a plain error claim on prejudice grounds.”).

For the above stated reasons, defendant received a fair trial that was free from prejudicial error. We uphold the jury’s verdict and the trial court’s written judgment and commitment.

NO ERROR.

Judges STADING and THOMPSON concur.

Report per Rule 30(e).