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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-135

Filed 3 December 2024

New Hanover County, No. 19CRS57583

STATE OF NORTH CAROLINA

v.

TAREE JEANETTA BETHEA, Defendant.

Appeal by defendant from judgment entered 27 June 2023 by Judge Richard Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 9 October 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Jodi Regina, for the State-appellee.

Stephen G. Driggers, PLLC, by Stephen G. Driggers, for defendant-appellant.

GORE, Judge.

Defendant, Taree Jeanetta Bethea, was indicted for felony larceny and conspiracy to commit felony larceny. A jury found her guilty of both offenses. The trial court sentenced defendant to 11–23 months in custody, suspended, subject to 36 months of supervised probation, and ordered defendant to pay \$3,417.98 in restitution—jointly and severally with two co-defendants. Defendant gave oral notice

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of appeal in open court.

Defendant appeals from a final judgment entered upon her conviction in Superior Court, New Hanover County. This Court has jurisdiction to hear and decide defendant's appeal pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a).

At trial, three of the State's witnesses—two Lowe's Home Improvement store ("Lowe's") employees and one law enforcement officer—offered their opinions as to the identity of the individuals seen in video surveillance footage taken at a Lowe's store located in Wilmington, North Carolina. The video showed three individuals taking vacuum cleaners and faucets off the shelves, putting them into two large trash cans, and pushing the cans out of the store. The video was entered into evidence as State's Exhibit 1 and played for the jury. All three of the State's witnesses identified defendant as one of the perpetrators seen in the video and screenshots derived therefrom.

Defendant presents one issue for review: whether the trial court plainly erred in permitting the State's witnesses to give lay opinions about her identity as one of the individuals shown in the video footage. The State counters that the lay opinion testimony at issue was admissible under N.C.G.S. § 8C-1, Rule 701, or in the alternative, that defendant was not fundamentally prejudiced as a result. Upon review, we discern no plain error in this case.

This Court reviews the trial court's decision to admit lay opinion testimony for abuse of discretion. *State v. Belk*, 201 N.C. App. 412, 417 (2009). Defendant

acknowledges, however, this issue is not preserved on appeal and contends the admission of the opinion testimony at issue amounts to plain error. N.C. R. App. P. 10(a)(4). The plain error standard of review applies to unpreserved evidentiary errors. *State v. Lawrence*, 365 N.C. 506, 518 (2012). “For error to constitute plain error, a defendant must demonstrate . . . 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). Plain error exists “only in exceptional cases where, after reviewing the entire record, it can be said the claimed error is a *fundamental* error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done.” *State v. Hammett*, 361 N.C. 92, 98 (2006) (cleaned up).

Under our Rules of Evidence, admissible lay witness testimony “is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.” N.C.G.S. § 8C-1, Rule 701 (2023). Defendant appropriately cites *State v. Buie*, 194 N.C. App. 725, 730–33, for its principles regarding identification, and *Belk*, 201 N.C. App. at 415, for its four factors relevant to an analysis of the admissibility of lay identification. Ultimately, however, “[u]nder the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result.” *State v. Jordan*, 333 N.C. 431, 440 (1993) (citation omitted). We conclude that defendant has not met her burden in this case.

Presuming, *arguendo*, and without deciding that the trial court abused its discretion by allowing the testimony at issue, defendant fails to show this alleged error had a probable impact on the jury's verdict. There is no indication on this record the jury gave significant weight to any lay opinion testimony, such that it had a probable impact on the outcome at trial.

About 10 minutes after the jury began deliberations, the trial court received a note from the foreperson requesting, *inter alia*, to review "the still photos from the video" marked as State's Exhibits 3 and 4. And, without objection, the jury took those exhibits back to the jury room with them for their deliberations. Again, the jury requested, "can we see video again of suspects putting vacuums in second garbage can[?]" The surveillance video footage was then played for the jury once more. The jury requested, "can we see the picture of the three defendants together[?]" The jury was permitted to review this exhibit in the jury room, along with the other two photographs, while continuing their deliberations.

"[T]he jury is charged with determining what inferences and conclusions are warranted by the evidence[.]" *Buie*, 194 N.C. App. at 730, and the record reflects the jury fulfilled its fact-finding function independently and reasonably. Moreover, defendant fails to demonstrate an exceptional circumstance where it could be said "justice cannot have been done." *Hammett*, 361 N.C. at 98. "Consequently, defendant's argument does not meet the standard of plain error." *State v. Collins*, 216 N.C. App. 249, 257 (2011).

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NO ERROR.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).