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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-363

Filed 17 December 2024

McDowell County, No. 20CRS50516

STATE OF NORTH CAROLINA

v.

LAWRENCE WADE TAYLOR, Defendant.

Appeal by defendant from judgment entered 8 September 2023 by Judge Lisa C. Bell in McDowell County Superior Court. Heard in the Court of Appeals 22 October 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Lisa B. Finkelstein, for the State.

Sarah Holladay, for defendant-appellant.

FLOOD, Judge.

Defendant Lawrence Wade Taylor appeals from the trial court's judgment finding him guilty of first-degree burglary. On appeal, Defendant argues (A) the trial court erred or plainly erred by allowing testimony in response to questioning at trial about Defendant's alleged gang membership to be admitted, and (B) the trial court erred by granting a restitution order in the amount of \$793.14 without supporting evidence. After careful review, we conclude the trial court did not plainly err because

Defendant only generally objected to the cross examination of the gang-related evidence outside the presence of the jury, and the State's remaining evidence was such that the alleged error did not have a probable impact on the outcome of Defendant's trial. We further conclude, however, that the trial court did err where it granted the full amount of restitution, without supporting evidence. Thus, we find no plain error in part, and we vacate and remand in part.

I. Factual and Procedural Background

The Record on appeal tends to show the following: On 9 April 2020, Ms. Erin Brown was in her McDowell County home with her two minor sons and her brother when her back door was kicked in. Ms. Brown ran towards the noise and saw, in her living room, a masked man holding a machete. The masked man was accompanied by another assailant—later identified as Defendant—who was armed with a gun and yelled at one of Ms. Brown's sons to, “[g]et the F on the ground.” Ms. Brown's other son tried to run out the front door, but he was confronted at the door by a third masked man, who was also carrying a machete.

Ms. Brown's brother began struggling with Defendant over the gun. A few gunshots were fired over the course of the struggle, but no one suffered injuries from the gunfire. Ms. Brown's brother successfully disarmed Defendant, and once disarmed, Defendant attempted to flee to his co-assailant's vehicle, outside the home. One of Ms. Brown's sons was able to stop Defendant by striking Defendant with a

hammer to his back. The Brown family kept Defendant restrained until law enforcement arrived.

Defendant was apprehended at Ms. Brown's home and charged with first-degree burglary. At the time of his arrest, Defendant was on probation for a felony conviction, wore an ankle monitor, and was prohibited from leaving Buncombe County.

On 5 September 2023, this matter came on for hearing before the trial court. During a recess, Defendant indicated to the trial judge and the State that he would be testifying, and the State informed Defendant that it intended to cross-examine him about his social media posts, specifically those that included gang symbols. Defense counsel objected to this evidence on the basis of relevancy, the lack of expert opinion, and its prejudicial effect. The trial court overruled this objection and allowed the State to cross-examine Defendant on the gang symbols.

The jury was brought back in from the recess, and the State then began its cross-examination of Defendant and asked him how long he had been part of a gang. Defendant denied gang involvement. The State further questioned Defendant about his fascination with gang life, based on his social media following, postings, and handle "chiefenforcer239." The State asked Defendant if he was a member of the gang "Folk Nation" or any other gangs, and Defendant again denied gang involvement. The State next entered three photos into evidence of Defendant wearing a blue bandana and making hand symbols. Defendant denied the photos had any

relation to gang involvement. The State finally concluded its questioning of Defendant by asking him about his knowledge of gang enforcers, and whether Defendant had been acting as one. Defendant did admit to helping to evict people regularly, but denied he enforced evictions on behalf of a gang.

Other than the general objection outside of the jury's presence as to the State's intention to question Defendant about Defendant's social media posts that included gang symbols, which was raised before the State began its specific questioning on cross-examination and overruled by the trial court, Defendant did not further object to the State's questions or exhibits.

At the conclusion of the trial on 8 September 2023, the jury found Defendant guilty of first-degree burglary. Defendant was sentenced to sixty to eighty-four months' imprisonment; the trial court then turned to the State's request for restitution and imposed on Defendant a restitution payment of \$793.14. The trial court's calculation of the restitution payment was based on a handwritten note provided by the prosecutor, which included the monetary value of the broken or destroyed objects in Ms. Brown's home. The handwritten note was not entered into evidence, and the transcript provides the only information as to what was on the note:

THE COURT: The State has presented a restitution worksheet, well, handwritten note, seeking restitution payment of a replacement of a window and some lumber strips and some silicone caulking, an aluminum sheet, a thermostat. What is the Larson Signature? Is that a television? What is that?

[THE PROSECUTOR]: I am not sure. It was just in my file.

Initially, the trial court ruled that restitution in the amount of \$399.14 was appropriate as it found, “there is evidence of damage to the mobile home, the window being punched out during the course of the events,” but seemingly declined to consider the amount for the “Larson Signature.” The prosecutor then informed the trial court that the “Larson Signature” is a door manufacturing company, which had made Ms. Brown’s door that was damaged during the burglary. The trial court then added the requested amount for the “Larson Signature” door in the final restitution award. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to review the appeal from the final judgment of a superior court, pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 7A-1444(a) (2023).

III. Analysis

On appeal, Defendant contends (A) the trial court erred or plainly erred by allowing the State to question Defendant on his alleged gang membership. Additionally, Defendant argues (B) the trial court erred by granting a restitution order in the amount of \$793.14, without supporting evidence. We address each argument, in turn.

A. Gang Membership Evidence

Defendant first argues the trial court erred or plainly erred in allowing the State to cross-examine Defendant on his alleged gang membership. Specifically, Defendant contends the State failed to demonstrate how the alleged gang membership was relevant to his guilt, and thus, in allowing the State's questioning, the trial court prejudiced Defendant's case, entitling him to a new trial. We disagree.

"To be timely, an objection to the admission of evidence must be made at the time it is actually introduced at trial. An objection made only during a hearing out of the jury's presence prior to the actual introduction of the testimony is insufficient." *State v. Snead*, 368 N.C. 811, 816, 783 S.E.2d 733, 737 (2016) (internal citations and quotation marks omitted). Where the defendant "does not object to the admission of evidence at trial[.]" this Court reviews for plain error. *State v. Rourke*, 143 N.C. App. 672, 675, 548 S.E.2d 188, 190 (2001). "For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). "A fundamental error is one where after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. The burden of demonstrating the existence of this prejudice is on the defendant." *State v. Hinton*, 226 N.C. App. 108, 113, 738 S.E.2d 241, 246 (2013) (internal citation omitted) (cleaned up). Because Defendant objected to the gang-related evidence outside the presence of the jury, and did not object to the admission of this evidence during the

trial, we review for plain error. *See Snead*, 368 N.C. at 816, 783 S.E.2d at 737; *see also Rourke*, 143 N.C. App. at 675, 548 S.E.2d at 190.

“North Carolina courts have long held that membership in an organization may only be admitted if relevant to the defendant’s guilt.” *Hinton*, 226 N.C. App. at 113, 738 S.E.2d at 246. “Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C.R. Evid. 401. This Court has found evidence of gang membership to be relevant where the membership relates to the identity of the perpetrator or the perpetrator’s motives. *See State v. Medina*, 174 N.C. App. 723, 734, 622 S.E.2d 176, 182 (2005) (allowing evidence of gang membership, as the defendant’s gang-affiliated clothing assisted in the victim identifying the defendant); *see also State v. Roberson*, 182 N.C. App. 133, 137-38, 641 S.E.2d 347, 350 (2007) (allowing evidence of gang membership where the defendant’s gang membership was the motivation behind the shooting).

Relevant evidence, however, must be excluded if “its probative value is substantially outweighed by the danger of unfair prejudice.” N.C.R. Evid. 403. “This Court has recognized that admission of gang-related testimony tends to be prejudicial[.]” *Hinton*, 226 N.C. App. at 113, 738 S.E.2d at 246. This Court has also noted, however, “[w]hether to exclude evidence pursuant to Rule 403 is a matter left to the sound discretion of the trial court[.]” and a “ruling by the trial court will be reversed for an abuse of discretion only upon a showing that the ruling was so

arbitrary that it could not have been the result of a reasoned decision.” *State v. Gayton*, 185 N.C. App. 122, 124, 648 S.E.2d 275, 277 (2007) (citation omitted).

Notably, under our standard of review, “[w]e have not found plain error in admitting gang-related testimony where other sufficient evidence tends to implicate the defendant in the crime.” *Hinton*, 226 N.C. App. at 114, 738 S.E.2d at 247. “Where there exists overwhelming evidence of [the] defendant’s guilt, [the] defendant cannot make such a showing [of error]; this Court has so held in cases where the trial court improperly admitted evidence relating to [the] defendant’s membership in a gang.” *Gayton*, 185 N.C. App. at 125, 648 S.E.2d at 278.

In *Gayton*, the defendant was charged with trafficking cocaine by possession and carrying a concealed weapon, after being detained at the scene of an undercover narcotics operation. 185 N.C. App. at 123, 648 S.E.2d at 277. At trial, law enforcement officers testified to the defendant’s presence “during the drug buy,” as the defendant was in the car “during the sale, observed the sale of the drugs, and apparently acted as security,” and the State presented evidence of the defendant’s gang membership. *Id.* at 126, 648 S.E.2d at 278-79. The defendant appealed, contending it was error for the trial court to have allowed gang membership evidence to be admitted at trial. *Id.* at 124, 648 S.E.2d at 277. On appeal, we concluded that, “even had all the evidence as to gangs been excluded, the State presented enough evidence” of the defendant’s charge of trafficking cocaine such that the trial court did

not prejudicially err in admitting the evidence of gang membership. *Id.* at 126, 648 S.E.2d at 279.

Here, the Record demonstrates that: Defendant was apprehended by Ms. Brown and her sons in their home during the break-in; the police retrieved Defendant from Ms. Brown's home; at the time of the burglary, Defendant wore an ankle monitor; and Ms. Brown and her sons identified Defendant at trial as the man who unlawfully entered their home. "Even had all the evidence as to gangs been excluded, the State presented enough evidence," *see id.* at 126, 648 S.E.2d at 279, such that the jury would still have found Defendant guilty, and the inclusion of such evidence did not have a "probable impact on the jury's finding." *See Hinton*, 226 N.C. App. at 113, 738 S.E.2d at 246. Thus, the trial court did not plainly err in admitting the State's evidence of Defendant's alleged gang membership, and Defendant is not entitled to a new trial. *See id.* at 113, 738 S.E.2d at 246.

B. Restitution Award

Defendant finally argues the trial court erred in entering the restitution award, where there was no evidence to support the award. We agree.

Whether a restitution award was properly entered is a question preserved for appellate review without objection. N.C. Gen. Stat. § 15A-1446(d)(18) (2023); *see also State v. Shelton*, 167 N.C. App. 225, 233, 605 S.E.2d 228, 233 (2004). This Court reviews the granting of restitution awards de novo. *State v. Hunt*, 250 N.C. App. 238, 253, 792 S.E.2d 552, 563 (2016). "Under a de novo review, th[is C]ourt considers the

matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Clapp*, 235 N.C. App. 351, 359–60, 761 S.E.2d 710, 717 (2014) (citation omitted) (cleaned up).

Under North Carolina law, “[t]he amount of restitution must be limited to that supported by the record[.]” N.C. Gen. Stat. § 15A-1340.36(a) (2023). “To justify an order to pay restitution, there must be something more than a guess or conjecture as to an appropriate amount of restitution.” *State v. McNeil*, 209 N.C. App. 654, 667, 707 S.E.2d 674, 684 (2011) (citation omitted) (cleaned up); *see also State v. Blount*, 209 N.C. App. 340, 348, 703 S.E.2d 921, 927 (2011) (providing that “[a] restitution worksheet, unsupported by testimony, documentation, or stipulation, is insufficient to support an order of restitution”) (citations and quotation marks omitted). “Even though recommendations of restitution are not binding, we see no reason to interpret the statutes of this State to allow judges to make specific recommendations that cannot be supported by the evidence before them.” *McNeil*, 209 N.C. App. at 668, 707 S.E.2d at 684 (citation and internal quotation marks omitted).

In *McNeil*, the trial court ordered the defendant to pay \$217.40 as restitution for the damage to the victim’s door. 209 N.C. App. at 658, 707 S.E.2d at 678. At trial, the following evidence had been presented regarding the damage to the door:

Detective Parker testified that the back doors of [the victim]’s home were “busted in,” that “[t]here were splinters of wood laying on the floor,” and that “the lock had been kicked in.” A photograph of the damaged doors was shown to the jury, and the State submitted a

Restitution Worksheet, Notice and Order, stating that there was damage caused to the home.

Id. at 668, 707 S.E.2d at 684. The defendant appealed, arguing the trial court committed reversible error by “ordering him to pay restitution when the State presented no evidence to support the award.” *Id.* at 667, 707 S.E.2d at 684. We agreed and held there “was no evidence as to the appropriate amount of restitution” where there was only testimony and visual evidence of a “busted in” door. *Id.* at 668, 707 S.E.2d at 684. We then “vacated [the restitution award] and remanded to the trial court for redetermination.” *Id.* at 668, 707 S.E.2d at 684.

Here, as in *McNeil*, there is no evidence in the Record to support the amount of restitution. 209 N.C. App. at 668, 707 S.E.2d at 684. The only relevant document presented at trial or sentencing was the handwritten note from the prosecutor, which was not filed and is not contained in the Record on appeal. Because there is no evidence to indicate or support the appropriate amount of restitution, we vacate this award and remand to the trial court for redetermination of the restitution award. *See id.* at 668, 707 S.E.2d at 684.

IV. Conclusion

Upon review, we conclude that the trial court did not plainly err in allowing the introduction of alleged gang membership evidence at trial, because Defendant only generally objected to the cross-examination of the gang-related evidence outside the presence of the jury, and the State’s remaining evidence was such that the alleged

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error did not have a probable impact on the outcome of Defendant's trial. We further conclude, however, that the restitution award imposed on Defendant is not properly supported by Record evidence, and we therefore vacate and remand for redetermination of the restitution award.

NO PLAIN ERROR in part, and VACATED AND REMANDED in part.

Judges STROUD and MURPHY concur.

Report per Rule 30(e).