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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-324

Filed 19 March 2025

New Hanover County, No. 22CRS51379

STATE OF NORTH CAROLINA

v.

SHAWN MICHAEL BAILEY II

Appeal by defendant from judgments entered 15 September 2023 by Judge Tiffany Peguise-Powers in New Hanover County Superior Court. Heard in the Court of Appeals 12 February 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General John Tillery, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for the defendant-appellant.*

TYSON, Judge.

Shawn Michael Bailey, II (“Defendant”) appeals from judgments entered upon a jury’s verdicts of guilty of felony breaking or entering a motor vehicle and felony larceny. We find no error.

**I. Background**

Defendant was employed for Chris Natale's tree service for two or three months in 2021. Natale stored his work truck, with the tools inside of the truck's toolboxes in a secure storage facility. Natale would change the security code to gain access to the truck every time an employee was terminated. Natale did not consider Defendant as fired when Defendant stopped working for him and did not change the security code.

Security footage from the storage facility identified Defendant accessing the Natale's equipment. When Natale learned his truck had been moved to a different location, he went to inspect it, and he found some items had been stolen. Natale called his mother, the bookkeeper for his business, and received a list of serial numbers and values of the items stolen. Natale testified the list of stolen items included: one climbing rope, five saws, and one blower. Natale also gave the values of each, totaling an aggregate of \$2,450.

Defendant was indicted for felony breaking or entering a motor vehicle and felony larceny. Defendant was tried and convicted by a jury of both charges. Defendant was sentenced to an active sentence of 11 to 23 months for felony larceny and an active sentence of 8 to 19 months for breaking or entering a motor vehicle, with the sentences to run concurrently. Defendant appeals.

## **II. Jurisdiction**

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

### **III. Issue**

Defendant argues the trial court erred in admitting the testimony and inventory of the stolen tree-cutting equipment in violation of the prohibition against hearsay and in violation of his right to confrontation.

### **IV. Admission of Inventory of Stolen Equipment**

Defendant failed to object to the admission of the inventory of the stolen equipment or to Natale's testimony. *See* N.C. R. App. P. 10(a)(1). Where a defendant fails to preserve errors at trial, this Court reviews alleged errors under plain error review. *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012).

#### **A. Standard of Review**

This Court has held:

The plain error rule "is always to be applied cautiously and only in the exceptional case where, after reviewing the entire record," the error is found to have been "so basic, so prejudicial, so lacking in its elements that justice cannot have been done" or that it had a "probable impact on the jury's finding that the defendant was guilty."

*State v. Theer*, 181 N.C. App. 349, 363, 639 S.E.2d 655, 665 (2007) (citation omitted).

#### **B. Hearsay**

The North Carolina Rules of Evidence defines hearsay as "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 at trial, unless a recognized exception to the hearsay rule applies. N.C. Gen. Stat. § 8C-1, Rule 802 (2023).

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Rule 803(5) establishes an exception to the general exclusion of hearsay for recorded recollections. N.C. Gen. Stat. § 8C-1, Rule 803(5) (2023). This Court has established three foundational requirements to Rule 803(5), permitting a memorandum or record to be read into evidence where:

(1) the witness once had knowledge about the matters he recorded, (2) the witness now has insufficient recollection to enable him to testify fully and accurately about those matters, and (3) the record was made or adopted by the witness at a time when the matters were fresh in his memory and reflected his knowledge correctly.

*State v. Brown*, 258 N.C. App. 58, 68, 811 S.E.2d 224, 230-31 (2018).

While at the crime scene, Natale had the information and values of the missing property recorded by his bookkeeper. Natale had knowledge of the missing inventory, and their values were recorded. After the passage of time Natale was unable to recollect all of the information concerning the stolen property, and Natale adopted the inventory immediately after the theft when the information was fresh in his memory. Presuming, without deciding, this was not a recorded recollection, the trial court did not err because the State elicited testimony the aggregate value of the items stolen exceeded \$1,000. After Natale was asked: “Okay. Fair to say that those values are over \$1,000?” he answered: “Yes, ma’am.”

Both our Supreme Court and this Court have long held an owner can testify to property value when they would not otherwise be eligible. *See Responsible Citizens v. City of Asheville*, 308 N.C. 255, 270, 302 S.E.2d 204, 214-14 (1983); *State v. Dallas*,

205 N.C. App. 216, 222, 695 S.E.2d 474, 478 (2010). The trial court did not err in admitting this testimony and inventory.

### **C. Confrontation Clause**

Defendant further argues the testimony violated his Sixth Amendment right to confront and cross-examine the witness and to challenge the evidence admitted against him. Defendant did not raise any challenge under the Confrontation Clause before the trial court. *See* U.S. Const. amend VI. Defendant asserts this argument for the first time on appeal. “[A] constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal.” *State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982) (citations omitted). Defendant’s argument is dismissed.

### **V. Conclusion**

The trial court did not plainly err by allowing the valuation testimony as an exception to the hearsay rule. N.C. Gen. Stat. § 8C-1, Rule 803(5) (2023). Defendant did not raise his challenge under the Sixth Amendment’s Confrontation Clause before the trial court and has waived appellate review of this issue. U.S. Const. amend VI; *Hunter*, 305 N.C. at 112, 286 S.E.2d at 539. Defendant received a fair trial, free from prejudicial errors he preserved and argued. We find no plain error in the Defendant’s convictions or in the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges HAMPSON and GRIFFIN concur.

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Report per Rule 30(e).