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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-555

Filed 19 March 2025

Moore County, No. 21 CRS 050700

STATE OF NORTH CAROLINA

v.

DANIELLE MARIE HATCHER

Appeal by Defendant from Judgment entered 24 October 2023 by Judge William A. Wood, II, in Moore County Superior Court. Heard in the Court of Appeals 30 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Kendell Williams, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Anne M. Gomez, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Danielle Marie Hatcher (Defendant) appeals from a Judgment entered upon a jury verdict finding her guilty of Second-Degree Trespass. The Record before us tends to reflect the following:

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Jeffrey McDonald and his wife own Time Out Sports Bar and Grill (Time Out), located in a shopping center at 1005 Monroe Street in Carthage, North Carolina. Time Out has an outdoor dining area consisting of five tables and eighteen chairs, which is fenced in on three sides in front of Time Out's building.

On or about 11:15 in the evening of 12 March 2021, while he was working at Time Out, McDonald observed Defendant arrive at the premises. According to McDonald, he had previously informed Defendant she was not permitted to return to his establishment due to her "disruptive" behavior. McDonald notified Christopher Watson, a Time Out employee, that Defendant was not allowed to be on the premises or to enter the building. Defendant "parked directly in front of the establishment" and "came in the side entrance[.]" While Defendant was trying to open the door to the building, Watson repeatedly told Defendant she was not permitted to enter and asked her to leave the property. Defendant sat down in a chair in the outdoor seating area and said she wanted to speak with one of the owners and she did not need to leave because it was public property.

McDonald went outside and spoke with Defendant. At that point, all of the outdoor seating tables had been cleared and were being moved inside. Defendant asked McDonald why she was not allowed in Time Out. McDonald "explained it to her[.]" but Defendant still would not leave. McDonald called the police, who arrived approximately ten minutes later. When the police arrived, they arrested Defendant.

Defendant was charged with Second-Degree Trespass and Resisting a Public

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Officer. This matter was heard on 17 November 2021 in Moore County District Court. The District Court found Defendant guilty of Second-Degree Trespass and not guilty of Resisting a Public Officer. The District Court entered Judgment imposing a \$100 fine. Defendant appealed to the Moore County Superior Court.

This case came on for trial in Superior Court on 23 October 2023. At trial, Defendant testified as to the layout of the outdoor seating area: “There is a, what used to be a completely enclosed patio. They have since throughout these years removed the left panel, and I was standing at the entrance to it. I had just barely crossed what is an emptying, like a void in the fencing.” Defendant testified it was her belief she had been on a “public easement” and thus she was not on Time Out property. Further, according to Defendant, the chair in which she sat was on “[t]he left side, which is where the panel has since been removed.” She stated “[t]he left side is totally void.” The business adjacent to Time Out on the left was a tax agency.

During the jury charge conference, the trial court read the proposed instructions to the attorneys for both sides. Counsel for Defendant did not object. The trial court instructed the jury, in pertinent part, that the State had to prove beyond a reasonable doubt:

First, that the defendant entered or remained on the premises of another without authorization. . . . The premises is defined as the entire piece of property, not just the building but the land as well, provided it is so enclosed or secured as to clearly demonstrate an intent to keep intruders out. And, second, that prior to entering or remaining on the premises of another without authorization the defendant had been notified not to enter or remain by the

owner[.]

On 24 October 2023, the jury returned a verdict finding Defendant guilty of Second-Degree Trespass. The trial court entered a Judgment sentencing Defendant to 15 days in custody of the Moore County Sheriff's Office. It then suspended this sentence and placed Defendant on 12 months of supervised probation. The trial court also ordered Defendant to comply with the following as a special condition of probation:

NOT GO ON/ABOUT TIME OUT BAR AND GRILL AT ANY
TIME FOR ANY REASON; NOT GO ON/ABOUT THE
PREMISES OF 1005 MONROE STREET[,] CARTHAGE OR
ANY SHOP AT THAT SHOPPING CENTER[.]

Defendant orally entered Notice of Appeal on 24 October 2023.

Issues

The issues on appeal are whether: (I) the trial court erred by not instructing the jury on the Defense of Right; (II) the Record is sufficient to review Defendant's ineffective assistance of counsel claim on direct review; and (III) the trial court erred by barring Defendant from entering the shopping center as a condition of her probation.

Analysis

I. Defense of Right Instruction

Defendant contends the trial court plainly erred by not instructing the jury it could consider defense of right as a justification for trespassing. Defendant did not

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object to the jury instructions at trial. Consequently, our review on appeal is limited to plain error. N.C.R. App. P. 10(a)(4) (2023) (“In criminal cases, an issue that was not preserved by objection noted at trial . . . 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.”).

“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). Further, “[t]o show than an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error ‘had a probable impact on the jury’s finding that the defendant was guilty.’ ” *Id.* (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (citation omitted)). Thus, plain error is reserved for “the exceptional case where, after reviewing the entire record, it can be said the claimed error is a ‘*fundamental*’ error, something so basic, so prejudicial . . . that justice cannot have been done,’ or ‘where [the error] is grave error which amounts to a denial of a fundamental right of the accused[.]’ ” *Odom*, 307 N.C. at 660, 300 S.E.2d at 378 (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982)).

Defendant argues she was entitled to an instruction that the defense of right was available as a defense to trespassing. “It is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence.” *State v. Dilworth*, 274 N.C. App. 57, 61, 851 S.E.2d 406, 409 (2020) (quoting *State v. Shaw*,

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322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988)). “When determining whether the evidence is sufficient to entitle a defendant to jury instructions on a defense or mitigating factor, courts must consider the evidence in the light most favorable to [the] defendant.” *State v. Mash*, 323 N.C. 339, 348, 372 S.E.2d 532, 537 (1988) (citation omitted).

In cases regarding criminal trespassing, “the accused may still escape conviction by showing as an affirmative defense that he entered under a bona fide claim of right.” *State v. Baker*, 231 N.C. 136, 140, 56 S.E.2d 424, 427 (1949) (citations omitted); *see also State v. Young*, 195 N.C. App. 107, 112-13, 671 S.E.2d 372, 375 (2009) (“A breaking or entry is wrongful when it is without the consent of the owner or tenant or other claim of right.” (citing *State v. Mathis*, 126 N.C. App. 688, 691-93, 486 S.E.2d 475, 477-78 (1997) (reversing breaking and entering conviction on grounds the jury was not instructed on the “claim of right” bondsmen have to break and enter the house of someone who has jumped bail), *aff’d on other grounds*, 349 N.C. 503, 509 S.E.2d 155 (1998)) (additional citations omitted). This defense requires a defendant to prove: “(1) [t]hat he believed he had a right to enter; and (2) that he had reasonable grounds for such belief.” *Baker*, 231 N.C. at 140, 56 S.E.2d at 427 (citations omitted).

Here, Defendant testified she had visited Time Out prior to 2020. On the night of the incident, Defendant stated she “parked directly in front of the establishment” and “came in the side entrance[.]” Defendant described her understanding of the layout and bounds of Time Out: “There is a, what used to be a completely enclosed

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patio. They have since throughout these years removed the left panel, and I was standing at the entrance to it.” This statement, viewed in the light most favorable to the Defendant, indicates Defendant knew she was on Time Out property because where she was standing on the patio was previously fully enclosed. Defendant also testified Watson asked her to leave the premises and she refused, after which she sat down in a chair owned by Time Out. Viewing this in the light most favorable to the Defendant, Defendant had been informed she was on Time Out property and responded by sitting down in a chair owned by Time Out. Although Defendant contends there was only a single chair on what she believed to be the public side of the sidewalk, she previously testified “they [Time Out] were already closed and were moving all the patio equipment and taking the chairs and tables inside[.]” Indeed, as Defendant herself testified, the closest business to Time Out was a tax agency, which does not have outdoor seating.

Based on this evidence, Defendant did not have reasonable grounds to believe she had a right to enter or remain on the premises. Rather, she was repeatedly asked to leave, entered and sat in an area she knew was previously fully enclosed by Time Out, and sat in a chair she could not have reasonably believed belonged to an entity other than Time Out. Thus, Defendant was not entitled to a jury instruction on the defense of claim of right. Therefore, the trial court did not plainly err by not instructing the jury on this issue.

II. Ineffective Assistance of Counsel

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Defendant argues her trial counsel was constitutionally ineffective because, in Defendant's view, she impliedly admitted Defendant was guilty. She also contends her counsel's failure to request a jury instruction on defense of right constitutes ineffective assistance of counsel (IAC). In general, IAC claims should be considered through motions for appropriate relief and not on direct appeal. *See State v. Dockery*, 78 N.C. App. 190, 192, 336 S.E.2d 719, 721 (1985) ("The accepted practice is to raise claims of ineffective assistance of counsel in post-conviction proceedings, rather than direct appeal."); *State v. Ware*, 125 N.C. App. 695, 697, 482 S.E.2d 14, 16 (1997) (dismissing the defendant's appeal because issues could not be determined from the record on appeal and stating that to "properly advance these arguments, defendant must move for appropriate relief pursuant to G.S. 15A-1415."). A motion for appropriate relief is preferable to direct appeal because in order to

defend against ineffective assistance of counsel allegations, the State must rely on information provided by defendant to trial counsel, as well as defendant's thoughts, concerns, and demeanor. [O]nly when all aspects of the relationship are explored can it be determined whether counsel was reasonably likely to render effective assistance.

State v. Buckner, 351 N.C. 401, 412, 527 S.E.2d 307, 314 (2000) (citations and quotation marks omitted).

"IAC claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of

investigators or an evidentiary hearing.” *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001) (citations omitted). However, “should the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant’s right to reassert them during a subsequent MAR proceeding.” *Id.* at 167, 557 S.E.2d at 525 (citation omitted).

In order to prevail on an IAC claim, Defendant “must show that counsel’s representation fell below an objective standard of reasonableness” and “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068, 80 L. Ed. 2d 674, 693, 698 (1984); *see also State v. Braswell*, 312 N.C. 553, 562-63, 324 S.E.2d 241, 248 (1985) (adopting *Strickland* standard for IAC claims under N.C. Const. art. I, §§ 19, 23).

Here, we are unable to decide Defendant’s IAC claims based on the “cold record” on appeal. *Fair*, 354 N.C. at 166, 557 S.E.2d at 524 (citations omitted). We thus conclude, “further development of the facts would be required before application of the *Strickland* test[.]” *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006) (citation omitted). Therefore, we dismiss any IAC claims without prejudice to permit Defendant to pursue a motion for appropriate relief in the trial court.

III. Probation Condition

Defendant contends the trial court erred at sentencing by prohibiting her from the shopping center as a condition of probation, as opposed to only barring her from

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Time Out. Specifically, she argues this condition does not bear a reasonable relationship to her offense or rehabilitation. We disagree.

Our statutes provide that a trial court is entitled to impose one or more of several specified conditions of probation in the exercise of its sound discretion. N.C. Gen. Stat. § 15A-1343(b1) (2023); *see also State v. Allah*, 231 N.C. App. 88, 97-98, 750 S.E.2d 903, 911 (2013). Indeed, “[t]he [trial] court has substantial discretion in devising conditions” under N.C. Gen. Stat. § 15A-1343. *Matter of Eldridge*, 268 N.C. App. 491, 497, 836 S.E.2d 859, 863 (2019). Further, the trial court may impose any condition of probation it determines “to be reasonably related to [the defendant’s] rehabilitation.” N.C. Gen. Stat. § 15A-1343(b1)(10) (2023). “The extent to which a particular condition of probation is authorized by N.C. Gen. Stat. § 15A-1343(b1)(10) hinges upon whether the challenged condition bears a reasonable relationship to the offenses committed by the defendant, whether the condition tends to reduce the defendant’s exposure to crime, and whether the condition assists in the defendant’s rehabilitation.” *Allah*, 231 N.C. App. at 98, 750 S.E.2d at 911 (citing *State v. Cooper*, 304 N.C. 180, 183, 282 S.E.2d 436, 438 (1981)).

“A challenge to a trial court’s decision to impose a condition of probation is reviewed on appeal using an abuse of discretion standard of review[.]” *Id.* (citing *State v. Harrington*, 78 N.C. App. 39, 48, 336 S.E.2d 852, 857 (1985)). “An abuse of discretion occurs ‘only upon a showing that the judge’s ruling was so arbitrary that it could not have been the result of a reasoned decision.’” *State v. Salentine*, 237 N.C.

App. 76, 81, 763 S.E.2d 800, 804 (2014) (quoting *State v. Dial*, 122 N.C. App. 298, 308, 470 S.E.2d 84, 91, *disc. review denied*, 343 N.C. 754, 473 S.E.2d 620 (1996)).

Here, the State requested at sentencing that Defendant not have “any contact with Time Out, and just to emphasize that her prohibition of going to Time Out does continue.” In rendering its sentencing decision, the trial court stated:

[I]n addition to the regular terms of probation [Defendant] shall not go on or about the premises of the Time Out Bar and Grill at any point for any reason. She shall not go on or about any of the stores at 1005 Monroe Street in Carthage, because apparently she doesn’t know where the boundary is to the Time Out, so we’re just not going to let her go over there at any point for any reason.

In the Judgment, under “Special Conditions of Probation”, the trial court provided:

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant’s rehabilitation:

....

NOT GO ON/ABOUT TIME OUT BAR AND GRILL AT ANY TIME FOR ANY REASON; NOT GO ON/ABOUT THE PREMISES OF 1005 MONROE STREET[,] CARTHAGE OR ANY SHOP AT THAT SHOPPING CENTER[.]

Although Defendant argues she had not been to Time Out in four years because she “had no desire to ever be there[,]” this misses the fact that she did, in fact, go to Time Out, thus beginning this matter in the first place. It was not unreasonable, then, for the trial court to be unpersuaded Defendant’s mere stated aversion to going to Time Out was sufficient to keep her from returning to the premises. Further, given the layout of the shopping center, this condition prevents Defendant from seeking to

engage with McDonald or Watson while on public property in the shopping center or the property of adjacent businesses. Additionally, Watson works at both Time Out and at another business located in the shopping center. Thus, this condition prevents Defendant from interacting with him at his other place of business. Therefore, the special probation condition barring Defendant from the shopping center where Time Out is located was reasonably related to her offense and rehabilitation. Consequently, the trial court did not abuse its discretion in imposing this condition.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error in Defendant's trial and affirm the Judgment. We dismiss Defendant's ineffective assistance of counsel claim without prejudice to the filing of a motion for appropriate relief.

NO ERROR IN PART; DISMISSED WITHOUT PREJUDICE IN PART.

Judge FLOOD concurs.

Judge STADING concurs in part and dissents in part by separate opinion.

Report per Rule 30(e).

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STADING, Judge, concurring in part and dissenting in part, writing separately.

I concur in the majority opinion, except I would deny on the merits, Defendant’s ineffective assistance of counsel (“IAC”) claim for “impliedly admitting” Defendant’s guilt, since it can be decided from the cold record without further proceedings. *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001).

Defendant maintains that the following portion of her trial counsel’s closing argument amounted to an implied admission of guilt:

Now, . . . we’ve heard from the . . . State, that there is this argument about the sidewalk of the shopping center of the Food Lion shopping center where she politely remained in hoping to be able to talk to the manager, that that’s on the premises.

I would submit to you that that is not, and she certainly -- no average person would be expected to know that that legal argument, oh, it’s the premises because they had the tables out there.

Citing the elements of second-degree trespass charged to the jury,¹ Defendant argues that since she admitted to remaining on the property after being told to leave, the State only needed to prove Defendant was in fact on Time Out’s property.

¹ “A person commits the offense of second degree trespass if, without authorization, the person enters or remains on . . . premises of another after the person has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person.” N.C. Gen. Stat. § 14-159.13(a) (2023).

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STADING, J., concurring in part and dissenting in part

After questioning by the trial court, Defendant offered evidence and the State thus offered the last closing argument. *See* N.C. R. Super. & Dist. Cts. Rule 10; *see also State v. Taylor*, 289 N.C. 223, 231, 221 S.E.2d 359, 365 (1976). In context, a close reading of the challenged closing argument shows Defendant's trial counsel merely sought to preempt the State's closing argument and then offered an alternative theory in her defense. Contrary to Defendant's understanding of her trial counsel's closing, just after forecasting the State's argument, counsel attempted to rebut the anticipated argument by stating the sidewalk "is not" part of Time Out's premises. Following this rebuttal, trial counsel stated "and," then proceeded to argue "no average person would be expected to know that that legal argument, oh, it's the premises because they had the tables out there." Although Defendant asserts this matter bears resemblance to *State v. McAllister*, that closing argument is a far cry from the one here. 375 N.C. 455, 460, 847 S.E.2d 711, 714-15 (2020). In view of foregoing, I would hold that there has been no showing that counsel made errors so serious as to deprive Defendant of a fair trial. *State v. Harbison*, 315 N.C. 175, 179, 337 S.E.2d 504, 506 (1985).