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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1066

Filed 7 October 2026

Forsyth County, No. 24CR211154-330

STATE OF NORTH CAROLINA

v.

MARQUELL Q. HUNTER, Defendant.

Appeal by defendant from judgment entered 12 February 2025 by Judge Joseph N. Crosswhite in Forsyth County Superior Court. Heard in the Court of Appeals 27 August 2026.

Blass Law, PLLC, by Danielle Blass, for defendant-appellant.

Attorney General Jeff Jackson, by Special Deputy Attorney General Sharon Patrick-Wilson, for the State.

FLOOD, Judge.

Defendant Marquell Q. Hunter appeals his conviction for interfering with an electronic monitoring device. On appeal, Defendant argues that the trial court, first, erred by failing to submit aggravating factors to the jury in violation of the Sixth Amendment and N.C.G.S. § 15A-1340.16(a1); second, plainly erred by allowing the State to introduce evidence of Defendant's post-release supervision hearing and

failing to give a jury instruction regarding that evidence; and third, plainly erred in admitting evidence related to GPS data and alerts because it was not properly authenticated and was inadmissible hearsay. Defendant also argues the cumulative effect of these errors deprived him of a fair trial.

Upon careful review, we conclude that the trial court did not err in failing to submit an aggravating factor to the jury, as the factor was a prior conviction sentencing factor; did not plainly err in allowing Defendant's post-supervision hearing to be admitted, as plain error review is inapplicable to Rule 403 determinations; and did not plainly err in admitting GPS-related evidence, as it was properly authenticated and fell under the business records exception. Furthermore, because we conclude that the trial court did not err, we reject Defendant's argument as to any cumulative effect of alleged errors.

I. Factual and Procedural Background

In 2013, Defendant was convicted of two counts of second degree murder, two counts of assault with a deadly weapon with intent to kill inflicting serious injury, kidnapping, and conspiracy to commit kidnapping. In September of 2023, Defendant was released from prison and placed on parole in Forsyth County under the supervision of Parole Officer Cody Johnson. As a condition of Defendant's parole, he wore an ankle monitor.

On 12 January 2024, Defendant informed Officer Johnson that he was going to Samaritan Ministries because his wife had kicked him out of the house, and

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Defendant further requested that Officer Johnson transfer him to supervision in Whiteville, North Carolina, where he had a sister. Officer Johnson instructed Defendant to provide an address and indicated that the request for transfer would be submitted the next business day.

That same day, however, the probation office received both a “tracker strap tamper” alert and a “proximity tamper” alert from Defendant’s ankle monitor. The on-call parole officer that evening, Officer Jacob Isaacs, contacted Defendant, who informed Officer Issacs that he was staying at Samaritan Ministries and agreed to meet Officer Issacs there. When Officer Isaacs arrived, he could not locate Defendant, and he was unable to reach him by phone despite calling twice. Defendant did not contact Officer Johnson for nearly three months, after which time he turned himself in because he “wanted to do the right thing for” his pregnant wife and soon-to-be first child.

Defendant was subsequently charged with violating post-release supervision by absconding and interfering with an electronic monitoring device, the latter of which is the subject of this appeal.

At trial, the State introduced various GPS-related exhibits, including tracking location exhibits as well as email and text alerts from the electronic monitoring system. Additionally, without objection from defense counsel, the State introduced testimony by Officer Johnson of Defendant’s post-release supervision hearing, in which Officer Johnson explained that Defendant “admitted he tampered with his

electronic monitor[.]”

After the close of the State’s evidence, defense counsel moved to dismiss the case “on due process and the violation of the United States Constitution and North Carolina State [C]onstitution[.]” claiming “the electronic monitoring interfering is punished at an extremely disparate rate not based on the defendant’s criminal history but based on whatever he’s being monitored on.” The trial court denied this motion. At the close of all evidence, defense counsel renewed his motion to dismiss, which the trial court again denied. The jury returned a guilty verdict, and the trial court subsequently sentenced Defendant to 58 to 82 months’ imprisonment. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to hear an appeal from a final judgment of a superior court pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a) (2025).

III. Analysis

On appeal, Defendant argues that the trial court: (A) erred by failing to submit aggravating factors to the jury, in violation of the Sixth Amendment and N.C.G.S. § 15A-1340.16(a1); (B) plainly erred by allowing the State to introduce evidence of Defendant’s post-release supervision hearing and failing to give a jury instruction regarding that evidence; and (C) plainly erred by admitting GPS-related evidence. Defendant also argues that (D) the cumulative effect of these errors deprived him of a fair trial. We address each argument in turn.

A. Aggravating Factor

Defendant first argues that the trial court violated the Sixth Amendment and N.C.G.S. § 15A-1340.16(a1) “by imposing a sentence based on an aggravating factor that was neither alleged in the indictment nor submitted to the jury.” We disagree.

We first address whether Defendant has properly preserved this argument. The North Carolina Rules of Appellate Procedure require a party to preserve an issue for appeal by “present[ing] to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10 (2025). At trial, Defendant objected based on “due process and the violation of the United States Constitution and North Carolina State [C]onstitution[,]” contending that “electronic monitoring interfere[ence] is punished at an extremely disparate rate not based on the defendant’s criminal history but based on whatever he’s being monitored on.” Counsel argued:

If he were on supervision for a misdemeanor he would only be looking at a class one or less misdemeanor punishment. But the fact that he is on it for a B2 means he’s subject to going to prison for, at a minimum if he’s convicted, the presumptive I believe is 58 months. Same conduct, same prior criminal record but an extremely disparate sentence based on that. I don’t have any case history to present to Your Honor. I don’t have anything to support that. I’m not even sure that issue’s ever been raised but I would raise that with this Court, Your Honor.

Defendant did not object on any basis regarding Defendant’s Sixth Amendment

right, and thus, this argument is not preserved for appeal. *See State v. Morrison*, 272 N.C. App. 656, 664 (2020) (“In this case [the d]efendant did not raise any objection based on issues of double jeopardy. In failing to raise the issue of double jeopardy at trial, [the d]efendant has not preserved the issue for appeal.”); *see also State v. Kirkwood*, 229 N.C. App. 656, 664 (2013) (“Constitutional questions not raised and passed on by the trial court will not ordinarily be considered on appeal.”).

Defendant, however, requests that this Court invoke Rule 2 in order to review his constitutional argument. Under Rule 2 of our Rules of Appellate Procedure, this Court may, in order “[t]o prevent manifest injustice to a party[.]” “suspend or vary the requirements or provisions of any of these rules in a case pending before it . . . upon its own initiative[.]” N.C. R. App. P. 2 (2025). An appellate court’s decision to invoke Rule 2 and suspend the appellate rules is always an exercise of discretion. *See State v. Bursell*, 372 N.C. 196, 201 (2019). Rule 2, however, “relates to the residual power of our appellate courts to consider, in exceptional circumstances, significant issues of importance in the public interest or to prevent injustice which appears manifest to the Court and only in such instances.” *State v. Campbell*, 369 N.C. 599, 603 (2017) (citation omitted). “The exercise of Rule 2 [is] intended to be limited to occasions in which a fundamental purpose of the appellate rules is at stake, which will necessarily be rare occasions.” *State v. Locklear*, 927 S.E.2d 720, 729 (N.C. Ct. App.), *review denied*, 930 S.E.2d 259 (N.C. 2026), *and appeal dismissed*, 930 S.E.2d 260 (N.C. 2026). “This assessment—whether a particular case is one of the rare

instances appropriate for Rule 2 review—must necessarily be made in light of the specific circumstances of individual cases and parties, such as whether “substantial rights of an appellant are affected.” *Campbell*, 369 N.C. at 603 (citation and internal quotation marks omitted). Defendant contends, in full, that “[t]he imposition of a dramatically enhanced sentence based on facts not found by a jury affects a substantial constitutional right and warrants review.” For the reasons explained below in response to Defendant’s statutory argument, we do not invoke Rule 2 for his constitutional argument.

Although the constitutional component of Defendant’s argument concerning the lack of aggravating factors was not adequately preserved, the statutory component of this argument is preserved as a matter of law. *See State v. Johnson*, 253 N.C. App. 337, 345 (2017) (“[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding [the] defendant’s failure to object at trial.” (citation omitted)). “Alleged statutory errors are questions of law, and as such, are reviewed de novo.” *State v. Mackey*, 209 N.C. App. 116, 120 (2011) (citation modified). “Under a de novo review, the [C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Chavis*, 278 N.C. App. 482, 485 (2021) (citation omitted).

Subsection 15A-1340.16(a1) provides, in relevant part, that, “[i]f the defendant does not so admit, only a jury may determine if an aggravating factor is present in an

offense.” N.C.G.S. § 15A-1340.16(a1) (2025). This statute was part of several amendments introduced by the North Carolina General Assembly in 2005 “to conform North Carolina’s sentencing procedures to the mandate of *Blakely v. Washington*, 542 U.S. 296 [(2004)]. Under these amendments, aggravating factors must be submitted to a jury, which must determine whether the State has proven the factors beyond a reasonable doubt.” *State v. Borges*, 183 N.C. App. 240, 244 (2007) (internal citation omitted).

An aggravating factor is, in relevant part, “[a] fact or situation that relates to a criminal offense or defendant and that is considered by the court in imposing punishment” *Aggravating Circumstance*, BLACK’S LAW DICTIONARY (12th ed. 2024). “Much turns on the determination that a fact is an element of an offense rather than a sentencing consideration, given that elements must be charged in the indictment, submitted to a jury, and proven by the Government beyond a reasonable doubt.” *Jones v. United States*, 526 U.S. 227, 232 (1999). The United States Supreme Court has held, however, that while “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt,” “the fact of a prior conviction” is *not* required to be submitted to the jury for sentencing purposes. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Jones*, 526 U.S. at 249 (“One basis for that possible constitutional distinctiveness is not hard to see: unlike virtually any other consideration used to enlarge the possible penalty for an offense, . . . a prior conviction must itself have

been established through procedures satisfying the fair notice, reasonable doubt, and jury trial guarantees.”).

Pursuant to N.C.G.S. § 14-226.3, the statute of which Defendant was convicted in the present appeal, “[i]t is unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for the purpose of monitoring a person who is . . . [w]earing an electronic monitoring device as a condition of post-release supervision.” N.C.G.S. § 14-226.3(b)(5) (2025). A violation of this statute, and the aggravating factor about which Defendant’s appeal is concerned,

is a felony one class lower than the most serious underlying felony or a misdemeanor one class lower than the most serious underlying misdemeanor, except that, if the most serious underlying felony is a Class I felony, then violation of this section is a Class A1 misdemeanor. Violation of this section by a person who is required to comply with electronic monitoring as a condition of bond or pretrial release is a Class 1 misdemeanor. Violation of this section by any other person is a Class 2 misdemeanor.

N.C.G.S. § 14-226.3(e) (2025) (emphasis added).

Here, the fact of Defendant’s prior convictions is not an element of the offense of electronic monitoring tampering that must be proved by the State before the jury; instead, it is a sentencing factor for consideration by the judge. *See Jones*, 526 U.S. at 232. Accordingly, the trial court did not violate N.C.G.S. § 15A-1340.16(a1), and thus we decline to invoke Rule 2 for the unpreserved constitutional argument. *See Apprendi*, 530 U.S. at 490; *Jones*, 526 U.S. at 249.

B. Post-Release Supervision Hearing

Defendant next argues that the trial court plainly erred by allowing the State to introduce evidence of Defendant's post-release supervision hearing and failing to give a jury instruction regarding that evidence. Specifically, Defendant contends, "a fundamental error occurred when the jury was permitted to hear that [Defendant] admitted to tampering at a prior parole hearing, without explanation of the proceeding's limited relevance or its lower probable-cause standard[.]" and this prejudiced Defendant under Rule 403.

Under Rule 403, "relevant[] evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" N.C.G.S. § 8C-1, Rule 403 (2025). "Whether or not to exclude evidence under Rule 403 . . . is a matter within the sound discretion of the trial court and its decision will not be disturbed on appeal absent a showing of an abuse of discretion." *State v. McCray*, 342 N.C. 123, 131 (1995). This Court does "not apply plain error to issues which fall within the realm of the trial court's discretion." *State v. Cunningham*, 188 N.C. App. 832, 837 (2008) (citation and internal quotation marks omitted). Here, because Rule 403 is reviewed for an abuse of discretion, and this Court does not apply plain error to discretionary issues on the part of the trial court, we do not reach Defendant's allegation of error under Rule 403. *See id.*; *see also McCray*, 342 N.C. at 131.

C. GPS Evidence

Defendant next argues that the trial court plainly erred in admitting GPS-

related evidence. Specifically, Defendant contends that the trial court plainly erred by allowing lay opinion testimony by Officer Johnson regarding GPS data and by allowing GPS exhibits because the electronic monitoring data was not properly authenticated and was inadmissible hearsay.

1. Lay Opinion Testimony of GPS Data

Defendant first contends that Officer Johnson’s testimony regarding the State’s Exhibits 5 through 8—GPS-related tracking location evidence—was improperly admitted as lay opinion testimony.

We review the trial court’s decision to admit lay opinion testimony for an abuse of discretion. *State v. Thomas*, 281 N.C. App. 159, 177 (2021). Here, because we review admission of lay opinion testimony for an abuse of discretion, and this Court does not apply plain error to discretionary issues on the part of the trial court, we do not reach the merits of this issue. *See Cunningham*, 188 N.C. App. at 837; *see also McCray*, 342 N.C. at 131; *State v. Gettleman*, 275 N.C. App. 260, 273 (2020).

2. GPS Exhibit Hearsay Evidence

Defendant next argues that the trial court plainly erred by allowing GPS tracking data exhibits related to Defendant’s monitoring system. Specifically, Defendant contends that these exhibits—tracking location documents, email alerts, and text message alerts—were not properly authenticated by Officer Johnson’s or Officer Issacs’s testimony under Rule 901 and were inadmissible hearsay. We disagree.

“A trial court’s determination as to whether a document has been sufficiently authenticated is reviewed de novo on appeal as a question of law.” *State v. Crawley*, 217 N.C. App. 509, 515 (2011).

Rule 901 of our Rules of Evidence requires authentication or identification “by evidence sufficient to support a finding that the matter in question is what its proponent claims.” N.C.G.S. § 8C-1, Rule 901 (2025). “Rule 901 does not require the proponent of evidence to conclusively prove that tendered documents or electronic evidence is definitively a record, only that the evidence is relevant for the jury to conclude that it is authentic.” *Crawley*, 217 N.C. App. at 516. “Our Supreme Court has held that ‘[t]he competency, admissibility, and sufficiency of the evidence is a matter for the court to determine. The credibility, probative force, and weight is a matter for the jury.’” *Id.* (quoting *State v. Wiggins*, 334 N.C. 18, 34 (1993)).

“Hearsay” is defined in the North Carolina Rules of Evidence 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.G.S. § 8C-1, Rule 801(c) (2025). Although generally inadmissible at trial, hearsay may be allowed by statute or the North Carolina Rules of Evidence. N.C.G.S. § 8C-1, Rule 802 (2025). Rule 803(6) establishes an exception to the general exclusion of hearsay for business records.

Under Rule 803(6),

[a] memorandum, report, record, or data compilation, in

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any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business activity and (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, by affidavit or by document under seal under Rule 902 of the Rules of Evidence made by the custodian or witness, or by a certification that complies with 28 U.S.C. § 1746 made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Authentication of evidence by affidavit shall be confined to the records of nonparties, and the proponent of that evidence shall give advance notice to all other parties of intent to offer the evidence with authentication by affidavit. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

N.C.G.S. § 8C-1, Rule 803(6) (2025). Business records stored electronically are admissible if:

(1) the computerized entries were made in the regular course of business, (2) at or near the time of the transaction involved, and (3) a proper foundation for such evidence is laid by testimony of a witness who is familiar with the computerized records and the methods under which they were made so as to satisfy the court that the methods, the sources of information, and the time of preparation render such evidence trustworthy.

State v. Crawley, 217 N.C. App. 509, 516 (2011) (quoting *State v. Springer*, 283 N.C. 627, 636 (1973)). “There is no requirement that the records be authenticated by the person who made them.” *State v. Wilson*, 313 N.C. 516, 533 (1985).

“This Court has previously held that GPS tracking evidence and simultaneously prepared reports are admissible under the business records exception to the hearsay rule.” *State v. Gardner*, 237 N.C. App. 496, 499 (2014). In *State v. Jackson*, for example, this Court held that GPS tracking evidence from the defendant’s ankle monitor was properly admitted as a business record where the officer “established his familiarity with the GPS tracking system by testifying about his experience and training in the field of electronic monitoring[,]” “testified concerning how the electronic monitoring device worn by [the] defendant transmits data to a secured server where the data was stored and routinely accessed in the normal course of business[,]” and “explained how[] . . . he accessed the tracking data for [the] defendant’s electronic monitoring device and produced Exhibit 16 for trial[,]” such that “producing reports such as Exhibit 16 was normal in the course of business.” 229 N.C. App. 644, 651 (2013). This Court explained that “[t]rustworthiness is the foundation of the business records exception[,]” *id.* (citation omitted), and that the officer’s “testimony established a sufficient foundation of trustworthiness for the tracking evidence to be admitted as a business record[,]” *id.* We also reasoned that, assuming the officer’s testimony was insufficient to lay a proper foundation and authenticate the GPS tracking evidence, “we find it likely that, had [the] defendant objected to the admission of the tracking evidence at trial, the State could have produced additional testimony to overcome the objection. As a result, the insufficiency of foundation does not amount to plain error.” *Id.*

Defendant argues that the present case stands in “sharp contrast” to the foundation laid for GPS tacking data evidence in *Jackson*. Defendant contends that, unlike in *Jackson*, where the officer’s testimony sufficiently established a “foundation of trustworthiness for admitting the tracking evidence to be admitted as a business record[,]” *see id.*, Officer Johnson’s testimony was insufficient to lay a proper foundation for authentication and to meet the requirements of the hearsay business record exception because he “provided no explanation of how accuracy is tested, what the margin of error is, how often errors occur, or how the system transmits and stores data[,]” and he did not testify “that the reports in Exhibits 5–8 were created in the regular course of business.”

At trial, Officer Johnson explained that he had “training specific to electronic monitoring”; had experience with clients on electronic monitoring; and was familiar with how the ankle monitor was “monitored through Wi-Fi, cellular, [and] satellite” He testified that Rialto Access was the electronic monitoring system “we use as a statewide agency” and that he “regularly” pulls up clients’ monitoring systems as part of his job. We hold that Officer Johnson’s testimony was similar to the officer’s testimony in *Jackson*, as Officer Johnson testified as to his training and familiarity with the monitoring system, establishing “a sufficient foundation of trustworthiness for the tracking evidence to be admitted as a business record[.]” *See id.* Even assuming Officer Johnson’s testimony was insufficient to lay a proper foundation, however, as we held in *Jackson*, “we find it likely that, had [D]efendant objected to

the admission of the tracking evidence at trial, the State could have produced additional testimony to overcome the objection[,]” and “[a]s a result, the insufficiency of foundation” if any, “does not amount to plain error.” *See id.*

Furthermore, as to the text message alerts, Officer Issacs testified that he has “training and experience in using the electronic monitoring devices[,]” and “typically [has] about 15 people on electronic monitoring at any given time.” He explained that he sometimes works on the “on-call team[,]” which “takes[] any kind of call regarding the alerts that would generate from the electronic monitoring devices[.]” He testified as to the process of the alerts:

With tracker proximity tampers and tracker strap tampers, [] BI monitoring, the company that owns the monitor, immediately sends you a text message for those alerts. And they call you ten minutes after the alert has been texted to you. An actual person will call you from the call center and verify you got the alert.

We hold that this testimony was similar to that of the officer in *Jackson*, again establishing “sufficient foundation of trustworthiness for the tracking evidence to be admitted as a business record[,]” by discussing his training and familiarity with the monitoring system. *See id.* Even assuming *arguendo* that Officer Issacs’s testimony was insufficient to lay a proper foundation, as we held in *Jackson*, “we find it likely that, had [D]efendant objected to the admission of the tracking evidence at trial, the State could have produced additional testimony to overcome the objection[,]” and “[a]s

a result, [any] insufficiency of foundation does not amount to plain error.” *See id.*¹

D. Cumulative Effect

Defendant finally argues that the cumulative effect of these errors deprived him of a fair trial. We disagree.

“Cumulative errors lead to reversal when ‘taken as a whole’ they ‘deprived [the] defendant of his due process right to a fair trial free from prejudicial error.” *State v. Wilkerson*, 363 N.C. 382, 426 (2009) (quoting *State v. Canaday*, 355 N.C. 242, 254 (2002)). “[C]umulative error requires there be multiple significant errors before an appellate court can conclude that a defendant has met the high bar of demonstrating that he has been wholly deprived of his due process right to a fair trial free from prejudicial error.” *State v. Gillard*, 386 N.C. 797, 852 (2024) (citation modified).

Here, because we have concluded there were no errors, we conclude that Defendant has failed to demonstrate that the trial court cumulatively erred. *See id.* As such, we reject Defendant’s argument.

IV. Conclusion

Upon careful review, we conclude that the trial court did not err in failing to

¹ Although the trial court did not explicitly state that it was admitting the text message evidence under the business records exception, we will uphold the admission if it is “correct upon any theory of law.” *State v. Cook*, 246 N.C. App. 266, 279 (2016) (“We note that although the trial court did not admit her statement under the state-of-mind hearsay exception, we generally uphold a trial court’s ruling ‘if it is correct upon any theory of law[.]’” (citation omitted)); *see also State v. Coffey*, 326 N.C. 268, 285–86 (1990) (upholding the trial court’s evidentiary ruling despite finding that the trial court had admitted the challenged statement under the wrong hearsay exception).

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submit an aggravating factor to the jury, as the factor was a prior conviction sentencing factor; did not plainly err in allowing Defendant's post-supervision hearing to be admitted, as plain error review is inapplicable to Rule 403 determinations; and did not plainly err in admitting GPS-related evidence, as it was properly authenticated and fell under the business records exception. Furthermore, because we conclude that the trial court did not err, we reject Defendant's argument as to any cumulative effect of alleged errors.

NO ERROR.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).