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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-663

Filed 7 October 2026

Wake County, Nos. 22CR330595-910, 22CR330599-910

STATE OF NORTH CAROLINA

v.

AARON-GEORGE BASIM JOHNSON

Appeal by defendant from order entered 8 November 2024 by Judge Keith O. Gregory in Wake County Superior Court. Heard in the Court of Appeals 25 February 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Elizabeth Curran O'Brien, for the State.

Dunn, Pittman, Skinner & Ashton, PLLC, by Rudolph A. Ashton, III, for defendant.

FREEMAN, Judge.

Defendant appeals from judgment entered upon a jury verdict finding defendant guilty of robbery with a dangerous weapon (RWDW), second-degree kidnapping, conspiracy to commit RWDW, and possession of a firearm by a felon (PFBF). On appeal, defendant argues the trial court erred in failing to dismiss the PFBF charge, in admitting prejudicial evidence, and in denying his request for jury

instructions on lesser included offenses to RWDW and second-degree kidnapping. After careful review, we affirm the trial court's order in part and vacate it in part.

I. Factual and Procedural Background

Quentin White moved to Raleigh in August 2022 to be with his girlfriend. While walking his dogs, White befriended a man called Tab. Tab encountered White on 11 August 2022 and invited him to meet Aaron-George Johnson (defendant).

Once they arrived at defendant's apartment complex, Tab got into the back seat of defendant's red Camaro, and White got into the front passenger seat. Tab produced a small black pistol resembling a Smith & Wesson model, held it to White's head, and took White's keys. Over the next few hours, defendant and Tab zip-tied White's hands, drove him to various locations, and took his necklace, money, clothes, and phones. During the encounter, White also saw defendant with a black gun that resembled a Smith & Wesson pistol.

Defendant and Tab told White that they planned to kidnap White's girlfriend, who was their real target. After defendant took White's shoes, the men dropped White off in Durham, where he asked two bystanders to call 911. The responding officer opened the investigation by interviewing White and photographing the injuries to his wrists from the zip ties. White later identified defendant from a photo lineup.

Police searched defendant's apartment and car on 28 October 2022. They found a black Smith & Wesson pistol, gun box, and ammunition in the apartment.

They also extracted photos from defendant's phone, including one of White wearing his own necklace, one of defendant wearing White's necklace, and one of a black Smith & Wesson pistol in defendant's possession. Metadata in the latter two photo files showed that they were taken on 11 August 2022. Warrants were issued on 29 October 2022, and defendant was arrested the next day.

Defendant was charged with RWDW, second-degree kidnapping, conspiracy to commit RWDW, and PFBF. He was indicted on 9 January 2023. Defendant already had multiple felony convictions in New Jersey, one of which was cited as the predicate felony to his PFBF charge. On 7 October 2024, a superseding indictment was entered, citing a different felony from another New Jersey county as defendant's predicate felony for PFBF.

On 4 November 2024, the matter came on for trial. Photos of the evidence were displayed on a screen above defendant's head. Counsel objected to this manner of evidence presentation and was overruled. The black Smith & Wesson pistol was introduced into evidence with no objection.

The defense moved to dismiss all charges at the close of the State's evidence and again at the close of all evidence. Both motions were denied. The defense objected to the court's finding and jury instruction that the statute defining defendant's New Jersey felony was substantially similar to a North Carolina felony statute. This objection was overruled. The defense requested jury instructions on lesser included offenses to two of defendant's charges and was denied. The defense

objected to the court’s planned jury instruction that gave an open-ended date for defendant’s PFBF charge—namely, that defendant could be found guilty if he possessed a gun at any time after 9 February 2018, the date of his New Jersey felony conviction, rather than on the specific date of 11 August 2022 listed on the indictment sheet. This objection was overruled.

On 8 November 2024, the jury found defendant guilty of all four charged offenses. Defendant gave oral notice of appeal.

II. Jurisdiction

This Court has jurisdiction to review a final judgment of a superior court pursuant to N.C.G.S. §§ 7A-27(b)(1) and 15A-1444(a) (2025).

III. Discussion

Defendant raises six issues on appeal, seeking reversal of his PFBF conviction and a new trial on his RWDW and second-degree kidnapping convictions.

A. Possession of a Firearm by a Felon

Defendant raises three issues on appeal that primarily concern PFBF: whether the trial court erred in (1) finding N.J. Stat. Ann. § 2C:29-2(a)(3)(a) substantially similar to N.C.G.S. § 14-34.7(c)(1), thereby establishing defendant’s predicate felony; (2) denying defendant’s motion to dismiss the PFBF charge; and (3) including two inaccurate statements in the jury instruction on PFBF.

“[W]hether a conviction under an out-of-state statute is substantially similar to an offense under North Carolina statutes is a question of law” which we review de novo. *State v. Fortney*, 201 N.C. App. 662, 669 (2010).

For a conviction under an out-of-state statute to qualify as a predicate felony to PFBF in North Carolina, the out-of-state felony must be “substantially similar” to a felony defined by our General Statutes and “punishable where committed by imprisonment for a term exceeding one year.” N.C.G.S. § 14-415.1(b)(3) (2011).

To determine whether an out-of-state conviction is substantially similar to a North Carolina offense, courts compare “the elements of a defendant’s prior convictions under the statutes of foreign jurisdictions with the elements of crimes under [North Carolina] statutes.” *State v. Hanton*, 175 N.C. App. 250, 254 (2006) (alteration in original). The State “may establish the elements of an out-of-state offense by providing ‘evidence of the statute of such state.’” *State v. Sanders*, 367 N.C. 716, 718 (2014) (quoting *State v. Rich*, 130 N.C. App. 113, 117 (1988)). If the “evidence of the applicable law is not presented to the trial court, the party seeking a determination of substantial similarity has failed to meet its burden of establishing substantial similarity by a preponderance of the evidence.” *Id.* (citing *State v. Burgess*, 216 N.C. App. 54, 57–58 (2011)).

Here, as it appeared at the date of defendant’s conviction, section 2C:29-2 of the New Jersey Statutes Annotated provided:

(1) Except as provided in paragraph (3), a person is guilty

of a disorderly persons offense if he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest.

(2) Except as provided in paragraph (3), a person is guilty of a crime of the fourth degree if he, by flight, purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest.

(3) An offense under paragraph (1) or (2) of subsection a. is a crime of the third degree if the person:

(a) Uses or threatens to use physical force or violence against the law enforcement officer or another[.]

N.J. Stat. Ann. §§ 2C:29-2(a)(1), (2), (3)(a) (2000).

Comparably, as it appeared at the date of sentencing, section 14-34.7 of our General Statutes provided:

(c) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person does either of the following:

(1) Assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his or her official duties and inflicts physical injury on the officer.

N.C.G.S. § 14-34.7(c)(1) (2015).

The North Carolina statute is narrower than the New Jersey statute in three ways. First, the New Jersey felony encompasses a violator's attempt to resist an arrest by either fighting *or* fleeing from the LEO, while in North Carolina, the felony requires an assault. Second, the New Jersey felony encompasses the violator's use *or threatened use* of physical force or violence. If the violator threatens force or violence

against the LEO but does not carry out his threat, he can be convicted of this crime without physically injuring the LEO. By contrast, a violator can only be convicted of the North Carolina felony if his assault inflicts *physical injury* on the LEO. Third, the New Jersey felony encompasses harm or threat of harm to the LEO *or* to “another.” If a third party is harmed or threatened by the violator’s use or threat of physical force or violence, the violator can be convicted of this crime, even if the LEO remains unharmed. Meanwhile, in North Carolina, physical injury must be inflicted specifically on the LEO for a violator to be convicted under this felony statute. For all these reasons, one could be convicted of a felony under N.J. Stat. Ann. § 2C:29-2(a)(3)(a) without meeting the required elements for conviction under N.C.G.S. § 14-34.7(c)(1).¹

We hold that the trial court erred in finding New Jersey’s resisting/eluding statute, N.J. Stat. Ann. § 2C:29-2(a)(3)(a), substantially similar to North Carolina’s assault statute, N.C.G.S. § 14-34.7(c)(1). Because this conviction was the predicate felony for defendant’s PFBF conviction, we vacate defendant’s PFBF conviction.

Defendant also argues that the trial court erred by denying defendant’s motion to dismiss the PFBF charge and including two inaccurate statements in the jury

¹ The North Carolina statute is also broader, in that the assaulted LEO need only be “discharging or attempting to discharge . . . official duties” for the assailant to be convicted, while in New Jersey, the LEO must be engaged in the specific act of performing an arrest for a violator to be convicted of the subject felony.

instruction on PFBF. Because we vacate defendant's PFBF conviction, these arguments are moot.

B. 403 Evidence

Defendant next argues that the trial court erred in overruling defendant's objections to the State's exhibits being published to the jury on a large screen on the wall directly over defendant's head.

We review a trial court's decision whether to admit or exclude evidence under Rule 403 for abuse of discretion. *State v. Richardson*, 385 N.C. 101, 132–33 (2023). To merit reversal for abuse of discretion, the court's ruling must be “manifestly unsupported by reason or . . . so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 133.

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C.G.S. § 8C-1, Rule 403. Under Rule 403, “when the use of photographs that have inflammatory potential is excessive or repetitious, the probative value of such evidence is eclipsed by its tendency to prejudice the jury.” *State v. Hennis*, 323 N.C. 279, 284 (1988). This is a fact-dependent inquiry:

The test for excess is not formulaic: there is no bright line indicating at what point the number of crime scene or autopsy photographs becomes too great. The trial court's

task is rather to examine both the content and the manner in which photographic evidence is used and to scrutinize the totality of circumstances composing that presentation.

Id. at 285.

Defendant argues the display of photos on the screen above his head was unduly prejudicial and should have been excluded under Rule 403. However, the cases defendant cites in support of his bid for a new trial undermine his argument.

The presentation of the photo evidence in *Hennis*, which showed the brutalized bodies of murder victims in such gruesome detail that the defendant received a new trial, was more “grotesque and macabre” than the display of the photos in the present case. *See* 323 N.C. at 286–87. In *Hennis*, overwhelming evidence of the defendant’s guilt was not presented; thus, the jury’s guilty verdict could have been based in part on the prejudicially inflammatory photos and was therefore reversible under N.C.G.S. § 15A-1443(a). *Id.* at 287. The disturbing nature of these photos was exacerbated by their manner of presentation: the trial court had allowed the State to construct a screen measuring more than three feet by five feet and to position it above the defendant so the jurors would have him constantly in view as they were shown the gruesome photographs of the victims’ bodies. *Id.* at 282–83.

In *State v. Hobson*, 261 N.C. App. 60 (2018), the trial court admitted twenty-eight photos of guns and ammunition from his home. 261 N.C. App. at 69. Though we held no prejudicial error, we nevertheless determined that “the probative value of the photographs was substantially outweighed by the danger of unfair prejudice, and

the trial court should have exercised its discretion by excluding the photographs.” *Id.* This is distinguishable from the facts below, as the gun photos here were relevant to defendant’s RWDW charge.

While the photos in *Richardson* were admittedly graphic, like those in *Hennis*, the *Richardson* defendant’s conviction was affirmed because the photos were necessary to prove witness testimony on essential elements of the charged crimes—making the analysis in *Richardson* more applicable to this case. 385 N.C. at 136–45.

Here, the trial court’s use of its built-in display equipment below was not unduly prejudicial. The “large screen above his head” to which defendant assigns error was the court’s standard screen, which was within its discretion to use and did not present the evidence in a manner substantially more prejudicial than probative. The most graphic imagery was limited to two photos of White’s bruised wrists, which supported White’s testimony of having been restrained with zip ties and were unlikely to disturb or inflame the jury. The gun and accessory photos further supported witness testimony and were relevant to the crimes charged—they showed defendant shopping for and owning a gun that resembled the pistol used to rob White. When the manner of presentation of the photos in this case is analyzed in context, Rule 403 supports the trial court’s ruling.

Accordingly, we conclude that the trial court did not abuse its discretion.

C. 404 Evidence

Defendant next argues that the trial court erred by allowing the State to introduce the Smith & Wesson pistol, photos of this pistol, its gun box, and ammunition, as well as photos extracted from defendant's cell phone.

"In order to preserve an issue for appellate review, a party must have presented 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(a)(1). Without a specific objection based on Rule 404, a defendant fails to preserve the matter for review. *State v. Garcia*, 358 N.C. 382, 416 (2004).

"In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be . . . presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C. R. App. P. 10(a)(4).

Here, defendant failed to preserve an objection to the challenged evidence under Rule 404(b). The defense neither made a pretrial motion to suppress the pistol and photos under Rule 404(b) nor objected under Rule 404(b) to the admission of any of this evidence at trial. This objection was therefore not preserved for our review.

Absent a preserved objection, defendant must argue plain error to appeal this issue. Although defendant alleges plain error in his reply brief, alleging plain error in a reply brief does not entitle him to plain error review. *See State v. Dinan*, 233

N.C. App. 694, 698–99 (2014) (holding that the defendant was not entitled to plain error review because “a reply brief is not an avenue to correct the deficiencies contained in the original brief”). Thus, we deem the issue abandoned. N.C. R. App. P. 28(b)(6).

D. Lesser Included Offenses

Finally, defendant assigns error to the trial court’s denial of his request to instruct the jury on lesser included offenses to his charges of RWDW and second-degree kidnapping.

We review de novo “[a]ssignments of error challenging the trial court’s decisions regarding jury instructions.” *State v. Osorio*, 196 N.C. App. 458, 466 (2009).

The law is well settled that the trial court must submit and instruct the jury on a lesser included offense when, and only when, there is evidence from which the jury could find that defendant committed the lesser included offense. . . . The determining factor is the presence of evidence to support a conviction of the lesser included offense.

State v. Boykin, 310 N.C. 118, 121 (1984) (citing *State v. Summitt*, 301 N.C. 591 (1981)).

“The trial court is not required to submit a lesser-included offense ‘when the State’s evidence is positive as to every element of the crime charged and there is no conflicting evidence relating to any element of the crime charged.’” *State v. Bellamy*, 159 N.C. App. 143, 150 (2003) (quoting *State v. Smith*, 110 N.C. App. 119, 134 (1993)). Even the possibility that the jury could reject some of the State’s evidence does not

justify instructing the jury on lesser included offenses. *See State v. Hicks*, 241 N.C. 156, 160 (1954).

1. RWDW

Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon . . . whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another . . . at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C.G.S. § 14-87(a) (2017).

Common law robbery is a lesser included offense to RWDW. *State v. Clevinger*, 249 N.C. App. 383, 392 (2016). The difference between offenses is that “common law robbery does not require proof that the defendant used a firearm or dangerous weapon.” *State v. Wise*, 269 N.C. App. 105, 107 (2019). Larceny is also a lesser included offense to RWDW. *Bellamy*, 159 N.C. App. at 150. The difference is that larceny can be committed without using or threatening to use a weapon. *State v. White*, 322 N.C. 506, 517–18 (1988).

Here, defendant alleges an internal conflict in the State’s evidence as to whether he had a weapon during the robbery, thus entitling him to common law robbery and larceny instructions. However, the State proved each element of RWDW, and the evidentiary “conflicts” alleged by defendant do not undo that proof. White testified that defendant possessed a firearm when he robbed White. White’s life was

endangered or threatened by this. Defendant also acted in concert with Tab when Tab used a firearm to rob White. Defendant and Tab both used a firearm to unlawfully take White's personal property from him. The fact that White saw Tab with a gun before he saw defendant with a gun does not conflict with the evidence in the record. Nor does defendant's assertion that the evidence indicates the parties were not all in the same place during the entire robbery.

Accordingly, the trial court did not err by not submitting to the jury the lesser included offenses of common law robbery and larceny.

2. Second-Degree Kidnapping

(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

. . .

(2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony[.]

. . .

(b) . . . If the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree and is punishable as a Class E felony.

N.C.G.S. §§ 14-39(a)(2), (b) (2006).

False imprisonment is a lesser included offense to kidnapping. *See State v. Surrett*, 109 N.C. App. 344, 350 (1993). The difference is whether "the purpose of the

restraint was to accomplish one of the purposes enumerated in the kidnapping statute, N.C.G.S. § 14-39.” *State v. Kyle*, 333 N.C. 687, 703 (1993). To support a conviction of the primary charge of kidnapping, the State must prove the defendant kidnapped the victim to accomplish one of the listed purposes. *State v. Lang*, 58 N.C. App. 117, 118–19 (1982). “[T]he trial court does not have to instruct on false imprisonment if there is sufficient evidence that the defendant acted with a purpose enumerated in [N.C.G.S.] § 14-39.” *State v. Boozer*, 210 N.C. App. 371, 378 (2011) (quoting *State v. Rodriguez*, 192 N.C. App. 178, 189 (2008)).

Defendant alleges that under *State v. Ryder*, 196 N.C. App. 56 (2009), he was entitled to a jury instruction on false imprisonment which the trial court erroneously declined to give. The evidence in *Ryder* pointed to false imprisonment as well as to kidnapping; the *Ryder* defendant appeared to have first kidnapped his victim and *then* formed the intent to rob her. 196 N.C. App. at 64. The same is not true of this case. The trial court was not required to instruct on false imprisonment, because the evidence supports the conclusion that defendant kidnapped White for the purpose of robbing him with a dangerous weapon. Neither party presented any evidence that defendant acted with any other purpose. The State presented positive and uncontroverted evidence on each element of second-degree kidnapping.

Accordingly, the trial court did not err by not submitting to the jury the lesser included offense of false imprisonment.

IV. Conclusion

We affirm the trial court's decisions regarding the admission of evidence and its exercise of discretion in authorizing the manner in which the State presented evidence. We further affirm the court's denial of defendant's request for jury instructions on lesser included offenses. We vacate defendant's PFBF conviction because the New Jersey felony statute under which he was convicted was not substantially similar to the North Carolina felony statute indicated. We remand for resentencing on the remaining convictions with instructions to the trial court to vacate defendant's conviction of PFBF.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).