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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-336

Filed 21 October 2026

Cabarrus County, No. 24CR224050-120

STATE OF NORTH CAROLINA

v.

DESTINY AREONNA LEE, Defendant.

Appeal by defendant from judgment entered 18 August 2025 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 29 September 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Katherine M. McCraw, for the State.

W. Michael Spivey, for defendant-appellant.

FLOOD, Judge.

Defendant Destiny Areonna Lee appeals from a single conviction of felony larceny. On appeal, she argues that, first, the trial court plainly erred in allowing the admission of testimony regarding two prior acts under Rule 404(b), and second, that she received ineffective assistance of counsel as a result of this error. After careful review, we hold that the trial court did not err in allowing the admission of the

challenged Rule 404(b) evidence. Additionally, Defendant has not shown her trial counsel's performance was deficient in her claim for ineffective assistance of counsel.

I. Factual and Procedural Background

On 24 June 2024, Defendant was indicted for a single count of felony larceny that allegedly occurred on 1 February 2024. The matter came on for trial on 18 August 2025.

On 1 February 2024, Brian Martin, a district area manager for Lowe's Home Improvement, was monitoring the surveillance videos at the Concord Mills location when he saw Defendant entering the store with a second woman, referred to throughout the trial only as "Ms. McRae." Martin testified at trial that he noticed Defendant and Ms. McRae because of an internal memo within the company that was circulated the previous year identifying Defendant, Ms. McRae, and a third participant known as "Mr. Whitfall." Martin testified in the following colloquy that Defendant and the two others were known for following a pattern in other stores:

> Q. What first brought your attention to [Defendant]?
>
> A. Her and the other[s] . . . had been in other larcenies in our district, and they were on our Teams Chat that we had on our whole group page. And so they were identified earlier on, and I just happened to be in the office. I first noticed Ms. McRae and then [Defendant] was in front of her, and then they entered the tool department at that time.
>
> Q. How long had you been familiar with what they looked like?

> A. For several months. I would go back a little before February. I mean, . . . [the] prior year is when we first noticed them in our district.
>
> Q. And once you recognized her, what did you do at that point?
>
> A. Well, the typical MO is either to go to a location of high theft, like you stated in your opening statement, [Defendant] will select some product, pass it off to Ms. McRae, and then Mr. [Whitfall] will either get the product and walk out, o[r] if he's not around at that time, Ms. McRae will push out. So when she entered the store that day, I knew who she was. I knew their MO. And we just followed procedure.

Defendant did not object to this testimony. Martin further testified the cameras showed Defendant and Ms. McRae walk to the DeWalt tools section. Video evidence shown to the jury during Martin's testimony depicted Defendant "on the phone at the time that she [was] allegedly selecting merchandise" before passing the cart to Mr. Whitfall. Defendant then left the store while Ms. McRae and Mr. Whitfall remained inside before they left the store with the shopping cart. Martin recovered the shopping cart containing $1,102.98 worth of merchandise "in the fire lane" just outside the store.

Detective Desouza of the Concord Police Department testified that he was called to the scene by Martin and that "Ms. McRae and [Mr.] Whitfall were found just outside the ABC Store and the Edge Car Wash across the street from Lowe's." Defendant was found in the Domino's parking lot "around the corner" and "in the driver['s] seat" of a vehicle. According to Detective Desouza, the subjects were

detained and escorted back into the Lowe's store. The following colloquy concerning the vehicle Defendant was found in then took place:

> Q. And what did Concord police do with the vehicle that was [] left there?
>
> A. The vehicle was towed. It was entered stolen out of South Carolina for breach of trust.
>
> Q. So the vehicle they were in came back as stolen?
>
> A. Yes, ma'am.
>
> Q. You said out of South Carolina?
>
> A. Yes, ma'am.

Defendant did not object to this testimony.

Defendant testified that she paid $2,000.00 for the vehicle, but, because the dealership was unable to verify her employment, it requested she return the vehicle. According to Defendant, on the morning of 1 February 2024, Ms. McRae and Mr. Whitfall "text[ed] [her] and asked for a ride" to Lowe's because Mr. Whitfall was "starting a new job for a handyman company." Upon arriving at Lowe's, Mr. Whitfall "was on the phone in the parking lot[,]" so Defendant and Ms. McRae went inside to gather the items he needed, and Mr. Whitfall would pay for them when he finished his phone call. She left the store without Ms. McRae and Mr. Whitfall because she "heard commotion. [She] thought they had gotten into a fight, a physical altercation of some sort." Defense counsel moved to dismiss at the close of the State's evidence and at the close of all evidence, respectively, and the trial court denied the motions.

The jury found Defendant guilty, and the trial court sentenced Defendant to six to seventeen months' imprisonment, suspended for twelve months' supervised probation. Defendant timely appealed.

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) (2025).

III. Analysis

On appeal, Defendant argues (A) that the trial court plainly erred in allowing Martin to testify as to Defendant's prior "bad acts" and by allowing Detective Desouza to testify about the stolen vehicle. Specifically, Defendant argues the testimony should not have been admitted under Rule 404(b). Defendant also argues (B) that, as a result of these errors, she received ineffective assistance of counsel. We address each argument in turn.

A. Rule 404(b) Testimony

Defendant first argues that the trial court erred under Rule 404(b) in allowing Martin to testify as to Defendant's prior "bad acts" and by allowing Detective Desouza to testify about the stolen vehicle. Because Defendant failed to object to this testimony, Defendant has requested plain error review. We "review unpreserved issues for plain error when they involve . . . rulings on the admissibility of evidence." *State v. Gregory,* 342 N.C. 580, 584 (1996) (citations omitted). "[T]he plain error rule is always to be applied cautiously and only in the exceptional case where[] . . . it can

be said the claimed error is a *fundamental* error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done[.]" *State v. Odom,* 307 N.C. 655, 660 (1983) (citation modified). To prevail on plain error review, the defendant must show the following three things:

> First, the defendant must show that a fundamental error occurred at trial. Second, the defendant must show that the error had a probable impact on the outcome, meaning that[,] absent the error, the jury probably would have returned a different verdict. Finally, the defendant must show that the error is an exceptional case that warrants plain error review, typically by showing that the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Reber, 386 N.C. 153, 158 (2024) (citations and internal quotation marks omitted).

Rule 404(b) does not allow "[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show that he acted in conformity therewith." N.C.G.S. § 8C-1, Rule 404(b) (2025). Evidence of other crimes, wrongs, or acts "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." N.C.G.S. § 8C-1, Rule 404(b) (2025). Rule 404(b) is a "general rule of inclusion . . . subject to but one exception requiring [] exclusion if its only probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *State v. Coffey*, 326 N.C. 268, 278–79 (1990).

1. "Bad Acts"

Defendant contends that the trial court erred by allowing Martin to testify as to Defendant's prior bad acts. The State, meanwhile, contends that the admission of Martin's testimony should fall under the "plan" exception of Rule 404(b). We agree with the State.

As mentioned above, Rule 404(b) is inclusionary and "constrained by the requirements of similarity and temporal proximity." *State v. Al-Bayyinah*, 356 N.C. 150, 154 (2002). This Court has held that,

> [w]hen the features of the earlier act are dissimilar from those of the offense with which the defendant is currently charged, such evidence lacks probative value. When otherwise similar offenses are distanced by significant stretches of time, commonalities become less striking, and the probative value of the analogy attaches less to the acts than to the character of the actor.

State v. Bowman, 188 N.C. App. 635, 644 (2008) (citation omitted). Conversely, "[p]rior acts are sufficiently similar if there are some unusual facts present in both crimes that would indicate that the same person committed them." *State v. Beckelheimer,* 366 N.C. 127, 131 (2012) (citation and internal quotation marks omitted).

Here, the similarity of prior incidents to this incident shows a common plan or scheme. *See State v. Mohamed,* 205 N.C. App. 470, 488 (2010) (holding that, where "the victims [of both robberies] were robbed of their credit or debit cards by one or more handgun-wielding individuals with African accents," evidence of the

defendant's previous robbery was admissible as proving a common plan because the similarities were "striking"). Martin's testimony was that, prior to the incident in question, Defendant and Ms. McRae had a "typical MO" of selecting product before passing it to Mr. Whitfall to carry out of the store. Likewise, Martin's testimony directly related to the reason he noticed Defendant, Ms. McRae, and Mr. Whitfall on the camera feed and why he followed them through the store. The prior incidents known to Martin occurred "several months" earlier and were therefore temporally proximate enough to demonstrate a commonality. *See State v. Maready,* 362 N.C. 614, 623-24 (2008) (holding that prior driving while under the influence convictions six months before arrest were admissible in a trial for second degree murder as a result of a car accident while under the influence of alcohol).

We conclude that "the decision to admit the evidence implies that the trial court concluded that [D]efendant's plan or intent was relevant to a material issue." *See State v. Houseright,* 220 N.C. App. 495, 500 (2012). Thus, the trial court did not err—let alone plainly err—in admitting Martin's testimony of Defendant's prior behavior.

2. Stolen Vehicle

Defendant next contends that Detective Desouza's testimony regarding the stolen vehicle was inadmissible under Rule 404(b) because the State failed to lay a sufficient foundation.

In *State v. McCree,* this Court considered a similar issue, albeit under a

preserved error standard. 160 N.C. App. 19 (2003). In *McCree*, an officer arrested the defendant after observing him driving a vehicle that matched the description of the vehicle that was used during a recent robbery. *Id.* at 22. The arresting officer testified that he ran a check on the vehicle and found that it was reported stolen. *Id.* During cross-examination, the officer clarified "that the vehicle was a rental car which had been reported stolen because it was not returned on time." *Id.* On appeal, the defendant argued that the trial court erred in allowing this testimony under Rule 404(b). *Id.* at 26. This Court disagreed, holding that the testimony was admissible because the officer "did not testify that [the] *defendant* stole the vehicle; to the contrary, [the officer] testified that he did not know who stole it." *Id.* at 27. Therefore, the testimony was permissible under Rule 404(b). *Id.* at 28.

We find *McCree* instructive. Here, as in *McCree*, Detective Desouza's testimony that the vehicle was "entered stolen" made no insinuation that Defendant stole the vehicle. Therefore, the testimony was permissible under Rule 404(b). *See id.* at 27. As this reasoning was adequate to show no error had occurred under a far less demanding preserved error analysis, here, in the plain error context, we likewise hold no error occurred. Accordingly, the trial court did not err in allowing Martin's and Detective Desouza's testimonies to be admitted under Rule 404(b).

B. Ineffective Assistance of Counsel

Defendant next contends that her attorney's failure to object to the admission of the allegedly impermissible Rule 404(b) evidence resulted in a breach of her Sixth

Amendment right to counsel. We disagree.

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." *Strickland v. Washington,* 466 U.S. 668, 685 (1984) (quoting U.S. Const. amend. VI). "On appeal, this Court reviews whether a defendant was denied effective assistance of counsel de novo." *State v. Perry*, 254 N.C. App. 202, 207 (2017) (citation omitted). "First, the defendant must show that counsel's performance was deficient[;] . . . [s]econd, the defendant must show that the deficient performance prejudiced the defense." *Id.* (quoting *Strickland,* 466 U.S. at 687). To establish prejudice, a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 208. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

For the reasons stated above, any objections on the basis of Rule 404(b) would not have been meritorious; thus, Defendant's trial counsel's performance was not deficient. Because counsel's performance was not deficient, we do not analyze prejudice. *See State v. Gentry,* 932. S.E.2d 325, 330 (2026) ("[I]f either prong fails, the claim fails[.]"). Thus, Defendant did not receive ineffective assistance of counsel.

IV. Conclusion

Upon careful review, we hold that the trial court did not err in allowing the admission of Martin's and Detective Desouza's testimonies under Rule 404(b). Additionally, Defendant has failed to show she received ineffective assistance of

counsel.

NO ERROR.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).