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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1162

Filed 18 November 2026

Onslow County, No. 23CR448249-660

STATE OF NORTH CAROLINA

v.

JARROD LEE GILBERT

Appeal by defendant from judgment entered 5 March 2025 by Judge Robert C. Roupe in Onslow County Superior Court. Heard in the Court of Appeals 27 October 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Derek L. Hunter, for the State.

Q Byrd Law by Quintin D. Byrd, for the defendant-appellant.

TYSON, Judge.

Jarrod Lee Gilbert ("Defendant") appeals from his conviction for felony larceny. We discern no error.

I. Background

Dion Deloney cashed a $5,600 check on 8 September 2023 as payment for a

painting job he had completed. He left the cash inside the bank envelope and placed the envelope into his pocket. When Mr. Deloney arrived home, he gave his wife, Charnique Stanford, $1,500 of the cash to pay household bills. Ms. Stanford placed the cash into her wallet, which also contained other cash, her debit and credit cards, and a small sack containing her deceased grandmother's ashes. Mr. Deloney placed the bank envelope with the remaining cash back into his pocket and the couple left home with their children.

The family went shopping at Walmart and then went to Little Caesar's and Wing Zone restaurants to pick up food for dinner. Sometime during their outing, Mr. Deloney put another $1,500 from the bank envelope into Ms. Stanford's wallet. He did not own his own wallet.

Mr. Deloney removed his wife's wallet from the middle console of the car and carried her wallet inside the Wing Zone. Defendant was employed at Wing Zone and took Mr. Deloney's order at the counter. Mr. Deloney realized he had enough cash in his pocket to pay for the food. He placed Ms. Stanford's wallet on the counter to retrieve the cash from his pocket and paid for the food. He exited the restaurant and left his wife's wallet on the counter.

Defendant noticed the wallet on the counter soon after Mr. Deloney had left the restaurant. One of Defendant's coworkers looked through the wallet, found her identification, and looked around the restaurant for the owner. Defendant then placed the wallet under the counter. At various times over the course of Defendant's

shift, video surveillance showed him accessing the space underneath the counter where the wallet was stored. Defendant testified he was checking his phone, getting menus for customers, and cleaning up a broken vape pen. He testified he did not remove the wallet from underneath the counter.

When the family arrived home, Ms. Stanford asked Mr. Deloney for her wallet. He thought he had returned it to her. When the couple realized they did not have the wallet, they returned to Wing Zone. Mr. Deloney asked Defendant if they had found a wallet. Defendant stated they had not.

Lucy Kabanjianwarait, the owner of Wing Zone, testified she had reviewed the video surveillance from that day. She testified Defendant took the wallet from under the counter, placed it into a trash bag, and took it outside of the restaurant. Ms. Kabanjianwarait confronted Defendant and told him she had reviewed the video showing him removing the wallet from under the counter. Defendant insisted he did not remove the wallet from its location under the counter. Ms. Kabanjianwarait terminated his employment.

Defendant was indicted on one count of felony larceny on 6 August 2024. He was tried on 5 March 2025 and the jury convicted him of the offense. Defendant was sentenced with a prior record level II to a term of eight to nineteen months in prison, which was suspended and he was placed on supervised probation for thirty months. He was also ordered to pay restitution in the amount of $1,500. Defendant appeals.

II. Issues

Defendant argues: (1) his conviction should be vacated because a fatal variance existed between the indictment for felony larceny and the evidence presented at trial; (2) the trial court's failure to identify the victim in its jury charge and verdict violated his right to a unanimous jury; and, (3) the trial court committed plain error by failing to instruct the jury on the lesser-included charge of misdemeanor larceny.

III. Fatal Variance

Defendant argues a fatal variance exists between the allegations in the indictment and the testimony elicited at trial. He asserts the indictment only identifies Charnique Stanford as the victim of the larceny and the testimony at trial showed the stolen money belonged to her husband, Mr. Deloney.

A. Standard of Review

An issue of a fatal variance between the indictment and the evidence established at trial is reviewed *de novo*. *State v. Clagon*, 279 N.C. App. 425, 431, 865 S.E.2d 343, 347 (2021). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation and internal quotation marks omitted).

B. Analysis

"A variance between the criminal offense charged and the offense established by the evidence is in essence a failure of the State to establish the offense charged." *State v. Pickens,* 346 N.C. 628, 646, 488 S.E.2d 162, 172 (1997). An indictment which

charges the accused with a crime against someone other than the actual victim is a fatal variance requiring the judgment to be vacated. *State v. Bell*, 270 N.C. 25, 29, 153 S.E.2d 741, 744-45 (1967). In *Bell*, the indictment charged the defendant with the robbery of Jean Rogers, whereas the evidence showed the correct name of the victim was Susan Rogers. *Id.* Our Supreme Court held the charge should have been dismissed where the indictment was in variance with the evidence. *Id.* *See also State v. Eppley*, 282 N.C. 249, 259, 192 S.E.2d 441, 448 (1972) (fatal variance found where the indictment described stolen shotgun as property of James Ernest Carriker and James Ernest Carriker testified the shotgun belonged to his father).

Here, the indictment charged Defendant "unlawfully, willfully, and feloniously did steal, take[,] and carry away a teal colored wallet containing $1,500.00 in US Currency . . . the personal property of Charnique Standford [sic], such property having a value of $1,515.00." Defendant asserts the amount of cash inside Ms. Stanford's wallet elevated the crime to a felony, but the cash belonged to Mr. Deloney, who was not named in the indictment as the owner. *See* N.C. Gen. Stat. § 14-72(a) (2025) ("Larceny of goods of the value of more than one thousand dollars ($1,000) is a Class H felony.")

Ms. Stanford testified her husband gave her $1,500 in cash after he had cashed a check for a painting job he had completed. She put the money into her teal-colored wallet, which was the same wallet Mr. Deloney had left on the counter at Wing Zone. Ms. Stanford was asked how much money was in the wallet and testified, "[I]t was a

lot. I don't remember exactly how much. But I know I put 1500 to the side, because that was for my bills."

Mr. Deloney took Ms. Stanford's wallet inside Wing Zone, and she remained in the car with the children. Mr. Deloney had placed additional money into the wallet, but the indictment only alleges theft of the $1,500 he had given to Ms. Stanford. The evidence shows no variance, fatal or otherwise, between the allegation in the indictment naming Ms. Stanford as the owner of the property stolen and the evidence presented at trial. This argument is overruled.

IV. Right to Unanimous Verdict

Defendant argues the trial court erred by failing to identify the victim in its charge and verdict, which violated his right to a unanimous jury verdict under the North Carolina Constitution. N.C. Const. art. I § 24 ("No person shall be convicted of any crime but by the unanimous verdict of a jury in open court[.]")

A. Standard of Review

"[W]here the error violates the right to a unanimous jury verdict under Article I, Section 24, it is preserved for appeal without any action by counsel." *State v. Wilson*, 363 N.C. 478, 484, 681 S.E.2d 325, 330 (2009). This Court reviews the existence of a unanimous jury verdict *de novo* and, in doing so, "we must examine the verdict, the charge, the jury instructions, and the evidence to determine whether any ambiguity as to unanimity has been removed." *State v. Surrett*, 217 N.C. App. 89, 93, 719 S.E.2d 120, 123 (2011) (citation omitted).

B. Analysis

Defendant argues the jury could not match the verdict to the evidence because the jury instructions and the verdict sheet fail to identify the actual victim. As discussed above, the indictment alleges Ms. Stanford was the owner of the wallet and victim of the larceny and evidence was presented tending to show the wallet and $1,500 of cash inside it belonged to her. The jury instructions do not refer to a specific individual as the victim and simply states as the first element to the crime that Defendant "took property – a wallet containing $1,500 in cash, credit cards, a debit card, and a bag containing ashes – belonging to another person." The verdict sheet likewise does not specifically name a victim.

A defendant's right to a unanimous jury verdict is not violated where "the trial court's jury instructions and the evidence on the record clear[s] the verdict of any ambiguity." *State v. Bowman*, 387 N.C. 509, 520-21, 915 S.E.2d 134, 143 (2025). In *Bowman*, the Court held the defendant's right to a unanimous jury verdict was not violated where "the trial court's entire jury instruction as a whole provided adequate constitutional certainty as to the unanimity of the verdict," and "evidence submitted to the jury . . . allow[s] [the reviewing court] to conclude[] that there was possible unanimity in the jury's decision." *Id.* at 520, 915 S.E.2d at 143.

Our Court has ruled upon the trial court's failure to name the victim in the jury instructions and verdict sheet in an unpublished opinion. *State v. Fair*, No. 24-507, slip. op. at 13 (N.C. Ct. App. 2025) (unpublished). We held: "Based on the

indictments and the evidence presented at trial, there is no indication that the jury misunderstood the verdict sheets, nor does Defendant argue as much." *Id.* The Court further stated: "Although the trial court's instructions were not perfect, Defendant was not entitled to receive a perfect trial; instead, he was entitled to receive a fair trial, free of prejudicial error." *Id.* (citation, brackets, and internal quotation marks omitted). The same reasoning prevails here. Defendant has not met his burden to show he did not receive a fair trial or suffered prejudicial error. This argument is overruled.

V. Lesser-Included Offense

Finally, Defendant argues the trial court committed plain error by failing to instruct the jury on the lesser-included offense of misdemeanor larceny. Defendant did not request nor object to the jury instructions given.

A. Standard of Review

"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." N.C. R. App. P. 10(a)(4). Plain error arises when the error is "so basic, so prejudicial, so lacking in its elements that justice cannot have been done . . . . " *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). "Under the plain error rule, defendant must convince [the] Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*,

333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993).

B. Analysis

Defendant asserts the jury could have found the wallet belonged to Ms. Stanford, and it was worth less than $1,000, and the cash inside belonged to Mr. Deloney. "To convict a defendant of felonious larceny, it must be shown that he: (1) took the property of another, (2) with a value of more than $1,000.00, (3) carried it away, (4) without the owner's consent, and (5) with the intent to deprive the owner of the property permanently." *State v. Owens*, 160 N.C. App. 494, 500, 586 S.E.2d 519, 523-24 (2003). If the property has a value of not more than $1,000, the offense is a Class 1 misdemeanor. N.C. Gen. Stat. §14-72(a) (2025).

The uncontroverted evidence tends to show Ms. Stanford's wallet contained at least $1,500 in cash Mr. Deloney had given her prior to them leaving their home. No evidence was presented tending to show the amount of money therein was less than the $1,000 threshold element for felonious larceny. Defendant has failed to show "the jury probably would have reached a different result" had it been instructed on the offense of misdemeanor larceny. *Jordan*, 333 N.C. at 440, 426 S.E.2d at 697. This argument is overruled.

VI. Conclusion

Defendant has failed to show a fatal variance exists between the indictment and the evidence presented at trial on the charge of felony larceny. He has failed to show his constitutional right to a unanimous jury verdict was violated by the absence

of the victim's name in the jury instruction and verdict sheet or that the trial court plainly erred by not instructing the jury on the lesser-included offense of misdemeanor larceny. Defendant received a fair trial, free from prejudicial error. *It is so ordered.*

NO ERROR.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).