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NO. COA01-1314

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

Forsyth County
Nos. 01 CRS 4427, 9289

MELVIN DOUGLAS BERROW

Appeal by defendant from judgments entered 17 July 2001 by Judge Judson D. DeRamus, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 15 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General David R. Minges, for the State.

Leslie C. Rawls for defendant-appellant.

WALKER, Judge.

Defendant was found guilty of breaking and entering, larceny, possession of stolen goods and of being an habitual felon. By judgments entered 17 July 2001, Judge Judson D. DeRamus, Jr. sentenced defendant to consecutive prison terms of 156 to 197 months for breaking and entering and larceny as an habitual felon. The court arrested judgment on the charge of possession of stolen goods in accordance with *State v. Perry*, 305 N.C. 225, 236-37, 287 S.E.2d 810, 817 (1982).

State witness Hillardo Gonzalez testified that he attended a class at a community college on the night of 29 January 2001. When he returned home, he observed that the lights in his residence had been turned on. Walking inside, Gonzalez saw that his couch was overturned and his television, videocassette recorder (VCR), satellite receiver, and stereo were missing. Pieces of broken glass were scattered on the floor, the living room window at the back of his residence had been broken, and the window screen had been removed. Gonzalez telephoned the police and was able to give them the brand and serial number of his VCR. Gonzalez further testified that he did not know defendant and had not given anyone permission to take the items from his home.

Winston-Salem Police Officer Scott D. Lichtenhan arrived at Gonzalez's home at 11:12 p.m. He described the inside of the residence as "a shambles," noting that "[a] lot of the drawers and a lot of the dressers and the other items had been opened and gone through." Lichtenhan determined that the point of entry for the break-in was the broken window. Identification Officer Rene E. Shoaf was called to the scene and lifted a latent fingerprint from a shard of window pane that remained in the frame.

Officer C.M. Crater, Latent Fingerprint Examiner for the Winston-Salem Police Department, offered expert testimony that the print lifted from the broken window pane matched defendant's left thumbprint. Crater testified that he had obtained defendant's fingerprints from the pool of samples available through the

Automated Fingerprint Identification System and that defendant's prints had been on file at a "detention center."

Officer T.J. Taylor began looking for defendant based on the fingerprint match made by Crater. He found defendant at the residence of Willie L. Henry, which is next door to the residence of Gonzalez. Defendant denied any knowledge of the break-in. When informed by Taylor that his fingerprint had been found on Gonzalez's window, defendant replied, "Okay, do your job then." Defendant told Taylor he did not have the authority to allow a search of Henry's residence. After obtaining Henry's consent for a search, Taylor returned to the residence and found a VCR with the serial number given by Gonzalez. Defendant was no longer at the residence, having been arrested on outstanding warrants.

Willie L. Henry testified that he was living next door to Gonzalez on 29 January 2001. Henry, who is a diagnosed paranoid-schizophrenic, was staying in a shelter at the time and allowed defendant to use his residence while he was not there. Some time during January, Henry stopped by his residence, which he did from time to time, and saw defendant with a television, VCR, and "some kind of gray box[.]" Defendant told Henry that he had taken them from "the guy['s] house next door." When Henry expressed concern about having these items in his home, defendant threatened that if he were caught, he would "make sure" Henry went "down with him." Henry confirmed that police later visited him at the shelter and obtained his permission to search the residence.

Defendant claims the trial court erred in allowing witness testimony that revealed to the jury his prior criminal activity. See N.C. Gen. Stat. § 8C-1, Rule 404(b) (2001). Defendant argues this evidence was both irrelevant and "highly prejudicial[,]" implying that he had a propensity to engage in criminal conduct. Because defendant did not object to this testimony at trial, he argues that its admission constitutes plain error by the trial court. See N.C.R. App. P. 10(c) (4).

A party seeking to establish plain error "must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Roseboro*, 351 N.C. 536, 553, 528 S.E.2d 1, 12, cert. denied, 531 U.S. 1019, 148 L. Ed. 2d 498 (2000) (quoting *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993)).

Defendant has not shown plain error here. The evidence of defendant's prior "bad acts" consisted entirely of Crater's testimony that defendant's fingerprints were on file at a "detention center" and Taylor's allusion to defendant's arrest on "outstanding warrants." Neither of these general statements suggests any proclivity on the part of defendant to engage in the specific criminal acts with which he was charged. In light of the compelling and un rebutted evidence of defendant's guilt--which included his fingerprint on Gonzalez's broken window, Henry's eyewitness account of defendant's possession of the stolen property, defendant's incriminating statement to Henry, and the recovery of Gonzalez's VCR by police--we find no reasonable

probability that the jury's verdict was affected by the challenged testimony. See *State v. Lee*, 348 N.C. 474, 483-84, 501 S.E.2d 334, 339-40 (1998); *State v. Doisey*, 138 N.C. App. 620, 626-27, 532 S.E.2d 240, 245, *disc. review denied*, 352 N.C. 678, 545 S.E.2d 434 (2000), *cert. denied*, 531 U.S. 1177, 148 L. Ed. 2d 1015 (2001).

No error.

Judges THOMAS and BIGGS concur.

Report per Rule 30(e).