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NO. COA11-243
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

STATE OF NORTH CAROLINA

v.

Wake County
Nos. 09 CRS 54364;
09 CRS 205753

WILLIE LEE REID, JR.

Appeal by Defendant from judgment entered 30 June 2010 by Judge Carl R. Fox in Superior Court, Wake County. Heard in the Court of Appeals 27 September 2011.

Attorney General Roy Cooper, by Assistant Attorney General Hilda Burnett-Baker, for the State.

Brock, Payne & Meece, P.A., by C. Scott Holmes, for Defendant.

McGEE, Judge.

Willie Lee Reid, Jr. (Defendant) was convicted of possession of a firearm by a convicted felon and of misdemeanor carrying a concealed weapon. Defendant was sentenced within the presumptive range of fifteen months to eighteen months in prison. Detective Greer Marley (Det. Marley) of the Raleigh Police Department was working off duty at a nightclub in Raleigh

on the evening of 24 September 2009. Det. Marley saw Defendant being escorted out of the nightclub and later saw Defendant return to an area near the nightclub. Det. Marley watched Defendant walk by the nightclub several times. Det. Marley began to approach Defendant because he thought Defendant's actions were "suspicious." Defendant walked away from Det. Marley and began to run, but he was shoved to the ground by another security guard employed by the nightclub. When Defendant hit the ground, Det. Marley saw a pistol fall from Defendant's waistband. At trial, Defendant stipulated to being a convicted felon.

Defendant raises two arguments on appeal: (1) that the trial court erred by allowing Det. Marley to testify concerning the reputation of the neighborhood in which Defendant was arrested; and (2) that the trial court erred by overruling Defendant's objections to certain statements made by the State during closing arguments.

I. Standards of review

Defendant failed to object to the testimony he challenges on appeal and our review is therefore limited to plain error review. *State v. Davis*, 191 N.C. App. 535, 538, 664 S.E.2d 21, 23 (2008). "In order to establish plain error '[d]efendant must show that the error was so fundamental that it had a probable

impact on the result reached by the jury.'" *Id.* (citation omitted). "'Plain error is error "so fundamental as to amount to a miscarriage of justice or probably resulted in the jury reaching a different verdict than it otherwise would have reached.'" *Id.* (citations omitted).

Defendant did object to the challenged portions of the State's closing argument, but the trial court overruled those objections. We review properly preserved arguments concerning closing arguments for an abuse of discretion. *State v. Walters*, 357 N.C. 68, 101, 588 S.E.2d 344, 364 (2003). "Application of the abuse of discretion standard to closing argument requires [the appellate] Court to first determine if the remarks were improper." *Id.* "'Next, we determine if the remarks were of such a magnitude that their inclusion prejudiced defendant, and thus should have been excluded by the trial court.'" *Id.* (citation omitted).

II. Reputation of Neighborhood

Defendant first argues that the trial court committed plain error by allowing Det. Marley to testify that he "knew that we had a lot of robberies in the area, robberies from the person, . . . especially down on Pogue Street, behind the bank, and it . . . was odd behavior for [Defendant]." We disagree. Defendant relies on *State v. Williams*, 164 N.C. App. 638, 596

S.E.2d 313 (2004). In *Williams*, this Court noted that "the 'general rule is that in a criminal prosecution evidence of the reputation of a place or neighborhood is ordinarily inadmissible hearsay.'" *Id.* at 639, 596 S.E.2d at 314 (citation omitted). The *Williams* defendant was being tried for selling drugs, and the testimony at issue involved an officer's statement that the defendant "was in a neighborhood known as an 'open air market for drugs.'" *Id.* This Court concluded that "had this error not been committed, there is a reasonable possibility that a different result would have been reached at trial, [and therefore] grant[ed] [d]efendant a new trial." *Id.*

However, *Williams* involved a particular set of circumstances and type of testimony, neither of which are involved in the present case. It is clear from reviewing the analysis conducted in *Williams*, that this Court held it was error for the trial court to allow an officer to testify that the defendant was found in a "drug market" when otherwise there was no overwhelming evidence that the defendant was selling drugs. *See generally id.* In the present case, it appears from the context of the testimony at trial that Det. Marley was offering an explanation for his detention of Defendant, not substantive evidence of whether Defendant was in possession of a firearm. In other words, Det. Marley's testimony was not

offered for the truth of the matter asserted, but rather to explain that he pursued Defendant because of robberies in the area and because of Defendant's unusual behavior. Thus, Det. Marley's testimony concerning the neighborhood's reputation was not, as Defendant contends, "inadmissible hearsay." We find no error at all, let alone plain error, in the trial court's allowing Det. Marley to testify concerning the neighborhood's reputation.

III. Closing Arguments

Defendant next argues that the trial court "erroneously allow[ed] the prosecutor to speculate and introduce her personal belief in closing argument that . . . Defendant was going to shoot someone[.]" The State further posed the following hypothetical question to the jury: "Was [Defendant] going to use this gun on Mr. Little? Was he going to use it on the officers? What was he going to do with the gun? I think the evidence would show that he was going to use this weapon on someone that night." The State contends that the "arguments of the prosecutor during closing [were] not improper and [were] within the permissible bound of fair debate."

We note that Defendant was charged with possession of a firearm by a felon and carrying a concealed weapon. The undisputed facts of this case show that Defendant was a felon

and was found in possession of a firearm. Assuming, *arguendo*, that it was error for the State to hypothesize about Defendant's intent and plans to use the firearm, we are not persuaded that these statements had any impact on the jury's determination. In light of the overwhelming evidence that Defendant was a felon and was in possession of a firearm, any error that may have been committed by the State during closing argument was not of such magnitude that it would have prejudiced Defendant. *See Walters*, 357 N.C. at 101, 588 S.E.2d at 364. We therefore hold that Defendant received a trial free from prejudicial error.

No prejudicial error.

Judges ELMORE and HUNTER, Jr. concur.

Report per Rule 30(e).