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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1122

Filed: 2 October 2018

Robeson County, No. 16-CRS-50420

STATE OF NORTH CAROLINA

v.

CHRISTOPHER LEE LaCLAIRE, Defendant.

Appeal by Defendant from judgment entered 7 February 2017 by Judge James M. Webb in Robeson County Superior Court. Heard in the Court of Appeals 19 April 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Amy Bircher, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Hannah H. Love, for defendant-appellant.

MURPHY, Judge.

A probationer, who fails to make specific objections on the basis of a statutory confrontation violation at a probation revocation hearing, does not preserve the argument for appellate review unless the grounds for objection are readily apparent from the context.

Christopher Lee LaClaire (“Defendant”) objected to an improper foundation at his probation revocation hearing, but he made no other specific objections or otherwise raise any statutory confrontation violation. The grounds for his other general objections were not readily apparent from the context. After careful review, we conclude that Defendant’s statutory confrontation rights were not preserved for appellate review, and we dismiss this portion of his appeal but remand the judgment for correction of a clerical error.

BACKGROUND

Defendant was previously convicted of breaking or entering a motor vehicle, first-degree trespass, and misdemeanor larceny. Defendant’s convictions of breaking or entering a motor vehicle and first-degree trespass were consolidated for judgment. The judge imposed a suspended sentence of 10 to 21 months imprisonment, and placed Defendant on supervised probation for 24 months. On 2 December 2016, a probation violation report was filed alleging Defendant violated certain conditions of his probation, stating that Defendant willfully violated:

1. Regular Condition of Probation: [N.C.G.S. §] 15A-1343(b)(3a) “Not to abscond, by willfully avoiding supervision or by willfully making the supervisee’s whereabouts unknown to the supervising probation officer” in that, ON OR ABOUT 11/15/16 THE DEFENDANT LEFT HIS PLACE OF RESIDENCE AT 1227 WIREGRASS ROAD IN LUMBERTON NC 28358 WITHOUT PRIOR APPROVAL FROM HIS PROBATION OFFICER AND FAILED TO MAKE HIS WHEREABOUTS KNOWN, THEREBY MAKING

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HIMSELF UNAVAILABLE FOR SUPERVISION AND THEREBY ABSCONDING SUPERVISION. AS OF THE DATE OF THIS REPORT, THE DEFENDANTS WHEREABOUTS ARE UNKNOWN AND ALL EFFORTS TO LOCATE THE OFFENDER HAVE BEEN UNSUCCESSFUL [sic].

A probation violation hearing was held on 7 February 2017, and the State's only evidence was testimony from Officer Crystal Britt, who was not Defendant's actual probation officer. Officer Britt testified that her entire testimony was based on another probation officer's probation violation report and conversations with the officer. Defense counsel objected three times during Officer Britt's testimony. The testimony and objections were as follows:

Prosecutor: And how did he abscond from supervision?

Officer Britt: By her notes, he absconded on 12/8/15.

Defense Counsel: Your Honor, I would object to testimony from her notes unless there is a foundation that those are in fact her notes.

Trial Court: Overruled. Go ahead.

....

Officer Britt: On 11/15/2016, Officer Jerri Locklear did a home contact at [Defendant's] residence. The Defendant was not home. Spoke with [Defendant's] parents, and they advised that they didn't know where he was at that time, and they hadn't seen him in a week or so. Then on 11/21/16, there was another home contact. Went to the listed residence trying to make contact with Defendant. Man at residence stated that [Defendant] no longer lived at the residence.

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Defense Counsel: Objection, Your Honor.

Trial Court: Overruled. Go ahead.

Officer Britt: Left door tag with instructions for [Defendant] to report at 11/22/16 at 8:30 in the morning. Man agreed to give to [Defendant] if he saw him. On 11/21/16, Officer Locklear went to the residence again trying to make contact with [Defendant]. Man at residence stated that – the same thing that he no longer lived there.

Defense Counsel: Objection, Your Honor.

Trial Court: Overruled. Go ahead. Said what?

Defendant did not present evidence at the revocation hearing and did not object to any of Officer Britt's subsequent testimony. However, defense counsel asked to be heard at the close of all evidence and argued, *inter alia*, that "what the State's offered today is incomplete and insufficient to make a finding of absconding" Defense counsel further stated that "while not doubting [Officer] Locklear's reliability, I am doubting the reliability of those whom she spoke with and their relationship to [Defendant]." The trial court found that Defendant violated his probation by absconding from supervision, and Defendant gave notice of appeal in open court.

STANDARD OF REVIEW

The asserted portion of N.C.G.S. § 15A-1345(e) states, "At the [probation revocation] hearing, evidence against the probationer must be disclosed to him, and the probationer may appear and speak in his own behalf, may present relevant

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information, and *may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation.*” N.C.G.S. § 15A-1345(e) (2017) (emphasis added). Defendant asks us to review the trial court’s alleged violation of the statutory mandate of N.C.G.S. § 15A-1345(e) de novo.

Defendant also asks us to use a harmless error analysis in evaluating whether the trial court’s alleged statutory confrontation violations under N.C.G.S. § 15A-1345(e) constitute reversible error. The State argues that the trial court’s decision to revoke probation must be reviewed solely for an abuse of discretion. If this issue were properly preserved, a harmless error analysis would be appropriate to determine whether violation of the statutory confrontation mandate of N.C.G.S. § 15A-1345(e) is reversible error. *See State v. Terry*, 149 N.C. App. 434, 438, 562 S.E.2d 537, 540 (2002) (applying a harmless error analysis where the defendant was not allowed to confront a witness who provided damaging testimony which in turn led to revocation of the defendant’s probation).

However, Defendant’s appeal is subject to dismissal because the statutory confrontation issue was not properly preserved for appellate review. Further, while Defendant relies on *Terry*, where the probationer raised both constitutional and statutory confrontation rights, in the case *sub judice*, Defendant has not presented a constitutional confrontation argument in his brief. Accordingly, this issue is deemed abandoned. *Id.*; N.C. R. App. P. 28(b)(6) (2017).

ANALYSIS

A. Preservation of Issues for Appeal

“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) (2017). A “general objection, if overruled, is no good, unless, on the face of the evidence, there is no purpose whatever for which it could have been admissible.” *State v. Ward*, 301 N.C. 469, 477, 272 S.E.2d 84, 89 (1980) (citation omitted).

Here, Defendant did not preserve the statutory confrontation issue for appellate review because he only made a specific objection for lack of foundation. *State v. Moses*, 205 N.C. App. 629, 635, 698 S.E.2d 688, 693 (2010) (“[I]n order for an appellant to assert a constitutional or statutory right on appeal, the right must have been asserted and the issue raised before the trial court.” (alteration in original) (quoting *State v. McDowell*, 301 N.C. 279, 291, 271 S.E.2d 286, 294 (1980))). The grounds for the second and third objections were general and not readily apparent from the context. At the hearing, Defendant did not specifically object to Officer Britt testifying in place of Officer Locklear, argue that the statutory confrontation provision was violated, claim notice was improper, or otherwise explicitly state that any part of N.C.G.S. § 15A-1345(e) was violated. The grounds for the general

objections were not clear from the context because there were numerous reasons Defendant could have objected. Even so, this Court will review issues in criminal cases for plain error only where “the judicial action questioned is specifically and distinctly contended to amount to plain error.” N.C. R. App. P. 10(a)(4) (2017). However, Defendant did not argue that the trial court’s actions amounted to plain error. As a result, this issue is dismissed.

B. Clerical Error

Defendant observes, and the State agrees, that the original amended *Judgment and Commitment Upon Revocation of Probation* entered on 7 February 2017 should be remanded to correct a clerical error. “When, on appeal, a clerical error is discovered in the trial court’s judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record ‘speak the truth.’” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (citation omitted). In open court, the trial court found that Defendant violated the terms of his probation by absconding from supervision. However, the written amended *Judgment and Commitment Upon Revocation of Probation* revoking Defendant’s probation contains a written finding that Defendant violated “ALL” the conditions of the violation report.

In *State v. Trent*, we affirmed the defendant’s probation revocation but still remanded to the trial court for correction of two clerical errors within the findings

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section of the trial court's judgment. *State v. Trent*, ___ N.C. App. at ___, ___, 803 S.E.2d 224, 233 (2017). Here, it is undisputed that the *Judgment and Commitment Upon Revocation of Probation* is inconsistent with the trial court's findings in open court and must be corrected to speak the truth.

CONCLUSION

Defendant did not preserve his statutory confrontation argument for appeal, and, therefore, we do not consider this argument. However, we remand for the limited purpose of correcting the clerical error in the amended *Judgment and Commitment Upon Revocation of Probation*.

DISMISSED; REMANDED FOR CORRECTION OF A CLERICAL ERROR.

Judges DAVIS and INMAN concur.

Report per Rule 30(e).