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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-849

Filed: 21 August 2018

Wilkes County, Nos. 11CRS51281-82; 11CRS51343-44

STATE OF NORTH CAROLINA

v.

CHAD NORMAN COLLINS, Defendant.

Appeal by Defendant from Judgments entered 7 April 2014 by Judge William Z. Wood in Wilkes County Superior Court. Heard in the Court of Appeals 7 March 2018.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Matthew Tulchin, for the State.*

*Appellate Defender Glenn Gerding and Assistant Appellate Defender Nicholas C. Woomer-Deters for Defendant.*

INMAN, Judge.

Defendant Chad Norman Collins (“Defendant”) appeals from judgments entered following a jury trial finding him guilty of robbery with a firearm, impersonating a law enforcement officer, first-degree kidnapping, and first-degree burglary. Defendant also petitions for writ of certiorari concerning guilty pleas

entered on additional charges of robbery with a dangerous weapon, impersonating a law enforcement officer, first-degree kidnapping, and breaking and entering. After careful review, we hold that Defendant has failed to demonstrate reversible error with respect to his appeal of the judgments entered on his convictions by jury trial and, in our discretion, we deny his petition for writ of certiorari.

**I. FACTUAL AND PROCEDURAL HISTORY**

The evidence introduced at trial tends to show the following:

On 16 July 2010 at approximately 8:45 p.m., Jason Aldean Carter (“Mr. Carter”) was at his home at 443 Bethel Road in Ronda, North Carolina, when he heard a knock on the front door. When Mr. Carter opened the door, a man, later identified as Ray Hugus (“Hugus”), was standing in the doorway wearing a bulletproof vest and a law enforcement badge. Hugus, who was brandishing a handgun and a purported warrant, barged into Mr. Carter’s home and ordered him to his knees. Hugus then secured Mr. Carter’s hands and feet with zip ties.

Two other men entered the home after Mr. Carter had been restrained. One man, later identified as Robbie Miller (“Miller”), wore a mask and carried a handgun. The other man, whom Mr. Carter later identified as Defendant, wore a black shirt bearing the acronym “DEA,” a mask that was too small for his face, and clear safety glasses. The three men were not, in fact, law enforcement officers.

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Miller held Mr. Carter at gunpoint while Hugus and Defendant searched the home. The perpetrators looted two safes and stole a number of valuables including money, guns, binoculars, a radio, and a camera. After the robbers left the residence, Mr. Carter freed himself from the zip ties around his wrists and called 9-1-1.

Nine months later, on 28 April 2011, police executed a search warrant at Defendant's residence. Investigators discovered an envelope with Mr. Carter's name and address and a diagram of Mr. Carter's residence showing the location of two safes. They also found several other items of interest, including two handguns, baseball hats for the ATF and Wake County Sherriff's Department, a sheriff's badge, a pair of duty boots, a bulletproof vest, additional law enforcement badges from various jurisdictions and law enforcement agencies, and printouts of warrants and consent to search forms from Tennessee and North Carolina.

Defendant was arrested that same day and interviewed for seven hours at the Wilkes County Sheriff's Department by Detectives Robbie Martin and Jason Whitley. The interview was recorded on video, but roughly five hours of the recording were lost due to malfunction or human error; Detective Whitley also took notes during the interview.

Defendant denied knowing Mr. Carter and denied any involvement in the robbery, though he admitted owning zip ties, a bulletproof vest, and law enforcement

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memorabilia. He denied any knowledge of printed search warrant forms at first, but later admitted printing out a warrant for his co-defendants' use.

The next day, on 29 April 2011, police searched Defendants' vehicle. In the vehicle police found more zip ties, a shirt with a police insignia, a DEA baseball hat, as well as the camera, binoculars, and radio stolen from Mr. Carter's home.

Relevant to this appeal, Defendant was indicted, pled not guilty, and tried before a jury on one count each of robbery with a dangerous weapon, impersonating a law enforcement officer, first-degree kidnapping, and first-degree burglary. At trial, the State called Detective Steve King to testify concerning the investigation into Defendant. On cross-examination, the defense sought to introduce an out-of-court statement by Theresa Roark ("Mrs. Roark"), who was never called to testify, purporting to have information that her husband, Chauncey Roark ("Mr. Roark"), was also a participant in the robbery of Mr. Carter. Although Detective King did attempt to interview Mr. Roark, he was never charged and Detective King ultimately ceased pursuing him. The State objected on the grounds that the statement was inadmissible hearsay. Defense counsel conceded that the statement did not satisfy any exception to the prohibition against hearsay, and the trial court excluded the statement. Defendant testified in his defense, denying any involvement in the robbery. He denied making the fake search warrant that was used during the robbery and denied providing the search warrant to Hugus and Miller. He testified that he

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printed the warrants found in his house to scare a man who was having an affair with Miller's girlfriend. He was adamant that the warrants found in his home were never used.

To rebut Defendant's testimony, the State called Detective Whitley, who interviewed Defendant after he was arrested, to testify concerning the content of that interview. When asked by the prosecutor if he "recall[ed] taking a statement of the Defendant back in April of 2011[.]" Detective Whitley testified that he did. Defense counsel objected on the grounds that, although Detective Whitley took notes during the interview, no statement was taken from Defendant. The court instructed the prosecutor not to refer to the notes as a statement. When Detective Whitley later testified that he had summarized the seven-hour interview in seven pages of notes, defense counsel objected again, stating "[y]our Honor, *that is the basis of my objection . . . a seven-hour interview he's reduced to seven pages of notes.*" (emphasis added). Outside the presence of the jury, defense counsel argued that the notes did not reflect what Defendant said in the interview, suggesting instead that the court play the incomplete video. The court overruled the objection, to which Defendant's counsel replied that "he's representing this thing as [Defendant's] statement, it's not his statement." The court replied, "that's why I said that you can ask him what he said. Don't call it a statement." After the jury reentered the courtroom, the court reiterated that Defendant's objection was overruled, and Detective Whitley proceeded to read

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his notes from the interview to the jury showing Defendant had admitted to making the warrants and that they had been used in the robbery of Mr. Carter.

Following deliberations, the jury found Defendant guilty on all charges tried. Defendant then pled guilty to the sentencing enhancements of wearing a bulletproof vest and using a firearm during the robbery and kidnapping. The trial court ultimately entered three consolidated judgments on the charges at issue in this appeal, combining them with judgments on additional charges for robbery with a dangerous weapon, kidnapping, impersonating a law enforcement officer, and breaking and entering arising from a different incident to which Defendant pled guilty following the above-described jury trial. The consolidated judgments, entered on 7 April 2014, imposed three consecutive sentences: 185 to 231 months imprisonment for two counts each of first-degree kidnapping and impersonating a law enforcement officer; 132 to 168 months imprisonment for first-degree burglary and breaking and entering; and 73 to 97 months imprisonment for two counts of robbery with a dangerous weapon.

Defendant filed a *pro se* petition for writ of certiorari to this Court concerning the above convictions. The petition was granted as to all judgments, but the appeal of the convictions entered upon his guilty pleas on the untried robbery, kidnapping, and breaking and entering charges was limited to “those issues which [D]efendant could have raised on direct appeal pursuant to N.C. Gen. Stat. [§] 15A-1444.”

Following his initial brief, Defendant filed a petition for writ of certiorari to this Court seeking review of the judgments entered on his guilty plea on issues outside of those with a right of direct appeal set forth in N.C. Gen. Stat. § 15A-1444.<sup>1</sup>

## II. ANALYSIS

Defendant's appeal challenges the trial court's rulings sustaining the State's objection to exclude hearsay evidence about Detective King's investigation into Mr. Roark and denying Defendant's objection to exclude Detective Whitley's interview notes. Defendant's petition for writ of certiorari asserts that he should be allowed to withdraw his guilty pleas on the additional charges of armed robbery, impersonating a law enforcement officer, kidnapping, and breaking and entering arising from a separate incident, even though he did not seek to withdraw those pleas in the trial court. As explained below, each of these arguments is without merit.

Defendant argues that the trial court committed plain error in excluding the hearsay statements of Mrs. Roark identifying a different possible perpetrator from Defendant, insofar as they show that detectives did not diligently pursue Mr. Roark perpetrator of the crime. Such a failure, Defendant argues, impugns the State's investigation into the robbery. On plain error review, we determine whether

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<sup>1</sup> Defendant's briefs do not assert any argument for withdrawal of his guilty pleas on the grounds allowed in the writ of certiorari issued by this Court, and he concedes that review of his guilty pleas is proper only upon a grant of his second petition for writ of certiorari. As a result, Defendant has abandoned any argument concerning his guilty pleas within the scope of the first writ of certiorari issued by this Court. N.C. R. App. P. 28(a) (2017).

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Defendant has demonstrated a fundamental error—one “that, after examination of the entire record . . . had a probable impact on the jury’s finding that the defendant was guilty.” *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (internal quotation marks and citation omitted). We hold that the exclusion of the evidence in question does not meet this standard.

We acknowledge Defendant’s proposition that “[a] common trial tactic of defense lawyers is to discredit the caliber of the investigation or the decision to charge the defendant[.]” *Kyles v. Whitley*, 514 U.S. 419, 446, 131 L. Ed. 2d 490, 513 (1995) (citation and internal quotation marks omitted). It does not appear from the record, however, that Mrs. Roark’s hearsay statements were so significant that they, if admitted, would have “had a probable impact on the jury’s finding that the defendant was guilty.” *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. All evidence at trial indicated that three persons were involved in the robbery, and Mr. Roark’s participation would not have excluded Defendant as a perpetrator of the crimes charged. Further, Mrs. Roark’s statements primarily impugn the caliber of the investigation *into Mr. Roark*, not Defendant. Had Mrs. Roark’s testimony concerned some misconduct, impropriety, or deficiency in the investigation into Defendant’s involvement, or had it indicated that Mr. Roark’s participation precluded Defendant’s involvement in the crime, Defendant would be closer to demonstrating fundamental error. As the record stands, however, we cannot say that the exclusion of Mrs. Roark’s



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hearsay statements rise to the level of plain error. Defendant's argument is overruled.

Defendant also contends that the trial court committed reversible error in allowing Detective Whitley's notes into evidence on the grounds that the document was not sufficiently authenticated as a written confession as required by *State v. Walker*, 269 N.C. 135, 139, 152 S.E.2d 133, 137 (1967). But Defendant acknowledges that "the authentication requirements outlined in *Walker* . . . do not apply to statements made by a defendant that are not confessions." *State v. Marion*, 233 N.C. App. 195, 199, 756 S.E.2d 61, 65-66 (2014) (citation omitted). Nor did Defendant's trial counsel object to the introduction of Detective Whitley's notes for lack of authentication. Rule 10 of the North Carolina Rules of Appellate Procedure provides that "[i]n 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). "The specific grounds for objection raised before the trial court must be the theory argued on appeal because 'the law does not permit parties to swap horses between courts in order to get a better mount in the [appellate court].'" *State v. Harris*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 800 S.E.2d 676, 680, *review denied*, \_\_\_ N.C. \_\_\_, 803 S.E.2d 388 (N.C. 2017) (quoting *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934)). And, "when counsel objects to the

admission of evidence on only one ground, he or she fails to preserve the additional grounds for appeal, unless plain error is specifically and distinctly argued on appeal.” *Id.* at \_\_\_, 800 S.E.2d at 680 (citation omitted).

Defendant argues in the alternative that the trial court committed plain error in admitting Detective Whitley’s notes in evidence. Defendant has not met this burden. Substantial evidence independent of Detective Whitley’s notes ties Defendant to the crimes for which he was found guilty. Mr. Carter’s identification of Defendant as the perpetrator and the numerous items found in Defendant’s residence and vehicle support the jury’s verdict. The circumstantial nature of that evidence is immaterial: “It is well-established . . . that jurors may rely on circumstantial evidence to the same degree as they rely on direct evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence.” *State v. Sluka*, 107 N.C. App. 200, 204, 419 S.E.2d 200, 203 (1992) (citations omitted).

Further, Detective Whitley’s notes do not contain a confession to the crimes charged in the indictment and presented to the jury. “A confession is generally defined as an acknowledgement in express words by the accused in a criminal case of his guilt of the crime charged *or of some essential part of it.*” *State v. Fox*, 277 N.C. 1, 25, 175 S.E.2d 561, 576 (1970) (citation omitted) (emphasis added). Here, the indictments alleged that Defendant was an active participant in the robbery and kidnapping of Mr. Carter, and the jury was instructed on the theory of acting in

concert—a theory with the essential element that the Defendant “be[] present at the scene of the crime[.]” *State v. Poag*, 159 N.C. App. 312, 320, 583 S.E.2d 661, 667 (2003) (citation omitted). Detective Whitley’s notes do not disclose an admission by Defendant that he was present at the robbery and kidnapping of Mr. Carter, and in fact contain multiple assertions to the contrary. As acknowledged by Defendant in his brief, the notes are “not fully compatible with the State’s theory that [Defendant] was physically present during the invasion of Carter’s trailer,” and, taken on their face, they tend to disprove, rather than prove, that essential element of physical presence. Detective Whitley’s notes were neither a confession nor were they represented to the jurors as such, and we fail to see any fundamental error in their admission. Defendant’s argument on this point is overruled.

Finally, Defendant argues that he is entitled to withdraw his guilty pleas on the charges arising from a separate incident not addressed in his jury trial. As conceded by Defendant, this argument is not properly before this Court unless we grant his petition for writ of certiorari filed during the pendency of this appeal. Having reviewed the record, Defendant’s argument, and the State’s response, we deny certiorari in our discretion. Defendant’s guilty plea remains undisturbed.

### **III. CONCLUSION**

Defendant has failed to show plain error in the trial court’s rulings excluding hearsay statements by Mrs. Roark and allowing Detective Whitley’s notes into

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evidence. Pursuant to Rule 28(a) of the North Carolina Rules of Appellate Procedure, Defendant has abandoned any appeal from his guilty plea on the grounds permitted in the writ of certiorari issued by this Court. Finally, Defendant's second petition for writ of certiorari for review of his guilty pleas is denied in our discretion.

NO ERROR.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).