NO. COA13-307
NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2013

STATE OF NORTH CAROLINA

v. Cabarrus County
No. 09 CRS 52965

PATHIK PRASHANT SHAH

Appeal by defendant from judgments entered 26 July 2012 by Judge W. Erwin Spainhour in Cabarrus County Superior Court. Heard in the Court of Appeals 9 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General Rebecca E. Lem, for the State.

Russell J. Hollers III for defendant appellant.

McCULLOUGH, Judge.

A jury found defendant guilty of insurance fraud, conspiracy to commit insurance fraud, and aiding the burning of personal property. The trial court sentenced him to an active prison term of eight to ten months for burning of personal property. Consecutive to the active sentence, the court imposed concurrent suspended sentences of eight to ten months and six to eight months for insurance fraud and conspiracy and ordered

defendant to serve thirty-six months of supervised probation. Defendant filed timely notice of appeal from the judgments.

The State's evidence tended to show the following: In August of 2009, Steven Laprade was working for defendant at defendant's Subway restaurant in Northlake Mall. Over a period of weeks, defendant pressured Laprade to stage a theft and burning of defendant's 2006 Audi sedan, threatening to fire him if he did not cooperate. Defendant told Laprade that he "wanted to get a new car and use his insurance to cover it" and had "found a way to get another key for the car[.]" Laprade, who was on probation and had experienced difficulty in finding a job, feared that his probation would be revoked if he was fired. He told several coworkers about defendant's request – all of whom advised him to refuse – and told them "afterwards, . . . that it happened." Laprade testified at defendant's trial as part of a plea agreement under which he received a suspended sentence after pleading guilty to felony burning of personal property.

On the morning of 18 August 2009, defendant gave Laprade the spare key, "put a gas can in the trunk of the car," and told Laprade to take the car "somewhere indiscreet" and burn it. That afternoon, Laprade used the key to remove defendant's car

from the mall's valet parking area and drove to a vacant lot. After dousing the car with gasoline, Laprade "tossed [the gas can] aside[,]" and threw a burning stick into the open trunk. Leaving the scene on his bicycle, he passed a man in a truck who was "on his phone[.]" When Laprade realized the man was following him, he hid near some tennis courts in the Skybrook neighborhood and discarded the spare car key. Laprade left his bicycle at the tennis courts and walked home, calling defendant when he arrived. He did not speak to defendant again but continued to report to work until he was fired by defendant's parents approximately two weeks later.

Members of the O'Dell Fire Department extinguished the burning car, which was parked in a vacant lot behind the Highland Creek subdivision. A fireman spotted a red plastic gasoline can in a nearby wooded area. The assistant fire marshal who investigated the blaze concluded that it had started in the rear of the car and that "some type of an ignitable liquid" was involved. He further believed that the red gas can was "connected" to the fire, as it was "fairly new" in appearance and was "between an eighth and a quarter full" of gasoline. However, a sample of the car's interior flooring tested negative for the presence of an accelerant. Using the car's VIN number,

the assistant fire marshal determined that it had been reported stolen in Mecklenburg County.

After valet-parking his car at the mall on the morning of 18 August 2009, defendant spent the afternoon drinking and shooting pool in a restaurant. He became so intoxicated that the restaurant manager ordered him to leave. The mall's director of public safety, Michael Bolinsky, also asked defendant to leave mall property because of his intoxication. At approximately 5:30 p.m., Bolinksy was advised that defendant's car was missing from the valet lot and tried without success to find it. Before leaving work at approximately 6:00 p.m., Bolinsky again asked defendant to leave the mall. Defendant was found by police walking near the mall at approximately 7:00 p.m., extremely intoxicated. Police drove him back to the mall to recover his cellular phone and saw him walk over to the valet service area. Defendant phoned the police at 8:26 p.m. to report that his car was stolen. After a two-hour search, the officers decided to complete a stolen vehicle report. Defendant became "belligerent and uncooperative" but calmed down after his parents arrived. Defendant also reported the theft to his insurance carrier, GEICO, on 18 August 2009.

On 1 September 2009, Laprade's coworkers informed Bolinksy that defendant's car had been "intentionally burned[.]" Bolinsky contacted the Charlotte-Mecklenburg Police Department. A detective came to Laprade's workplace to interview him on 3 September 2009. Believing that he had been spotted leaving the burning car on his bicycle, Laprade confessed to the detective, who notified law enforcement in Cabarrus County.

After charges were filed against Laprade, defendant presented a typed statement to a detective at the sheriff's department on 4 September 2009, telling the detective "that it was for the department of justice." Much of the statement detailed improper sexual advances allegedly made by women at the mall toward defendant in July of 2009. Regarding the incident on 18 August 2009, defendant stated that the valet parked his car at 10:15 a.m. and went to work. He left work to eat lunch and play pool with a coworker, and had four or five drinks. He was standing at the mall entrance talking to a girl at 4:15 p.m., when the security guard asked him to leave. Defendant called his attorney on his way to the valet parking area. After being told that his car was missing and that he was barred from the property, defendant "walked away for a while and . . . called somebody that was completely sober to come pick [him]

up." Two hours later, he returned to the mall and asked for his car. After mall security called the police, defendant "walked away and called the police to come and file a stolen vehicle report."

After reading defendant's typed statement, the detective noted to defendant that only a few lines addressed the theft of his car. Defendant said that "this was all he had to give[,]" but denied "any involvement in the removal or the disposal of his vehicle[.]"

On appeal, defendant claims that the trial court committed plain error by allowing GEICO's theft and fire examiner, Jennifer Chapman, to inform the jury that GEICO declined to pay defendant's theft claim. He notes Chapman's admission that GEICO based its decision entirely on information provided by police and by defendant during his interview with Chapman the day after the incident. Citing this Court's decision in *State v. Giddens*, 199 N.C. App. 115, 681 S.E.2d 504 (2009), *aff'd*, 363 N.C. 826, 689 S.E.2d 858 (2010), defendant contends Chapman's testimony that GEICO denied his claim implicitly vouched for Laprade's credibility as a witness and implied that defendant "did not tell the truth" during his interview with her.

Because defendant did not object to the challenged portion of Chapman's testimony at trial, we review his exception only for plain error. N.C.R. App. P. 10(a)(4). In order to establish plain error, defendant must show not only that the evidence was admitted erroneously but that the error "'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) (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)).

In *Giddens*, the defendant was convicted of sex offenses involving two young children, both of whom testified at his trial. *Giddens*, 199 N.C. App. at 116, 681 S.E.2d at 505. Although the children bore no physical evidence of abuse, a Department of Social Services ("DSS") social worker who interviewed them testified that her investigation "substantiated" the defendant as the perpetrator of sexual acts as they alleged. *Id*. at 117-18, 681 S.E.2d at 506. Relying on the well-established principle that "a witness may not vouch for the credibility of a victim[,]" we found this testimony both "clearly improper" and prejudicial, as follows:

> [The DSS social worker]'s testimony that DSS had "substantiated" Defendant as the perpetrator, and that the evidence she gathered caused DSS personnel to believe

> that the abuse alleged by the children did occur, amounted to a statement that a State agency had concluded Defendant was guilty. . . . Although [the social worker] was not qualified as an expert witness, [she] is a child protective services investigator for DSS, and the jury most likely gave her opinion more weight than a lay opinion.

Id. at 121-22, 681 S.E.2d at 508. We further held the error amounted to plain error, inasmuch as "our prior case law instructs that [victim testimony, though corroborated by their prior statements to interviewers,] alone is insufficient to survive plain error review of the testimony of a witness vouching for the children's credibility." *Id.* at 123, 681 S.E.2d at 509.

We find no such plain error here. Unlike the social worker in *Giddens*, Chapman acknowledged GEICO did not conduct a meaningful investigation of defendant's claim but relied on the conclusions reached by the police. She likewise disavowed any personal knowledge as to the merits of the claim. Chapman did not interview Laprade; nor did she suggest that her outside investigator did so. She thus could not reasonably have been perceived as vouching for Laprade's credibility. We further note that Laprade was not the victim in this case, and that his testimony was supported by the physical evidence of the burned car and the gas can. Finally, given GEICO's obvious financial

incentive to deny defendant's claim, its decision to credit a police investigation favorable to its interests was hardly remarkable. Assuming ***arguendo***, that GEICO's denial of defendant's insurance claim was inadmissible, we find no probability that Chapman's single sentence of testimony, "No, we did not pay on the claim[,]" affected the jury's verdict.

No plain error.

Judges HUNTER (Robert C.) and BRYANT concur.

Report per Rule 30(e).