

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA14-1112  
NORTH CAROLINA COURT OF APPEALS

Filed: 17 March 2015

STATE OF NORTH CAROLINA

v.

Forsyth County  
Nos. 13 CRS 53402, 12118

PHILLIP ANDREW HINSON, JR.

Appeal by Defendant from judgment entered 15 April 2014 by Judge John O. Craig in Superior Court, Forsyth County. Heard in the Court of Appeals 2 March 2015.

*Attorney General Roy Cooper, by Assistant Attorney General B. Carrington Skinner, IV, for the State.*

*Charlotte Gail Blake for Defendant-Appellant.*

McGEE, Chief Judge.

Phillip Andrew Hinson, Jr. ("Defendant") appeals his conviction of felony breaking and entering. Defendant contends that the trial court erred by admitting the lay testimony of a police officer who identified Defendant in surveillance video of the crime. Defendant has not preserved this issue for appeal, and we can find no error by the trial court.

## I. Background

The State's evidence tended to show that at approximately 11:00 p.m. on 9 April 2013, Police Officer Michael Parker ("Officer Parker") responded to the security alarm of the Save-A-Lot store ("the Save-A-Lot") located at 550 North Martin Luther King Drive in Winston-Salem. He soon was joined by the Save-A-Lot store manager, James Willard ("Mr. Willard"). Officer Parker and Mr. Willard entered the Save-A-Lot and observed a hole in the ceiling of the back stock room. Mr. Willard also noticed that a metal bar used to secure the store's rear exit door had been removed. The outside awning above the door was caved in and bore an indentation resembling a footprint.

The Save-A-Lot store was equipped with a 32-camera video surveillance system programmed to record twenty-four hours a day. Officer Parker and Mr. Willard reviewed the surveillance video ("the surveillance video") beginning at the time the alarm sounded. The surveillance video showed a "male with short hair, dark-colored jacket, blue pants, dark shoes [with] . . . white trim and white laces" fall through the ceiling in the back stock room, walk onto the sales floor, steal approximately sixty dollars' worth of meat products, remove the bar from the rear door, and exit through the door.

Officer Parker broadcast a description of the suspect to his fellow officers and specifically "requested [that] Officer [Travis] Montgomery [("Officer Montgomery")] respond to the scene and check the video[,] " based on Officer Montgomery's familiarity with the "faces and names" of people in the area. Upon viewing the surveillance video, Officer Montgomery indicated that he knew the suspect and left the scene to search for him. Officer Montgomery located Defendant "about a block and half away" from the Save-A-Lot "about an hour later" and took Defendant into custody.

At trial, the trial court admitted both the surveillance video and Officer Montgomery's testimony, including Officer Montgomery's identification of Defendant in the surveillance video. Officer Montgomery further testified that he recognized Defendant in the video because he had a fifteen to twenty-minute conversation with Defendant on the day before the break-in. The jury found Defendant guilty of felony breaking and entering. Based on this conviction, Defendant pled guilty to being an habitual felon. From the underlying conviction of felony breaking and entering, Defendant appeals.

## II. Analysis

Defendant claims the trial court erred by allowing Officer Montgomery to identify Defendant as the person depicted in the surveillance video. "In general, we apply the abuse of discretion standard to reviews of the admissibility of lay opinion testimony." *State v. Collins*, 216 N.C. App. 249, 254, 716 S.E.2d 255, 259 (2011) (citation omitted). "However, '[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.'" *Id.* (quoting N.C. R. App. P. 10(a)(1)). "[A] motion *in limine* is not sufficient to preserve for appeal the question of admissibility of evidence if the defendant does not object to that evidence at the time it is offered at trial." *State v. Brown*, 178 N.C. App. 189, 192, 631 S.E.2d 49, 51-52 (2006).

The record on appeal shows that Defendant filed a motion *in limine* before trial to exclude Officer Montgomery's lay opinion that Defendant was the individual depicted in the surveillance video. At trial, Defendant repeatedly objected to whether a proper foundation had been established for the surveillance video, including during Officer Montgomery's testimony. However,

Defendant never objected to Officer Montgomery's testimony at trial on the grounds that it was impermissible lay testimony.

Having failed to raise a timely objection to the admissibility of Officer Montgomery's lay testimony, defendant waived his right to appellate review of this issue. *See id.* Moreover, although "an issue not properly preserved at trial may be reviewed as plain error, . . . defendant did not specifically allege plain error" in his brief and therefore has waived his right to plain error review. *See State v. Shearin*, 170 N.C. App. 222, 231, 612 S.E.2d 371, 379 (2005). Defendant has not presented this Court with any further issues to review.

No error.

Judges STEPHENS and HUNTER, JR. concur.

Report per Rule 30(e).