IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-441

Filed: 1 March 2016

Guilford County, Nos. 14 CRS 082450-51

STATE OF NORTH CAROLINA

v.

LATASHA JAVONNE HOLLAND

Appeal by defendant from judgment entered 4 December 2014 by Judge Lindsay R. Davis in Guilford County Superior Court. Heard in the Court of Appeals 8 October 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General David W. Boone, for the State.

Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Kathleen M. Joyce, for defendant-appellant.

McCULLOUGH, Judge.

Defendant Latasha Javonne Holland appeals from judgment entered upon jury verdicts finding her guilty of first degree kidnapping, simple assault, and conspiracy to commit first degree kidnapping. Based on the reasons stated herein, we hold no error.

I. Background

On 8 September 2014, defendant was indicted for first degree kidnapping in violation of N.C. Gen. Stat. § 14-39, common law robbery in violation of N.C. Gen. Stat. § 14-87.1, and felony conspiracy to commit first degree kidnapping in violation of N.C. Gen. Stat. § § 14-2.4 and 14-39.

Defendant's trial commenced at the 2 December 2014 criminal session of Guilford County Superior Court, the Honorable Lindsay R. Davis presiding.

Kayla Croft testified that on 24 July 2014 she was on her way to an appointment with social services on Maple Street. She had just gotten off of a bus on the corner of Summit Avenue and Cone Boulevard. Croft was wearing a pink sundress and "flip flops." She was walking down the street with her head down when she was suddenly "getting attacked." Croft identified defendant as the person who was attacking her. She did not know defendant prior to this incident. Defendant was pulling Croft's hair, screaming, saying "something about a brother." Defendant was using her fists to hit Croft in the face and head. Croft then saw two men across Summit Avenue. She recognized one of the men, but did not know his name. Croft testified that defendant "had me by my arm and brought me to the car[,]" a blue Ford Taurus. The men were also with Croft and defendant. When asked whether Croft wanted to go with them, Croft testified, "I mean, I -- I didn't fight. I just went, you know." Her head was hurting and she was confused, "out of it, you know. That happened too fast, you know. . . ."

The man that she recognized took Croft's phone. Defendant drove the vehicle and a man was in the front seat. Croft was seated in the back of the vehicle with another female and the man she recognized. The group drove Croft to a bank and the man she recognized demanded Croft give him $100 "and some more money for the opiates" if she wanted her phone back. He wanted between "200 and 250." Croft did not have a debit card and the bank was closed, so she gave him $42 and he threw the phone at Croft. Thereafter, the police arrived on the scene.

Norman Newsome, Jr., a delivery route driver employed with Southern Foods, testified that on 24 July 2014, he was working in Greensboro. He was driving down Cone Boulevard with his co-driver, when he witnessed a white female wearing a red or pink dress, walking on the sidewalk to his left. The white female was walking down Cone Boulevard toward Summit Avenue. Newsome then saw a black female run towards the white female. The black female "just started jumping on her and just started punching her in the head, started punching her." Newsome testified that the white female was being hit on her head, face, chest and torso and fell down. Newsome then saw two black males come from across the road. The two males stood and watched while the black female continued to beat the white female. The two black males and black female got the white female up and "dragged" her across Summit Avenue. Newsome testified that they were "forcefully taking her across Summit un--unwillingly." He could tell it was against her will because the white

female was struggling and "trying to get loose." Newsome and his co-driver called the police. Newsome saw a bluish gray, four-door sedan exit a development and recognized the white girl wearing the red or pink dress in the back seat of the vehicle. Newsome began following the vehicle and gave the police dispatcher a description of the vehicle, which had out-of-state tags. There were five people in the vehicle; two in the front seat and three, including the victim, in the back seat. The female in the pink or red dress was positioned in the middle, rear seat. After driving three to four miles, Newsome was told by the dispatcher that a black vehicle that was driving near him was a police officer. The bluish gray sedan turned into a bank and four or five police officers arrived on the scene. Newsome identified defendant as the female who initiated the attack that day.

T.D. Moore, a sergeant with the City of Greensboro police, testified that on 24 July 2014, he received a call to investigate a possible kidnapping in progress on Summit Avenue. The call came in about 5:42 p.m. and Sergeant Moore testified that civilian witnesses had indicated that "a female was being assaulted and forced into a vehicle[.]" The suspect vehicle was described as a blue Ford Taurus with Virginia tags and Sergeant Moore was able to locate this vehicle going east on Bessemer Avenue. He began following the suspect vehicle. Sergeant Moore noticed five occupants in the vehicle: a black female driver; black male right, front passenger; black female right, rear passenger; black male left, rear passenger; and a white

female in the rear center. The suspect vehicle turned into a Wells Fargo bank parking lot and made a big loop around the parking lot. The suspect vehicle stopped in front of an automatic teller machine. Sergeant Moore made eye contact with the driver. He identified defendant in court as the driver of the suspect vehicle. As the suspect vehicle began pulling away toward the entrance, Sergeant Moore activated his blue lights. Officer K.R. Johnson, of the Greensboro Police Department, pulled into the entrance and blocked suspect's vehicle. All occupants of the suspect vehicle were removed without incident. Sergeant Moore testified that Croft seemed "somewhat frightened. She seemed somewhat aloof. She had some visible injuries, not major injuries." She had slight contusions and scratches to the face, injuries consistent with being hit with a fist or hand.

Officer Johnson made the first contact with Croft and testified that Croft was "visibly upset and frightened." Croft provided a written statement to Officer Johnson. Croft had stated that she was walking down the street when she was struck, knocked down to the ground, and forced into a vehicle. Croft had told Officer Johnson that defendant stated, "You are not going to steal from my brother" to Croft. Officer Johnson testified that Croft had visible signs of injuries: small laceration about the left eyelid; bruises to the left side of her head; swelling about both hands, which were defensive wounds.

On 4 December 2014, a jury found defendant guilty of first degree kidnapping, simple assault, and conspiracy to commit first degree kidnapping. Defendant was found to be a Prior Record Level I. On 4 December 2014, defendant was sentenced to an active term of 48 to 70 months. Defendant appeals.

II. Standard of Review

On appeal, defendant concedes that she made no objection to the admission of the challenged evidence and challenged jury instruction at trial. "The North Carolina Supreme Court has elected to review unpreserved issues for plain error when they involve either (1) errors in the judge's instructions to the jury, or (2) rulings on the admissibility of evidence." *State v. Hoskins*, 225 N.C. App. 177, 179, 736 S.E.2d 631, 633 (2013) (citation and quotation marks omitted). Therefore, we consider only whether the trial court committed plain error. N.C. R. App. P. Rule 10(a)(4) (2016).

> [T]he plain error rule . . . is always to be applied cautiously and only in the exceptional case where, after reviewing the entire record, it can be said the claimed error is a "*fundamental* error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done," or "where [the error] is grave error which amounts to a denial of a fundamental right of the accused," or the error has " 'resulted in a miscarriage of justice or in the denial to appellant of a fair trial' " or where the error is such as to "seriously affect the fairness, integrity or public reputation of judicial proceedings" or where it can be fairly said "the instructional mistake had a probable impact on the jury's finding that the defendant was guilty."

State v. Odom, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (citation omitted) (emphasis in original).

III. Discussion

Defendant presents two issues on appeal. Defendant argues that the trial court committed plain error (A) by admitting into evidence the State's Exhibit 11 and by allowing Officer K.R. Johnson's testimony that Croft was "forced" into the car because they did not corroborate Croft's testimony at trial. Defendant also argues that the trial court committed plain error (B) by instructing the jury on "impeachment or corroboration by prior statement" after previously admitting Croft's prior statement solely for corroboration, not impeachment.

A. Admission of the State's Exhibit 11 and Officer Johnson's Testimony

Defendant argues that the trial court committed plain error by admitting into evidence, State's Exhibit 11[1], which was Croft's unsworn, written statement given to police, and by allowing Officer Johnson to testify that Croft was "forced" into the suspect vehicle. Specifically, defendant contends that the State's Exhibit 11 and Johnson's testimony amounted to non-corroborative hearsay and was not admissible

[1] We note that defendant has appended to her brief the State's Exhibit 11. The State's Exhibit 11 does not appear elsewhere in the record. While our Rules of Appellate Procedure permit an appendix to a brief, it is improper for a defendant to attach a document not in the record and not permitted under N.C. R. App. P. Rule 28(d) in an appendix to his brief. Although we could exercise our discretion to dismiss this first issue, we choose instead to consider the merits of defendant's appeal.

under the prior consistent statement exception to the hearsay rule because it contradicted Croft's trial testimony. We disagree.

It is well-established

> that a witness' prior consistent statements are admissible to corroborate the witness' sworn trial testimony. Corroborative evidence by definition tends to "strengthen, confirm, or make more certain the testimony of another witness. Corroborative evidence *need not mirror* the testimony it seeks to corroborate, and may include new or additional information as long as the new information tends to strengthen or add credibility to the testimony it corroborates. Prior statements by a witness which contradict trial testimony, however, may not be introduced under the auspices of corroborative evidence.

State v. McGraw, 137 N.C. App. 726, 730, 529 S.E.2d 493, 497 (2000) (internal citations and quotation marks omitted) (emphasis added). "[I]f the previous statements offered in corroboration are generally consistent with the witness' testimony, slight variations between them will not render the statements inadmissible. Such variations affect only the credibility of the evidence which is always for the jury." *State v. Jones*, 110 N.C. App. 169, 173, 429 S.E.2d 597, 599-600 (1993) (citation omitted).

Defendant argues that while the State's Exhibit 11 alleged that a man and woman took Croft's "pocketbook" and pulled her hair, at trial, Croft never mentioned a "pocketbook" and testified that only defendant had her by the hair. Our record reveals that in the State's Exhibit 11, Croft provided that her hair was pulled and

that "they took my pocket book[.]" It is not precisely clear to whom she is referring. At trial, Croft testified that her "hair was getting pulled" by defendant and that the man in the rear seat of the suspect vehicle took her phone and $42 from her. We hold that although Croft's trial testimony and the State's Exhibit 11 do not mirror one another in regards to this subject, the previous statement was generally consistent with her trial testimony and merely affected the credibility of the evidence. Any differences were slight and for the jury to resolve.

Defendant also argues that while Croft's initial testimony did not indicate that she was "concerned that the group would harm her at a subsequent time[,]" on redirect, the State used the State's Exhibit 11 to demonstrate that Croft had stated that "these people knew where [she] lived[.]" We deem this to be new or additional information which did not contradict the substance of Croft's trial testimony.

Next, defendant argues that while the State's Exhibit 11 suggests that defendant took a phone and money from Croft and threatened to "f*** [her] up[,]" Croft testified at trial that defendant did not take anything from her and did not threaten her. As conceded by defendant's brief that "[t]he awkward syntax of the prior unsworn statement [] created confusion[,]" we agree that it is not clear from the State's Exhibit 11 exactly what Croft intended in her unsworn statement to police. Croft provided in the State's Exhibit 11 that "[t]hey will f*** me up in the car" and "they took my pocket book my 11$ dollar bill ten bill pull my hair my hair bowes [SIC]

in the blue taurus." A review of the transcript demonstrates that Croft testified that the man she recognized was the individual who took her phone and $42. Croft also testified that the same man was making threats to her during the time she was in the car, "it really wasn't by [defendant], it was by the guy." We hold that any variations were slight and that the State's Exhibit 11 was generally consistent with Croft's trial testimony. As such, the statements were not inadmissible.

In regards to the testimony of Officer Johnson, defendant states that Officer Johnson testified that Croft previously told him she was "forced" into the vehicle. Defendant argues that that is inconsistent with Croft's trial testimony. Our review indicates that Officer Johnson testified that Croft told him that she was walking down the street when she "started being struck," "was forced from that location, after being struck, being knocked down to the ground, forced to a vehicle." At trial, Croft testified to the following:

> [Croft]: . . . they brought me to the car.
>
> . . . .
>
> [The State]: Okay. And how did you get from where you got -- initially were hit to the car?
>
> [Croft]: Truthfully, [defendant] had me by my arm and brought me to the car.
>
> . . . .
>
> [The State]: And did you want to go with them?

> [Croft]: I mean, I -- I didn't fight. I just went, you know.
>
> [The State]: Were you hurting?
>
> [Croft]: Yeah. My head was hurting. I was kind of confused. Like I was just out of it, you know. That happened too fast, you know, and it --
>
> . . . .
>
> [Defense Counsel]: But with particular regard, do you remember him [(referring to Officer Johnson)] asking you about it and you using the words that you kind of went willingly?
>
> [Croft]: Yeah.

Although Officer Johnson testified that Croft stated that she was "forced" into the vehicle, Croft testified at trial that she was injured and confused and chose not to fight. She was "brought" to the vehicle. We do not believe that the previous unsworn testimony and trial testimony are contradictory. In addition, we do not believe that even assuming, *arguendo*, that admission of the prior unsworn statement was error, that it amounted to plain error. There was substantial evidence showing that Croft was taken to the vehicle against her will. Newsome, an eyewitness to the incident, testified that after Croft was attacked by defendant, Croft was "forcefully" and "unwillingly" taken across Summit Avenue. Newsome testified that Croft was "struggling" in that "she wasn't putting up a UFC fight" but was "trying to get loose." In addition, several police officers testified that when they arrived at the scene, Croft had visible signs of injury and seemed "frightened" and "visibly upset." Any

inconsistencies goes to the weight, and not the admissibility, and was for the jury to resolve.

In conclusion, we hold that the trial court did not commit error, much less plain error, by allowing the State's Exhibit 11 and Officer Johnson's testimony into evidence.

B. Jury Instructions

In the second issue on appeal, defendant argues that the trial court committed plain error by instructing the jury on "impeachment or corroboration by prior statement" after previously admitting Croft's prior statement solely for corroborative and not impeachment purposes.

During the charge conference, defense counsel specifically requested North Carolina Pattern Jury Instruction 105.20, entitled "impeachment or corroboration by prior statement." The State did not object to this instruction and the trial court included it in its jury instructions. Our case law has established that "[a] criminal defendant will not be heard to complain of a jury instruction given in response to his own request." *State v. Wilkinson*, 344 N.C. 198, 213, 474 S.E.2d 375, 383 (1996) (citation omitted). Any error amounted to "invited error which does not entitle the defendant to any relief and of which he will not be heard to complain on appeal." *State v. Patterson*, 332 N.C. 409, 415, 420 S.E.2d 98, 101 (1992). Therefore, defendant has "waived his right to all appellate review concerning the invited error, including

plain error review." *State v. Goodwin*, 190 N.C. App. 570, 574, 661 S.E.2d 46, 49 (2008) (citation omitted). We dismiss this argument as waived.

IV. Conclusion

For the foregoing reasons, we find no error in defendant's trial.

NO ERROR.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).