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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-818

Filed: 19 May 2020

Mecklenburg County, Nos. 14CRS248254; 17CRS017726

STATE OF NORTH CAROLINA

v.

DEMARQUIS ANTONIO HARRISON, Defendant.

Appeal by Defendant from judgments entered 17 January 2019 by Judge Donnie Hoover in Mecklenburg County Superior Court. Heard in the Court of Appeals 4 March 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Sarah N. Cibik, for the State.*

*Irons & Irons, PA., by Ben G. Irons, II, for Defendant-Appellant.*

DILLON, Judge.

Defendant Demarquis Antonio Harrison appeals from the trial court's judgment entered upon his convictions for robbery with a dangerous weapon and possession of firearm by a felon. We conclude Defendant received a fair trial.

I. Background

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On the morning of 6 December 2014, a man with a handgun approached a Charlotte grocery store and demanded that the store manager open the store's safe. The man fled with contents from the safe, totaling between \$1,500 and \$2,000. A security camera caught the robbery on tape, and the footage was played to the jury.

At the time of the robbery, Defendant was on supervised release and was subject to electronic monitoring. He became a person of interest when it was discovered that he was in the vicinity of the store at the time of the robbery. After further investigation, Defendant was arrested for the robbery.

A jury convicted Defendant for the robbery and for possessing a firearm as a felon. Judgment was entered consistent with the verdicts. Defendant appeals.

II. Analysis

Defendant makes three arguments on appeal, which we address in turn.

A. Sufficiency of the Evidence

Defendant first argues that the trial court erred by denying his motion to dismiss, contending that the State's evidence was insufficient to identify Defendant as the perpetrator. We disagree.

We review *de novo* the denial of a motion to dismiss. *State v. Barnett*, 368 N.C. 710, 713, 782 S.E.2d 885, 888 (2016). In making its determination on a defendant's motion to dismiss, "the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State

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the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994). And “[c]ircumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence.” *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988).

The evidence at trial regarding the robbery tended to show as follows:

The manager described the perpetrator as African American, wearing black clothing, a face covering, black and white shoes, and latex gloves. She described the suspect’s height as 5’6” to police officers who responded to the robbery. However, at trial, she estimated that the robber was between 5’6” and 5’9” and stated that he was about the same height as the prosecutor, who she estimated was approximately 5’9”. The prosecutor then clarified that he was 6’1”.

The chief investigator assigned to robbery stated that Defendant became a suspect because he (1) was on supervised release and was wearing an electronic monitoring ankle bracelet and (2) electronic monitoring by the police indicated that he was “in the vicinity of the robbery during and after.” A report of Defendant’s tracking data showed that he was in the immediate vicinity of the store around the time of the robbery and that at certain points he was traveling at speeds indicative of walking or running. An officer testified about how the electronic monitoring worked. He explained that the monitor would not provide pinpoint accuracy but

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would provide a person's general location at a given time and that Defendant's report was consistent with him being in the store at the time of the robbery.

Six days after the robbery, Defendant was arrested. No money or handgun was recovered from Defendant at the time of his arrest. However, photographs were extracted from Defendant's cell phone that were taken on the day of the robbery. These photographs showed large amounts of money and Defendant posing with stacks of cash. Text messages were also recovered from the cellphone from two days prior to the robbery between Defendant's phone and a person named "Vegas." These messages referenced an attempt to rent a car and several outgoing messages from Defendant's phone stating "We gone get dat money."

We conclude that this evidence in this case, considered in the light most favorable to the State, was sufficient to identify Defendant as the perpetrator of the offense. The evidence was not required to rule out every hypothesis except guilt to survive Defendant's motion to dismiss. *See State v. Stone*, 323 N.C. at 452, 373 S.E.2d at 433. Therefore, we conclude that the trial court correctly denied Defendant's motion to dismiss.

B. Witness Testimony

Defendant next argues that the trial court plainly erred when it allowed a detective who did not visit the scene to testify that electronic monitoring data placed Defendant in the store at the time of the robbery and that currency was recovered

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near the store where Defendant “pinged” without a showing that the detective could read and interpret the data. We disagree.

We review this issue for plain error, as Defendant did not object to the testimony at trial. *See* N.C. R. App. P. 10(a)(4). “For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—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) (internal quotation marks and citation omitted).

Rule 701 of our Rules of Evidence allows a non-expert to testify concerning matters “which are (a) rationally based on [his] perception . . . and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.” N.C. Gen. Stat. § 8C-1, Rule 701 (2013).

In *State v. Jackson*, our Court held that a police officer’s testimony concerning electronic monitoring data was admissible lay testimony under Rule 701. 229 N.C. App. 644, 651, 748 S.E.2d 50, 56 (2013). In so holding, we noted that the officer’s testimony was based on his perception of the data rather than his personal knowledge of a suspect’s actual location. *Id.* at 652, 748 S.E.2d at 56.

Here, the detective's testimony was admissible lay testimony under Rule 701. The testimony was (1) based on his perception of the electronic monitoring data and (2) helpful to an understanding of Defendant's whereabouts at the time of the robbery.

But even assuming that the evidence was not admissible lay testimony, we conclude that the trial court did not err by failing to intervene *ex mero motu* in stopping the witness from testifying. Further, even if the trial court did err, we conclude that the error did not rise to the level of plain error, that it is reasonably probable that the jury would have reached a different verdict without this portion of the detective's testimony.

### C. Parole Officer's Testimony

Lastly, Defendant argues that the trial court plainly erred when it allowed a parole officer to testify that Defendant was a "high risk offender" who had just been released from prison. We disagree. Assuming that the trial court erred, we conclude that such error did not rise to the level of plain error.

### III. Conclusion

We conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).