IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-293

Filed 7 November 2023

Watauga County, Nos. 21-CRS-50745-46

STATE OF NORTH CAROLINA

v.

DAVID BRUCE WOODRING

Appeal by defendant from judgment entered 18 August 2022 by Judge Martin B. McGee in Watauga County Superior Court. Heard in the Court of Appeals 3 October 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Mary W. Scruggs, for the State.

Office of the Appellate Defender, by Assistant Appellate Defender Sterling Rozear and Appellate Defender Glenn Gerding, for defendant-appellant.

THOMPSON, Judge.

Defendant appeals from a judgment entered by the superior court on 18 August 2022 upon his convictions of possession of methamphetamine and violation of a domestic violence protective order (DVPO), wherein defendant received a single consolidated sentence of 9 to 20 months of imprisonment which the trial court

suspended for 30 months of supervised probation. Defendant contends that the trial court's instruction to the jury that defendant could be convicted of violating a DVPO by merely being at the residence of defendant's estranged wife constituted plain error. Upon review of the matters discussed below, we find no error, much less plain error, in defendant's trial.

I. Factual Background and Procedural History

Defendant and his wife, Deahanne (Ms. Woodring), were married in 2010 and the couple had one daughter. In the decade following their marriage, Ms. Woodring sought "several" DVPOs against defendant. Pertinent to this appeal, on 27 May 2021, a consent DVPO was entered by the Watauga County District Court which ordered that defendant was not to "assault, threaten, abuse, follow, harass (by telephone, *visiting the home* or workplace, or other means), or interfere with" Ms. Woodring. (Emphasis added). The DVPO further ordered that Ms. Woodring was "granted possession of, and *defendant is excluded from, the parties' residence*" and that any attempts defendant made to retrieve his personal property should be facilitated with the assistance of the Watauga County Sheriff's Office. (Emphasis added).

On 7 August 2021, defendant drove to Ms. Woodring's residence despite his being aware of the DVPO which was in place at the time. According to defendant, Ms. Woodring had telephoned defendant, asking him to bring her $500. While at Ms. Woodring's residence, defendant became irate and began cursing at Ms. Woodring, causing the couple's teenage daughter to call 911 for help in fear that defendant

"would hurt [the child] or [Ms. Woodring]." When law enforcement arrived at Ms. Woodring's house, defendant was placed under arrest; a subsequent search of defendant's person revealed a knife in his pocket and a small amount of methamphetamine contained in the sheath of the knife.

On 13 September 2021, defendant was indicted on charges of violating a domestic violence protective order, intimidating a witness,[1] and possession of methamphetamine. Defendant pled not guilty to all three charges. The joined offenses came on for trial at the 25 July 2022 session of Superior Court, Watauga County.[2] At trial, the State's evidence showed the facts summarized above. The State's case regarding the DVPO charge was not contradicted by defendant's evidence, which included his testimony that he went to Ms. Woodring's residence on 7 August 2021 even though defendant knew the property was Ms. Woodring's residence and that he "shouldn't have been there."

During the charge conference, the trial court proposed the following instructions on the charge against defendant for violating a DVPO:

> THE COURT: . . . . First, that a valid [DVPO] was entered on May 27, 2021, in the District Court of Watauga County pursuant to North Carolina law. I would say that.

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[1] On 26 July 2021, Ms. Woodring was scheduled to testify as a witness against defendant who was being tried for a matter separate from the couple's domestic violence issues. At the trial, Ms. Woodring testified that defendant entered her home on 25 July 2021 and threatened to kill her if she appeared in court the next day. Ms. Woodring called 911 to report the threat. On 5 August 2021, a warrant was issued for defendant's arrest for the charge of intimidating a witness.

[2] On 27 July 2022, the trial court extended the trial to the 18 August 2022 session due to a medical illness which prevented defendant from being able to be present in court.

> Second paragraph, Defendant violated the violence domestic protective order by the conduct by being at the residence [sic] Dehanne Woodring located at 598 Jones Drive, Boone, North Carolina. And I think it would be – I'll say and/or – or by harassing and interfering with Dehanne Woodring. I think or would be correct. It says and by being in – it says being at the residence and by harassing or interfering with her. But I think either one would be sufficient, so I would think it would be or.
>
> Anybody wish to be heard about that?
>
> [THE STATE]: No, Your Honor.
>
> [DEFENDANT'S COUNSEL]: No, Your Honor.
>
> THE COURT: And then I think – and third, the Defendant did so knowingly.
>
> . . . .
>
> Satisfactory to everyone?
>
> [THE STATE]: Yes, Your Honor.
>
> [DEFENDANT'S COUNSEL]: Yes, Your Honor.

{T 312-13} Accordingly, the trial court instructed the jury that for the jury to find defendant guilty of knowingly violating a valid DVPO, it must find the State proved three things beyond a reasonable doubt:

> First, that a valid [DVPO] was issued on May 27, 2021, in the District Court of Watauga County pursuant to North Carolina law.
>
> Second, that the Defendant violated the valid [DVPO] by being at the residence of Dehanne Woodring located at 598 Jones Drive, Boone, North Carolina, or by harassing and threatening Dehanne Woodring.

And third, that the Defendant did so knowingly.

The jury found defendant not guilty of intimidating a witness but returned verdicts of guilty on the charges of possession of methamphetamine and violating a domestic violence protective order that same day. Defendant was found to have a prior record level of V, and a consolidated sentence of 9 to 20 months was imposed and suspended for 30 months of supervised probation. Defendant timely appealed.

II. Analysis

Defendant presents a single issue on appeal: whether the trial court committed plain error by instructing the jury it could convict defendant of violating a DVPO by simply being at Ms. Woodring's residence when the DVPO in question did not order defendant to stay away from Ms. Woodring's residence. We answer in the negative and hold that defendant has failed to establish error, much less plain error, in the trial court's charge to the jury.

When, as here, "a defendant does not object to jury instructions at trial, the standard of review is plain error." *State v. Braswell*, 222 N.C. App. 176, 183, 729 S.E.2d 697, 702, *appeal dismissed and disc. review denied*, 366 N.C. 412, 735 S.E.2d 338 (2012). Plain error is error that is "so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different verdict than it otherwise would have reached." *State v. Bagley*, 321 N.C. 201, 213, 362 S.E.2d 244, 251 (1987), *cert. denied*, 485 U.S. 1036 (1988).

Because the purpose of the jury charge "is to give a clear instruction which applies the law to the evidence in such manner as to assist the jury in understanding the case and in reaching a correct verdict," *State v. Williams*, 280 N.C. 132, 136, 184 S.E.2d 875, 877 (1971), a "trial court should not give instructions which present to the jury possible theories of conviction which are either not supported by the evidence or not charged in the bill of indictment," *State v. Taylor*, 304 N.C. 249, 274, 283 S.E.2d 761, 777 (1981), *cert. denied*, 463 U.S. 1213 (1983). *See also State v. Smith*, 360 N.C. 341, 346–47, 626 S.E.2d 258, 261 (2006) and *State v. Shipp*, 155 N.C. App. 294, 300, 573 S.E.2d 721, 725 (2002). Accordingly, in order "[t]o determine if [a] defendant 'knowingly' violated the DVPO, we must first consider what the DVPO directed defendant not to do," *State v. Williams*, 226 N.C. App. 393, 406–07, 741 S.E.2d. 9, 19 (2013), and then review the allegations made in the indictment and the evidence introduced at trial, *Taylor*, 304 N.C. at 274, 283 S.E.2d at 777.

The pertinent indictment here alleges that defendant violated the DVPO "by being at the residence of [Ms. Woodring] . . . and harassing and interfering with" Ms. Woodring. In turn, the DVPO against defendant which was entered on 27 May 2021 utilized Form AOC-CV-306, which includes significant portions of preprinted text associated with boxes which a trial court may check to specify various aspects of its ruling. In one section of that form, following the phrase "It is ORDERED that," three checkboxes among a list of ten were marked to indicate the restrictions placed upon defendant: 1) that defendant "not assault, threaten, abuse, follow, harass (by

telephone, *visiting the home* or workplace, or other means) or interfere with" Ms. Woodring; 2) "the plaintiff is granted possession of, and *the defendant is excluded from, the parties' residence* . . . and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade," the latter of which required the facilitation of the Watauga County Sheriff's Office; and 3) that "defendant stay away from" Ms. Woodring's place of work, her school, and the parties' children's schools. (Emphases added). Not checked is an additional box indicating that "defendant shall stay away from the plaintiff's residence or any place where the plaintiff seeks temporary shelter."

As a result, defendant contends that because the court which entered the DVPO did not check the box ordering him

> to "stay away from" [Ms. Woodring's] residence, . . . he . . . could not have violated the DVPO by simply "being at the residence" as the trial court believed. When a DVPO does not order a defendant to stay away from certain premises, a defendant cannot violate that order solely by being at those premises.

Defendant's argument is meritless.

The DVPO "granted possession of, and defendant is excluded from, the parties' residence" and specifically directs defendant not to "harass" Ms. Woodring by "visiting the home" and "exclude[s]" defendant "from[] the parties' residence[.]" The fact that the DVPO did not check an additional box to direct defendant for a third time to stay away from the parties' residence where Ms. Woodring was residing does

not absolve defendant from knowingly violating the DVPO by being at Ms. Woodring's residence. Accordingly, the trial court's instruction to the jury that defendant could be convicted of violating a DVPO by merely being at the residence of defendant's estranged wife did not constitute error, much less plain error.

III. Conclusion

Because the trial court's instruction was supported by the evidence, the trial court did not err, much less plainly err.

NO ERROR.

Judges COLLINS and GRIFFIN concur.

Report per Rule 30(e).