IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-731

Filed 5 March 2024

Wilson County, No. 21 CRS 51996

STATE OF NORTH CAROLINA

v.

FATIMAH FREEMAN

Appeal by defendant from judgment entered 10 January 2023 by Judge William D. Wolfe in Superior Court, Wilson County. Heard in the Court of Appeals 7 February 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Samuel R. Gray, for the State.

Gilles Law, PLLC, by Michelle Abbott, for defendant-appellant.

ARROWOOD, Judge.

Fatimah Freeman ("defendant") appeals from judgment sentencing her to 45 days' imprisonment for misdemeanor flee to elude arrest with a motor vehicle, speeding, and reckless driving to endanger. On appeal, defendant argues the trial court committed plain error by allowing the State to cross-examine defendant about

a prior conviction outside the scope of Rule of Evidence 609 and by failing to give the jury a limiting instruction as to the 609 evidence. For the following reasons, we find no error.

I. Background

Defendant was indicted for felony flee to elude arrest with a motor vehicle, speeding, and reckless driving to endanger on 8 August 2022. The case was tried at the 9 January 2023 criminal session in Superior Court, Wilson County, Judge William D. Wolfe presiding. The evidence tended to show the following facts.

On 15 June 2021, defendant was driving from Pennsylvania to Louisiana and exited the interstate looking for a rest area. Defendant had never been to North Carolina, and due to being unfamiliar with the roads, she exited onto another highway rather than near a rest area. Wilson County Sheriff Department Deputy Zachary Byers ("Deputy Byers") testified for the State that he observed defendant's vehicle traveling on the highway at "a high rate of speed" and began to follow it, pacing its speed for about one mile at approximately 70 to 75 miles per hour ("m.p.h.") in a 55 m.p.h. zone. Deputy Byers continued to follow the SUV, estimating its speed increased to approximately 85 m.p.h.

Deputy Byers testified that he then turned on his blue lights, and when the car did not pull over, activated his siren. When the car still did not pull over and continued to increase its speed, he told the court that he "could tell the vehicle didn't appear it was going to stop." The SUV reached a speed of approximately 89 m.p.h.,

and Corporal Carl Whitfield ("Corporal Whitfield"), who was stationed further along the road, testified that he measured the vehicle traveling 83 m.p.h. Defendant's vehicle decreased speed to approximately 75 m.p.h. and passed another motorist on the road. Shortly after, defendant's vehicle abruptly stopped at a red light, and Deputy Byers testified that "[y]ou could see the rear end of the car lift up from how hard they hit the brakes[.]" Deputy Byers got out of his car and instructed defendant to exit her vehicle. When she exited her vehicle, it was apparent defendant had urinated on herself. Defendant told Deputy Byers "her music was too loud, she didn't see us, she didn't hear us." Defendant complied with Deputy Byers's commands and was taken into custody.

Deputy Byers testified that from the time he attempted to stop the car to the red light, he had traveled "approximately two to three miles, maybe a little bit further." The State then showed the court the dash camera footage from Deputy Byers's vehicle, beginning 20 or 30 seconds before Deputy Byers activated his blue lights and playing until defendant was taken into custody.

Defendant testified that she "didn't notice that blue lights were emergency lights here in North Carolina" and that she "feared for [her] life." She stated that she was "in a state of panic" because she had a congenital heart defect, and "people are murdered at traffic stops at a high rate especially for minority populations[.]" Defendant told the court that she was "extremely . . . nervous and anxious . . . and

not clear thinking." She testified that she "didn't try to commit a crime, flee from the police or anything. [She] just feared for [her] safety."

On cross-examination, the State questioned defendant as follows:

> Q: Have you been pulled by police before?
>
> A: I have but very few. I am a new driver. I haven't had my driver's license for just a few years prior to this happening.
> . . . .
> Q: So when have you been pulled by police before?
>
> A: One time in like Montgomery County. One time in a different township coming out of my university, my alma mater area.
>
> Q: Is that in Pennsylvania?
>
> A: Also in Pennsylvania.
>
> Q: Did you pull over for them?
>
> A: Yes, I have.
>
> Q: So you weren't charged with fleeing from officers prior to this?
>
> A: I have one time.
>
> Q:You were charged with this previously?
>
> A: Yes, and that was dismissed and it was also inaccurate and that was in 2016.
> . . . .
> Q: So in 2016 you were also fearful for your life, is that what you're saying?
>
> A: That's the same charge. That's just how long it lingered before I took the plea on that matter.

> Q: Right. But I'm just saying that whole situation, was it similar to this where you felt fearful for your life?
>
> A: That's why I was trying to handle it in a different manner because I did have that incident occur and I did the wrong thing.
>
> Q: You did the same thing this time as you did before; correct?

Defendant's counsel did not object to this questioning. Defendant's counsel submitted a Request to Charge including instructions for impeachment based on proof of an unrelated crime. Following a brief charge conference, the trial court gave jury instructions that did not include the requested limiting instruction on impeachment; defendant's counsel did not object to the instructions.

On 10 January 2023, a jury convicted defendant of misdemeanor flee to elude arrest with a motor vehicle, speeding, and reckless driving to endanger. The trial court consolidated the judgment and sentenced defendant to 45 days' imprisonment. Defendant filed timely notice of appeal on 24 January 2023.

II. Discussion

On appeal, defendant argues that the trial court committed plain error by (1) allowing the State to ask defendant details of a prior conviction outside the scope of Rule of Evidence 609 and (2) failing to give a limiting instruction for the 609 evidence. We disagree.

"An appellate court will apply the plain error standard of review to unpreserved instructional and evidentiary errors in criminal cases." *State v.*

Maddux, 371 N.C. 558, 564 (2018) (citation omitted). "[T]o demonstrate that a trial court committed plain error, the defendant must show that a fundamental error occurred at trial." *Id.* (citation and internal quotation marks omitted). "To show fundamental error, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *State v. Lawrence*, 365 N.C. 506, 518 (2012) (citations and internal quotation marks omitted).

North Carolina Rules of Evidence provide that "[f]or the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited from the witness or established by public record during cross-examination or thereafter." N.C.G.S. § 8C-1, Rule 609(a) (2023). Our case law establishes that "a limited inquiry into the time and place of conviction and the punishment imposed is proper." *State v. Finch*, 293 N.C. 132, 141 (1977). "[I]nquiry into prior convictions which exceeds the limitations established in *Finch* is reversible error." *State v. Rathbone*, 78 N.C. App. 58, 64 (1985), *cert. denied*, 316 N.C. 200 (1986); *see also State v. Lynch*, 334 N.C. 402, 410 (1993) (overruling a line of cases expanding the scope of *Finch*).

Additionally, absent a request for a limiting instruction for testimony regarding a defendant's prior convictions, "no assignment of error can be predicated on the court's failure to include such an instruction in its charge to the jury." *State v. Watson*, 294, N.C. 159, 170 (1978). Here, defendant's counsel did not object to the

State's questioning on cross-examination regarding defendant's prior conviction, and counsel did not object to the trial court's jury instructions. However, in their Request to Charge, defendant requested a pattern jury instruction regarding impeachment of a defendant by proof of an unrelated crime.

Even assuming *arguendo* that the trial court erred by allowing the State to cross-examine defendant outside the scope of Rule 609 and by failing to include these limiting instructions, these errors would not amount to plain error. The State presented evidence that tended to show Deputy Byers observed defendant traveling up to 89 m.p.h. in a 55 m.p.h. zone, and when Deputy Byers attempted to stop the vehicle with his emergency lights and sirens, defendant continued to drive at high rates of speed and did not pull over for approximately two to three miles. Even without defendant's testimony regarding the previous charge of fleeing to elude arrest, the State presented the jury with the testimony of both Deputy Byers and Corporal Whitfield as well as video footage of the events. Based on these facts, we are not persuaded that the alleged errors had a probable impact on the jury's decision to find defendant guilty.

III. Conclusion

For all the foregoing reasons, we hold the trial court committed no prejudicial error.

NO ERROR.

Judge HAMPSON concurs.

Judge MURPHY concurs in part and concurs by result only in part by separate opinion.

Report per Rule 30(e).

No. COA23-731– *State v. Freeman*

MURPHY, Judge, concurring in part and concurring in result only in part.

The Majority properly notes that, on appeal, Defendant seeks plain error review of the trial court's failure to provide his proposed limiting instruction. However, as our Supreme Court recently reaffirmed in *State v. Hooper*, Defendant's request for the instruction prior to the trial court having instructed the jury was enough to properly preserve this matter for appellate review. *State v. Hooper*, 382 N.C. 612, 625–26 (2022). Thus, even though Defendant's counsel seeks our review for plain error, we must "review it for ordinary prejudicial error, rather than the more onerous standard for plain error." *State v. Coleman*, 254 N.C. App. 497, 502 (2017). Applying the less onerous standard of review, I join my colleagues in holding that the Defendant was not prejudiced by the alleged error of the trial court in failing to give the requested instruction.