An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-738

Filed 19 March 2024

Scotland County, Nos. 21CRS50001–02

STATE OF NORTH CAROLINA

v.

RONNIE PATE, Defendant.

Appeal by defendant from judgment entered 10 February 2023 by Judge Stephan R. Futrell in Scotland County Superior Court. Heard in the Court of Appeals 7 February 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Sage A. Boyd, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Anne M. Gomez, for defendant-appellant.

GORE, Judge.

Defendant Ronnie Pate appeals the judgment convicting him of battery of an unborn child and habitual misdemeanor assault. Defendant argues the trial court erred by allowing a witness's "double hearsay" testimony about defendant's prior convictions. Defendant also seeks remand to clarify the judgment for habitual

misdemeanor assault. Upon review of the record and the briefs, we determine no error in part and remand in part.

I.

Defendant was indicted with assault pursuant to G.S. 14-33.2 (assault on a female), Special Indictment, first-degree burglary, common law robbery, and battery on an unborn child for an incident on 1 January 2021. The details surrounding these charges are not appealed, accordingly we only address what is before this Court on appeal.

During trial, the State admitted defendant's two prior assault convictions to support the habitual misdemeanor assault charge. One prior assault conviction was admitted through a certified copy of the prior judgment, and the second prior assault conviction was admitted as a certified copy of a screenshot of an ACIS (electronic recordkeeping of court documents) printout that showed the older assault conviction. Both documents were admitted and published to the jury without objection through Tray Dutch, a clerk of court.

Officer Keyondra Bratcher, defendant's former probation officer, testified during trial that she was aware of defendant's prior assault convictions. Officer Bratcher testified she became aware of the prior assault conviction by running a check on the government system, AOC Alert, which she testified was part of her officer duties with those assigned to her on probation. Prior to this admission, defense counsel requested to voir dire Officer Bratcher. Defendant argued outside the

presence of the jury that Officer Bratcher lacked personal knowledge. Defendant also argued that such testimony qualified as hearsay. The trial court overruled this objection and stated it would wait and see if any further testimony comes out. Defendant made no further objections during examination and cross-examination of Officer Bratcher. Instead, defendant questioned Officer Bratcher's personal knowledge of the information she found on the AOC Alert system.

The jury returned guilty verdicts for the following charges: battery of an unborn child and habitual misdemeanor assault, based upon the assault on a female charge. The jury returned not guilty verdicts for the first-degree burglary and common law robbery charges. The trial court consolidated defendant's sentences and sentenced him to 6 to 17 months' imprisonment. Defendant gave timely oral notice of appeal. The consolidated judgment listed the following offenses: assault pursuant to G.S. 14-33.2, class H felony; Special Count, class H felony; and battery of an unborn child, class A1 misdemeanor.

II.

Defendant appeals of right pursuant to section 7A-27(b). Defendant argues the trial court erroneously overruled his hearsay objection to Officer Bratcher testifying to her awareness of defendant's prior convictions by running a check through AOC Alerts and CJLEADS. Defendant seeks de novo review, but the State argues defendant did not preserve the issue on appeal and should be limited to plain

error review. While defendant did not preserve review of a business records exception, he did preserve a general hearsay challenge.

A.

Defendant argues the witness lacked personal knowledge of the prior convictions and that the State was offering it for the truth of the matter asserted, and therefore, it was hearsay. "We review *de novo* a properly preserved objection to the admission of hearsay evidence." *State v. Chevallier*, 264 N.C. App. 204, 208 (2019). For the first time on appeal, defendant argues the State failed to set a foundation for the witness testimony, because the State should have utilized the business records exception to overcome hearsay or any other exception. Conversely, the State argues Officer Bratcher's testimony was not hearsay, but rather for a non-hearsay purpose. We agree with the State's assertion.

"Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *Id.* (quoting N.C. R. Evid. 801(c)) (internal quotation marks omitted). "However, out of court statements offered for purposes other than to prove the truth of the matter asserted are not considered hearsay." *State v. Thomas*, 350 N.C. 315, 339 (1999). "[A] nonhearsay statement does not put the truth or falsity of the statement at issue." *State v. Valentine*, 357 N.C. 512, 524 (2003); *see State v. Wilson*, 322 N.C. 117, 137 (1988) (discussing how a warrant and its affidavit did not qualify as hearsay because the documents were admitted to demonstrate their existence). "A statement which

explains a person's subsequent conduct is an example of such admissible nonhearsay." *State v. Canady*, 355 N.C. 242, 248 (2002).

In the present case, the testimony the State elicited from Officer Bratcher was merely to ask about her awareness of prior convictions. Officer Bratcher testified that her duty as a probation officer involved checking the AOC Alert to determine defendant's criminal history. The State did not go further than to elicit this testimony of Officer Bratcher's awareness of the prior convictions. We determine the testimony was offered for a nonhearsay purpose.

Further, even if defendant could demonstrate error in this testimony, the ACIS document and prior judgment were already admitted without objection during Officer Dutch's testimony. Accordingly, the prior convictions were already published to the jury, and therefore, Officer Bratcher's additional testimony of her awareness of defendant's prior convictions was harmless error. *See State v. Murillo*, 349 N.C. 573, 589 (1998) (discussing error of certain testimony brought in was harmless due to other admissible testimony demonstrating violence toward the victim).

B.

Defendant also seeks remand and resentencing of the habitual misdemeanor assault judgment because on its face, the judgment sheet appears to convict defendant of two felonies, instead of the single felony for which he was convicted. The State argues the record and transcripts clarify defendant was correctly convicted of only one felony rather than two. The State concedes it is a clerical error.

A clerical error is "an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Taylor*, 156 N.C. App. 172, 177 (2003) (cleaned up). "When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." *State v. Smith*, 188 N.C. App. 842, 845 (2008) (cleaned up).

Defendant explains the judgment form gives the appearance of two felonies. The judgment form lists "Assault under GS 14-33.2 (F)" and states it is a felony under Class H. Right below that conviction is a "Special Count" that is also listed as a felony and under Class H. The State suggests the clerical error is minimal and easily rectified when a party reviews the record. While we agree with the State that a review of the indictments, jury verdicts and transcript do clarify defendant was only convicted of one felony, we believe the clerical error should be corrected. We determine the better practice, and in line with precedent, is to remand the judgment for correction of the clerical error on the judgment form. Accordingly, we remand the judgment solely to correct the clerical error on the judgment form.

III.

For the foregoing reasons, we determine no error in part and remand in part solely to correct the clerical error on the judgment form.

NO ERROR IN PART; REMAND IN PART.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).