An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-961

Filed: 17 April 2018

Cumberland County, No. 16 CRS 055096

STATE OF NORTH CAROLINA

v.

DONALD DONNELL ENGLISH

Appeal by defendant from judgment entered 31 May 2017 by Judge Claire V. Hill in Cumberland County Superior Court. Heard in the Court of Appeals 29 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Lauren T. Earnhardt, for the State.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for defendant.

ELMORE, Judge.

Donald Donnell English ("defendant") appeals from judgment entered upon a jury verdict finding him guilty of failing to report a change of address as a sex offender and upon his guilty plea to attaining habitual felon status. Defendant contends the trial court erred by failing to define the term "willfully" in its jury instructions. For the reasons stated herein, we find no error.

I.

On 12 December 2016, defendant was indicted for failing to report a change of address as a sex offender in violation of N.C. Gen. Stat. § 14-208.11(a)(2) and for attaining habitual felon status. At defendant's 30 May 2017 trial, the State's evidence tended to show the following:

In 1994, defendant was convicted of taking indecent liberties with a child. On 3 March 2016, defendant completed a "Duty to Register" form. In paragraph ten of the form, sex offenders agree to appear in-person and provide written notification of an address change to the county sheriff within three business days of such a change. Defendant initialed beside paragraph ten, indicating that he understood the paragraph. Also on 3 March 2016, defendant completed a change of address form indicating he was changing his address from 2020 Yonkers Road in Raleigh to 3816 John Marshall Road in Fayetteville.

A detective with the Cumberland County Sheriff's Office Sex Offender Registration Enforcement unit, whose duty was to conduct physical checks of the addresses provided by sex offenders, checked 3816 John Marshall Road on 3 April, 8 April, and 19 April 2016. The detective was unable to make contact with defendant at any of these checks. On all three occasions, the detective spoke to the current occupant of 3816 John Marshall Road and was able to determine that defendant did not reside in the home.

A woman who dated defendant testified that she met him on 2 April 2016. At that time, he was not living on John Marshall Road in Cumberland County but was living with his brother in "Wade County."[1] In May 2016, the woman took a trip with defendant to Lafayette, Louisiana, and defendant was arrested shortly thereafter. A Lafayette police officer who arrested defendant testified that defendant provided the following address as his residence: 3584 Rich Walker Road in Wade, North Carolina.

Defendant did not present any evidence at trial. On 31 May 2017, a jury found defendant guilty of failing to report a change of address as a sex offender, and defendant pled guilty to attaining habitual felon status. The trial court sentenced defendant to an active term of 131 to 170 months' imprisonment. Defendant gave oral notice of appeal.

II.

On appeal, defendant argues the trial court committed plain error by failing to define the term "willfully" in its jury instructions on the charge of willfully failing to comply with the sex offender registration law. Defendant acknowledges that defense counsel did not request a definition of the term "willfully." Thus, defendant is entitled only to plain error review of this issue. *See* N.C.R. App. P. 10(a)(2), (4).

[1] We note that although the witness testified that defendant was living in "Wade County," because there is no Wade County in North Carolina, the witness must have been referring to the town of Wade, North Carolina.

Plain error arises when the error is " 'so basic, so prejudicial, so lacking in its elements that justice cannot have been done[.]' " *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982), *cert. denied*, 459 U.S. 1018, 74 L. Ed. 2d. 513 (1982)). "Under the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993).

Section 14-208.11(a)(2) of our General Statutes provides that "[a] person required by this Article to register who willfully does any of the following is guilty of a Class F felony: . . . (2) Fails to notify the last registering sheriff of a change of address as required by this Article." N.C. Gen. Stat. § 14-208.11(a)(2) (2017). Here, the trial court notified the parties during the charge conference that it would read the pattern jury instructions for the offense of willfully failing to comply with the sex offender registration law. *See* N.C.P.I.—Crim. 207.75. The trial court then instructed the jury as follows:

> The defendant has been charged with *willfully* failing to comply with the sex offender registration law. For you to find the defendant guilty of this offense, the [S]tate must prove three things beyond a reasonable doubt.
>
> First, that the defendant was a resident of this state. Second, that the defendant had previously been convicted of a reportable offense for which the defendant must register. If you find beyond a reasonable doubt that on March 15, 1919 . . . March 15, 1994 in Cumberland County

> Superior Court the defendant was convicted of taking indecent liberties with a child, then this would constitute a reportable offense for which the defendant must register. And, third, the defendant *willfully* failed to provide written notice of a change of address in person at the sheriff's office no later than three business days after the change of address to the sheriff's office in the county with whom the defendant was last registered.
>
> If you find from the evidence beyond a reasonable double that on or about the alleged date, the defendant was a resident of this state, that the defendant had previously been convicted of a reportable offense for which the defendant must register and that the defendant *willfully* changed the defendant's address and failed to provide written notice of the defendant's new address in person at the sheriff's office no later than three business days after the change of address to the sheriff's office in the county with whom the defendant had last registered, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt of one or more of these things, it would be your duty to return a verdict of not guilty.

(Emphasis added.)

Defendant relies on *State v. Scaturro*, ___ N.C. App. ___, 802 S.E.2d 500 (2017), to support his contention that the trial court's failure to provide a definition for "willfully" was error. Defendant further argues that this error amounts to plain error because, according to defendant, the State's evidence on the issue of his willfulness was "practically non-existent."

In *Scaturro*, the defendant struck a bicyclist with his vehicle, drove the bicyclist to a hospital, and failed to return to the scene of the accident. *Id.* at ___, 802 S.E.2d at 502–03. The defendant was convicted of felony hit and run resulting in

serious bodily injury in violation of N.C. Gen. Stat. § 20-166(a). *Id.* at ___, 802 S.E.2d at 503. The trial court instructed the jury that an essential element of the offense was that "the defendant's failure to remain at the scene of the crash was willful, that is intentional." *Id.* at ___, 802 S.E.2d at 504. However, the statute required a driver to remain at the crash scene " 'unless remaining at the scene places the driver or others at significant risk of injury.' " *Id.* at ___, 802 S.E.2d at 506 (quoting N.C. Gen. Stat. § 20-166(a)). Subsection (b) of the statute further required the driver to render " 'reasonable assistance' " to any person injured in the crash. *Id.* (quoting N.C. Gen. Stat. § 20-166(b)).

On appeal, this Court noted that N.C. Gen. Stat. § 20-166(a) penalized only willful violations of the statute and that "a defendant might leave the scene of an accident intentionally and still not 'willfully' violate N.C.G.S. § 20-166(a) if his intentional departure was justified or with excuse." *Id.* at ___, 802 S.E.2d at 507. Because "the trial court never instructed the jury that an act is willful if it is without justification or excuse, as set out in the pattern jury instructions[,]" the trial court had "conflated willful acts with intentional ones." *Id.* Accordingly, this Court held that the trial court's failure to instruct on willfulness amounted to plain error because the defendant's sole defense was that his departure from the accident site was authorized and required by the statute, and thus, defendant was deprived of the "gravamen of his basis for acquittal." *Id.*

The present case is distinguishable from *Scaturro*. Here, pursuant to N.C. Gen. Stat. § 14-208.11, a registrant's failure to report a change of address is not excused unless:

> (1) The person is incarcerated in, or is in the custody of, a local, State, private, or federal correctional facility,
>
> (2) The person notifies the official in charge of the facility of their status as a person with a legal obligation or requirement under this Article and
>
> (3) The person meets the registration or verification requirements of this Article no later than 10 days after release from confinement or custody.

N.C. Gen. Stat. § 14-208.11(c). None of defendant's circumstances fit within this exception. Rather, in accordance with the pattern jury instructions, the trial court's instruction adequately explained the law as it applied to the evidence. *See State v. Holmes*, 120 N.C. App. 54, 71, 460 S.E.2d 915, 925 ("The primary purpose of a jury charge is to inform the jury of the law as it applies to the evidence 'in such a manner as to assist the jury in understanding the case and in reaching a correct verdict.' "), *disc. review denied*, 342 N.C. 416, 465 S.E.2d 545 (1995) (citation omitted).

Moreover, it is well-established that "[i]t is not error for the court to fail to explain words of common usage in the absence of a request for special instructions." *State v. Riddle*, 45 N.C. App. 34, 39, 262 S.E.2d 322, 325 (1980). This Court has previously held that the term "willful" "is common enough to be understood by jurors without being defined in jury instructions." *State v. Flaherty*, 55 N.C. App. 14, 24,

284 S.E.2d 565, 572 (1981). Assuming, for the sake of argument, that the trial court's failure to define "willfully" constituted error, we do not find that it amounted to plain error in light of the State's evidence of defendant's guilt.

Based on the foregoing, we hold that the trial court did not commit error, much less plain error, by failing to define the term "willfully" in its jury instructions.

NO ERROR.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).