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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-533

Filed 01 August 2023

Guilford County, No. 19 CRS 89600

STATE OF NORTH CAROLINA

v.

CHAD EDWARD JORDAN, Defendant.

Appeal by defendant from judgment entered on or about 2 September 2021 by Judge William A. Wood II in Superior Court, Guilford County. Heard in the Court of Appeals 10 January 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Derek L. Hunter, for the State.

Leslie Rawls for defendant-appellant.

STROUD, Chief Judge.

Defendant Chad Edward Jordan appeals from a judgment, entered following a jury trial, for discharging a weapon into an occupied dwelling. Because Defendant cannot prove prejudice as part of his argument the trial court plainly erred by allowing a police officer to testify about the caliber of a bullet recovered from the house, we find no error.

I. Background

The State’s evidence at trial tended to show on 28 November 2019, Alfred Staley¹ was going into his house from his truck when he heard a series of gunshots from a .22 caliber rifle. When Alfred looked up to see where the shooting was coming from, he saw Defendant shooting toward some houses including the homes of his nephew Howard Staley Jr. (“Howard Jr.”) and his brother Howard Staley Sr. (“Howard Sr.”) and sister-in-law Sandra Staley. Alfred later heard Defendant was shooting at some dogs, but Alfred did not see any dogs when he saw Defendant shooting. Alfred then went and asked Defendant to stop shooting the gun, but Defendant instead fired another shot into the ground, which Alfred interpreted as a statement Defendant did not care what he thought. In response, Alfred went to call the sheriff’s department.

As Alfred went to call the sheriff’s department, Howard Jr. walked outside of his house after hearing a gunshot. When he came outside, Howard Jr. saw Defendant holding a .22 caliber rifle in Defendant’s yard. Howard Jr. then told Defendant he could not “just be shooting no gun,” and Defendant proceeded to shoot into the ground several times. After Defendant shot into the ground, Defendant put the gun down, moved towards Howard Jr., and the two got into “an altercation[.]”

When the altercation started, Howard Jr.’s daughter went to alert Howard Sr.

¹ This case involves multiple members of the Staley family, so we refer to all of them by their first names for clarity.

who came running out and told Howard Jr. to return to his house. When Howard Sr. arrived at the altercation, he realized that a sound he had heard earlier, which had sounded like a bowl cracking, was actually the sound of Defendant shooting into his and Sandra's house. Sandra also had heard the sound while laying on the couch and thought "it sounded like [her] whole house fell apart." Shortly after Howard Sr. and Sandra heard this noise, Howard Jr.'s daughter came and alerted them to the altercation outside.

Once Howard Sr. realized the sound he heard was Defendant shooting into his house, he said, to Defendant, "That's what we heard. You – you have shot in our house." As a result, Howard Sr. told Defendant to go home because Defendant "was probably going to go to jail." When Defendant denied shooting into Howard Sr. and Sandra's house and did not leave, Howard Sr. said to call the sheriff and went back to his house.

As he was walking back to his house, Howard Sr. saw a "little hole" in his house. Howard Sr. and Sandra then went inside and could see "where the bullet went through the house" and into their entertainment center, where it was still laying. Neither the bullet hole nor the bullet had been there before Howard Sr. heard the gunshot noise. After that, Howard Sr. went to Alfred's house because he had heard Alfred had already called the sheriff.

When the sheriff's deputies arrived, Deputy James Swaringen first made contact with Defendant, who promptly complained his neighbor's dog had been

“aggressive” towards him. Neither Deputy Swaringen nor the other deputy on the scene, Deputy Hayden Bass, saw any dogs when they were present. While the deputies were talking with Defendant, Howard Sr. came up “yelling” about how Defendant had shot into his house. Deputy Bass went with Howard Sr. to investigate the matter while Deputy Swaringen stayed with Defendant.

At this time, Deputy Swaringen took Defendant’s statement about getting his .22 caliber rifle to shoot at an “aggressive” dog. Defendant also showed Deputy Swaringen where he shot from, and Deputy Swaringen could see Howard Sr. and Sandra’s house was “within the line of site [sic] from where [Defendant] said he fired from[.]”

At the same time Deputy Swaringen was with Defendant, Deputy Bass went with Howard Sr. to his house. When Deputy Bass approached Howard Sr.’s house, he saw a bullet hole in the side of the home that faced Defendant’s house. After determining the bullet had traveled straight through the inside wall of the house too, Deputy Bass also saw the .22 caliber bullet in the home’s entertainment center.

Around the same time, Defendant told Deputy Swaringen where to retrieve the gun he had fired, and Deputy Swaringen recovered a .22 caliber rifle. Deputy Swaringen had already discussed with other deputies the possibility that Defendant could be charged with “shooting into an occupied dwelling.” As a result, once Deputy Bass told Deputy Swaringen he had recovered a bullet that had gone through the house, Deputy Swaringen detained Defendant.

On 3 February 2020, Defendant was indicted for discharging a weapon into an occupied dwelling. On 1 September 2021, Defendant's jury trial began. Alfred, Howard Jr., Howard Sr., and Sandra Staley all testified consistent with the above facts. Deputies Swaringen and Bass also testified consistent with the above facts. As part of the deputies' testimony, the State introduced into evidence: (1) the .22 caliber rifle Defendant admitted he had fired; and (2) the bullet recovered from Sandra and Howard Sr.'s home. Both deputies also testified, without objection, that the bullet recovered was a .22 caliber bullet or "matche[d]" with Defendant's .22 caliber rifle. Defendant presented no evidence at trial. The jury found Defendant guilty of discharging a firearm into an occupied dwelling.

On or about 2 September 2021, the trial court entered judgment and sentenced Defendant to 44 to 65 months in prison. On 10 September 2021, Defendant entered written notice of appeal.

II. Analysis

On appeal, Defendant argues the "trial court committed plain error by allowing" Deputy Bass "to testify to the type of bullet found in" Howard Sr. and Sandra's "home because he was not qualified as an expert and the testimony did not satisfy the requirements for lay testimony." Defendant claims he was "harmed" by this testimony "matching the bullet to this gun" because it "was the primary evidence" and the "sole direct link in the evidence" that "he might have shot into the neighbor's home."

A. Standard of Review

Since, as Defendant admits, Defendant did not object to Deputy Bass's testimony at trial, we review this issue for plain error. *See State v. Lawrence*, 365 N.C. 506, 516, 723 S.E.2d 326, 333 (2012) (explaining plain error review “applies only when the alleged error is unpreserved” and “is normally limited to instructional and evidentiary error”). In the definitive case on plain error, our Supreme Court explained:

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, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings[.]

Id. at 518, 723 S.E.2d at 334 (citations, quotation marks, and brackets from original omitted). “In other words, to prevail on plain error, a defendant must show not just that an error occurred but also that the error prejudiced him.” *State v. Thomas*, 281 N.C. App. 159, 181, 867 S.E.2d 377, 394 (2021) (citing *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334).

B. Plain Error

Assuming, *arguendo*, the trial court's allowance of Deputy Bass's testimony that the bullet was a .22 caliber round was an error, Defendant has still not met his

burden of showing the error was prejudicial and thus a fundamental error requiring reversal under plain error review. *See Thomas*, 281 N.C. App. at 181, 867 S.E.2d at 394 (requiring both an error and prejudice to prevail under plain error); *see also Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334 (linking fundamental error to prejudice). Since Defendant has not challenged the evidence he was shooting a .22 caliber rifle, Deputy Bass's testimony linking the bullet in Howard Sr. and Sandra's home to Defendant's gun only served to show Defendant had actually shot into an occupied dwelling. But the State provided ample other evidence Defendant had shot into Howard Sr. and Sandra's home.²

First, the State presented evidence Defendant had shot toward Howard Sr. and Sandra's home. Alfred testified Defendant was shooting a .22 caliber rifle towards Howard Sr. and Sandra's home. Deputy Swaringen also testified Howard Sr. and Sandra's house was "within the line of site [sic] from where [Defendant] said he fired from[.]"

Second, the State presented evidence of a new bullet and bullet hole that appeared in Howard Sr. and Sandra's home at the time Defendant was shooting. Deputy Bass testified when he approached Howard Sr.'s house, he saw a bullet hole

² We also clarify that the issue in this case does *not* arise from expert opinion testimony or evidence that the bullet found in the house "matched" the particular weapon. There was no evidence of a formal forensic examination of the bullet or firearm in this case; Deputy Bass's testimony only addressed the general size and appearance of the bullet found in the home as a .22 caliber round. *Cf. State v. Griffin*, 268 N.C. App. 96, 108, 834 S.E.2d 435, 441-42 (2019) (giving detailed description of forensic examination of firearm, bullets, and cartridge casings and expert opinion testimony regarding evidence that the particular bullets had been fired from a particular firearm).

in the side facing Defendant's home. Howard Sr. also testified he saw a bullet hole in his house that was not there before he heard the gunshot noise, which he and Sandra heard "about [the] time" Howard Jr.'s daughter came and told them about the confrontation between Howard Jr. and Defendant where Howard Jr. told Defendant he could not "just be shooting no gun[.]" Deputy Bass, Sandra, and Howard Sr. then all saw a bullet in the home's entertainment center. Howard Sr. clarified the bullet also was not in the entertainment center before he heard the gunshot noise. All of this evidence provides strong support for the proposition Defendant had hit Howard Sr. and Sandra's house when firing his rifle.

Last, and most important, Deputy Swaringen testified, under cross-examination by Defendant's attorney, the bullet that struck the house "matche[d] with the weapon fired" by Defendant. In addition to this nearly identical evidence potentially waiving the issue, *see State v. Steen*, 226 N.C. App. 568, 575-76, 739 S.E.2d 869, 875-76 (2013) (determining a defendant had waived a plain error issue because he "offered testimony that is of a similar character" to the challenged testimony), Deputy Swaringen's testimony replaces the logical gap opened if we assume, *arguendo*, error in Deputy Bass's testimony that the recovered bullet was a .22 caliber bullet. Deputy Swaringen, among others, had already testified Defendant fired a .22 caliber rifle, so Deputy Swaringen's testimony the bullet matched the weapon fired essentially confirmed it was a .22 caliber bullet.

Defendant's only argument on prejudice is that Deputy Bass's testimony was

“the sole direct link in the evidence” that matched “the bullet to his gun[.]” In addition to Deputy Swaringen’s testimony also “match[ing]” the bullet to the gun, we note circumstantial evidence alone can still rebut a plain error prejudice argument. *See State v. Mitchell*, 270 N.C. App. 136, 142, 840 S.E.2d 276, 282 (2020) (“[T]he circumstantial evidence is sufficient to rebut [the d]efendant’s plain error argument.”); *see also State v. Maddux*, 371 N.C. 558, 565-66, 819 S.E.2d 367, 372 (2018) (explaining this Court “erred in applying the correct standard for plain error” because its “assertions” about (1) all the evidence of guilt being circumstantial and (2) the lack of direct evidence were “not dispositive” given our Supreme Court has “routinely stated, in the sufficiency of the evidence context, that the characterization of evidence as either direct or circumstantial does not resolve whether the evidence is sufficient”).

Therefore, we reject Defendant’s argument and determine, even if the trial court erred in allowing Deputy Bass to identify the recovered bullet as a .22 caliber bullet, the error was not a fundamental one because Defendant could not show prejudice, *i.e.*, that the error had a probable impact on the jury finding him guilty. *See Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334 (requiring an error to be fundamental for it to be a plain error and then saying a fundamental error requires a showing of “prejudice that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty” (citation and quotation marks omitted)).

III. Conclusion

Because Defendant has failed to show prejudice and thus a fundamental error, he cannot show the trial court plainly erred in allowing Deputy Bass to testify about the caliber of the bullet recovered from the Staley's home. Therefore, we find no error.

NO PLAIN ERROR.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).