

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-931

Filed 21 May 2024

Beaufort County, Nos. 20 CRS 50610, 20 CRS 695

STATE OF NORTH CAROLINA

v.

LAVONYA EUGENE DAVIS, Defendant.

Appeal by defendant from judgment entered 8 March 2021 by Judge Wayland J. Sermons, Jr., in Beaufort County Superior Court. Heard in the Court of Appeals 3 April 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Lisa R. Atwater, for the State.

Appellate Defender Glenn Gerding and Assistant Appellate Defender Candace Washington for defendant-appellant.

DILLON, Chief Judge.

Defendant Lavonya Davis was convicted of failing to register as a sex offender by failing to update a change of his address with the Sheriff within three business days of when he moved in late April of 2020. Defendant had previously been convicted of indecent liberties with a child and was ordered to register as a sex offender.

I. Background

Defendant completed a change of address form on 5 December 2019, listing his address at a certain home in Washington.

Months later, on 5 May 2020, Defendant spoke on the telephone with the director of administrative services at the Beaufort County Sheriff's Office, informing her that he "left the hotel" approximately a week ago. However, as the director later testified, the Office had no record where or when Defendant had moved to a hotel. While still on the phone, Defendant told the director that he was "living in a camper any and everywhere that he could." The director told Defendant that he needed to come to the Sheriff's Office to change his address. Defendant responded, stating that he was susceptible to COVID-19 and his wife had "health issues[.]" but that he would come to change his address.

Two days later, on 7 May 2020, the director again told Defendant on the telephone that he needed to change his address in person or risk being charged with failure to notify a change of address for a registered sex offender. Defendant continued to make "multiple excuses" for not coming in to change his address. For instance, he claimed that he came to the office on a Friday after 5:00 pm, to which the director reminded him that he needed to come to the office during business hours, between 8:00 am and 5:00 pm, Monday through Friday.

The next day, on 8 May 2020, Defendant finally came in and completed a change of address form. Three months later, though, Defendant was indicted for

failure to register as a sex offender. In March 2021, Defendant was convicted by a jury of “willfully failing to notify the Sheriff of Beaufort County of address change.” Defendant stipulated to an aggravating factor in exchange for the State dismissing a habitual felon indictment and was given an aggravated sentence.

II. Analysis

On appeal, Defendant argues that the trial court plainly erred when it twice misplaced the word “willfully” by instructing the jury that the state must prove “the defendant *willfully changed [his] address* and failed to provide written notice” instead of “the defendant changed his address and *willfully failed to provide written notice* of a change of address” and asks that this Court vacate and remand for a new trial.

Defendant concedes that he failed to object to the jury instructions at trial. We review unpreserved jury instructional errors for plain error. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). The burden for proving plain error is met when “the defendant has shown that, absent the error, the jury probably would have returned a different verdict.” *State v. Carter*, 366 N.C. 496, 500, 739 S.E.2d 548, 551 (2013) (quotation marks removed).

Having been convicted of the crime of taking indecent liberties with a child, Defendant is subject to N.C. Gen. Stat. § 14-208.9, which requires that sex offenders notify the local sheriff of any change of address by “report[ing] in person and provid[ing] written notice of the new address not later than the third business day after the change to the sheriff of the county with whom the person had last

registered.” N.C. Gen. Stat. § 14-208.9(a) (2024).

To prove that a defendant violated this statute, the State must prove he *willfully failed to provide written notice* of a change of address. See N.C. Gen. Stat § 14-208.9.

At the trial in this case, the trial court gave the following jury instruction:

[T]he State 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, and if you find beyond a reasonable doubt that on February 18, 2014 in Pitt County Superior Court that 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, that *the defendant willfully changed his 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 last registered.

Defendant essentially alleges that the placement of the word “willfully” before the phrase “changed his address” lessened the State’s burden of proving that he acted willfully in failing to timely register his change of address.

In a fairly recent unpublished case, a panel of this Court held that a similar instruction, a charge to the jury that the State must prove “that the Defendant willfully changed the Defendant’s address and failed to provide written notice of the Defendant’s new address”, did not rise to the level of plain error. *State v. Lindsey*, 276 N.C. App. 51, 853 S.E.2d 870 (2021) (holding that the defendant could not show

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that (1) a serious instructional error occurred and (2) the error had a probable impact on the jury's ultimate verdict) (unpublished). In so holding, the *Lindsey* panel primarily relied upon the 2016 unpublished case, *State v. Solomon*, 250 N.C. App. 184, 791 S.E.2d 540 (2016), which held that the placement of the word "willfully" in the instruction was likely error but that it did not rise to the level of plain error.

We find the reasoning from these unpublished opinions persuasive. Here, there was evidence that Defendant had knowledge of his duty to submit written notice of his change of address but that he did not comply with that obligation. He had been repeatedly reminded of his obligation, but he made excuses on more than one occasion in failing to meet that obligation. Therefore, we conclude that any error from the placement of the word "willfully" in the jury instructions did not rise to the level of plain error.

NO PLAIN ERROR.

Judges COLLINS and STADING concur.

Report per Rule 30(e).