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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1036

Filed 3 December 2024

Surry County, No. 21CRS52000

STATE OF NORTH CAROLINA

v.

VICTOR MANUEL GALARZA-RODRIGUEZ, Defendant.

Appeal by defendant from judgment entered 18 May 2023 by Judge Angela B. Puckett in Surry County Superior Court. Heard in the Court of Appeals 13 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Brooke Schmidly, for the State-appellee.

Vitrano Law Offices, PLLC, by Sean P. Vitrano, for defendant-appellant.

GORE, Judge.

Defendant Victor Manuel Galarza-Rodriguez appeals his conviction for possession of a firearm by a felon pursuant to section 14-415.1. *See* N.C.G.S. § 14-415.1 (2021). Specifically, defendant argues the trial court erred by allowing the State to cross-examine him regarding his prior convictions pursuant to Rule 609(a). Upon review we discern no error.

I.

On 4 August 2021, defendant was convicted of possession of a Schedule I or II controlled substance and possession of a firearm while possessing a Schedule I or II controlled substance in Carroll County, Virginia. Defendant was sentenced to two years of supervised probation. The trial court approved defendant's request to transfer his probation to Surry County, North Carolina. Defendant was assigned a North Carolina probation officer and listed an address on Pipers Gap Road as his home address. The terms of defendant's probation included waiver of his 4th amendment protection against search and seizure and the right to own, possess, transport, or carry any firearm. Defendant received and agreed to these probation terms.

On 15 September 2021, two probation officers, Lara Parsons and Jacob Zurita, conducted a warrantless search of defendant's listed address while defendant and one of his children were present. Probation officers testified they discovered a 9 mm Smith & Wesson pistol on a closet shelf in plain view. According to testimony, defendant's initial response was, "I forgot that was there." Parsons testified she also found men's clothing and some of defendant's "tools and other items of trade" in the bedroom. Parsons also testified that defendant told her, "I thought my wife got rid of everything I wasn't supposed to have." Parsons included in her written report, "Victor stated that it was his gun and he thought his wife has cleaned it out and all

of the stuff that he wasn't supposed to have and took it to his mom's, but he guessed she missed the gun." Defendant was arrested for possession of a firearm by a felon.

At trial, defendant's wife, Tracy, testified the firearm belonged to her, that defendant was unaware the firearm was in the closet, that the firearm was hidden in the closet, and that defendant did not sleep in the bedroom. Defendant testified he did not sleep in the bedroom and that his only belongings were in the basement; none of his belongings were in the bedroom where the firearm was discovered. Defendant also testified that the firearm belonged to Tracy and that once he was sentenced to probation, he asked her to remove anything in the house that he was prohibited from using while on probation. Defendant admitted he is a convicted felon due to his prior convictions of possession of a Schedule I or II controlled substance, and possession of a firearm while in possession of the illegal substance. The State rebutted defendant's testimony by calling the probation officers to testify again and by playing the audio from one of the law enforcement officer's body-worn microphone.

The jury returned a guilty verdict for the charge, and upon conviction the trial court sentenced defendant to 12 months to 24 months imprisonment. Defendant orally and timely appealed the judgment.

II.

Defendant appeals of right pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a). Defendant argues he preserved the issue for appeal through his trial counsel's general objection, but alternatively seeks plain error review should we determine the issue

was unpreserved. Conversely, the State argues the issue was unpreserved and only reviewable for plain error.

To properly preserve an objection pursuant to Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure, counsel must object and “state the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1) (cleaned up). Having reviewed the trial transcript, we determine defense counsel did not state specific grounds for the objection. Accordingly, we review defendant’s Rule 609(a) challenge for plain error.

Under plain error review, we consider whether the trial court erred to the extent it “seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *State v. Caballero*, 383 N.C. 464, 473 (2022) (cleaned up). Defendant must demonstrate that a fundamental error occurred at trial,” and defendant must demonstrate “prejudice—that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” *Id.* at 473–74.

Defendant argues the trial court plainly erred by allowing the State to question him about prior convictions that “exceed the scope of proper inquiry.” *State v. King*, 343 N.C. 29, 49 (1996) (cleaned up). Defendant points to the following questioning as plain error under Rule 609(a):

Q. And, sir, you are a convicted felon; is that correct?

A. That’s correct. First time I ever -- yeah.

Q. When we've heard the testimony about your convictions for which you're being supervised here, which is for possession of a Schedule I or II controlled substance and possession of a firearm while being in possession of that substance, correct?

A. Correct.

Q. What was that substance?

A. It was -- it was like --

MR. ERDMAN: Objection, Your Honor.

A. Like --

THE COURT: Overruled.

A. Go ahead and answer?

THE COURT: Yes, sir.

A. Okay. It was maybe a grain of -- of methamphetamine that they found in my coat pocket. And I -- I am not going to lie. I've been struggling with -- from addiction. But it wasn't no large amounts of -- trafficking and stuff. It was nothing like that. And there, again, the pistol was --

Q. And the gun in question on that occasion was a pistol; is that correct?

A. Yeah. It was in the truck that I was -- I mean, I forgot it was in the truck, actually.

Q. You forgot it was in the truck?

A. It was Valentine's Day. Yeah. I remember like it was yesterday. It was Valentine's Day. They did a search and they found the -- the grain in my back coat pocket. And when they did that, they just -- they said that they had to search my car and then when they searched the car, they found the pistol that didn't work. I would have to -- had to have took it to a friend to get it worked on.

Under Rule 609(a), the State may cross-examine the defendant, if he chooses to testify, about his prior convictions to attack his credibility. N.C. R. Evid. 609(a). However, there are limitations to this form of cross-examination. The State should not “elicit[] details of prior convictions other than the name of the crime and the time, place, and punishment for impeachment purposes . . . in the guilt-innocence phase of a criminal trial.” *King*, 343 N.C. at 49 (citations omitted).

In *King*, our Supreme Court demonstrated factually how this rule applies by determining “the State’s single question related to the factual elements of the crime” was within the proper scope. *Id.* It distinguished those facts from the facts in *State v. Lynch* by explaining in that case the State’s multiple questions “concerning exactly what type of weapon defendant . . . used in five of his prior convictions exceeded the scope of proper inquiry.” *Id.* Further, the Court determined that any error in *King* was not prejudicial error because the “overwhelming evidence of defendant’s guilt” resulted in “no reasonable possibility a different result would have been reached at trial absent the alleged error.” *Id.* at 50.

In the present case, the trial court did not plainly err by allowing the State to cross-examine defendant as to the specific substance he possessed for his prior conviction. The State did not excessively question defendant regarding the prior convictions, and defendant gave additional details about the methamphetamine and pistol found on him and in his truck without the State eliciting such a response. Further, immediately after the testimony above, the trial court sustained an objection

by defense counsel when the State attempted to ask further questions about the illegal substance defendant possessed that led to the prior conviction.

This line of questioning did not fundamentally impact the trial or raise questions as to the fairness and integrity of the trial court. Nor did defendant establish prejudicial error, considering the evidence available at trial, his knowledge of prohibited items as a convicted felon on probation, the audio footage at the search of defendant's listed residence, the testimony by multiple officers regarding the discovery of the firearm, defendant's initial response when the firearm was discovered, defendant's knowledge of the existence of the firearm, and the conflicting testimony by defendant's wife claiming ownership of the firearm. The jury had the ability to weigh the evidence and determine whether defendant constructively possessed the firearm. In light of the evidence available to the jury, there is no reasonable possibility that the challenged cross-examination questions impacted the jury decision to the extent it would have changed the outcome. Accordingly, the trial court did not plainly err.

III.

For the foregoing reasons, we determine the trial court did not plainly err.

NO ERROR.

Chief Judge DILLON and Judge Stroud concur.

STATE V. GALARZA-RODRIGUEZ

Opinion of the Court

Report per Rule 30(e).