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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-751

Filed 7 May 2025

Stokes County, Nos. 21CRS051294; 21CRS051295; 21CRS051296; 22CRS000153

STATE OF NORTH CAROLINA

v.

LONNIE CURTIS BASS, Defendant.

Appeal by Defendant from judgments entered 12 March 2024 by Judge Angela B. Puckett in Stokes County Superior Court. Heard in the Court of Appeals 18 March 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Rachel Posey, for the State.

Iron & Irons, PA., by Ben G. Irons, II, for Defendant.

GRIFFIN, Judge.

Defendant Lonnie Curtis Bass appeals from the trial court's judgments entered upon his guilty plea for obtaining habitual felon status and a jury verdict finding him guilty of possession of a firearm by a felon and multiple drug-related offenses. Defendant contends the trial court plainly erred by allowing a detective to testify about statements made by a confidential informant contained in a search warrant.

Defendant also asks us to invoke Rule 2 of the North Carolina Rules of Appellate Procedure so that he may argue section 14-415.1 of the North Carolina General Statutes—which prohibits felons from possessing firearms—is unconstitutional. We hold the trial court did not err and deny Defendant’s request to invoke Rule 2.

I. Facts and Procedural Background

In August 2021, the Stokes County Sheriff’s Office received information from a confidential informant that narcotics were being sold from Defendant’s house. On 19 August 2021, the Sheriff’s Office applied for and received a search warrant for Defendant’s property. During their search, officers seized crack cocaine, marijuana, paraphernalia for drug use and distribution, and a firearm with extra ammunition. On 13 July 2022, a Stokes County grand jury indicted Defendant for: (1) possession with intent to manufacture, sell, and deliver crack cocaine; (2) possession with intent to manufacture, sell, and deliver marijuana; (3) maintaining a dwelling house for keeping and selling controlled substances; (4) possession of marijuana paraphernalia; (5) possession of drug paraphernalia; and (6) possession of a firearm by a felon.

On 11 March 2024, Defendant’s matter came on for trial in Stokes County Superior Court. Defendant stipulated to being a felon. At trial, the investigating detective testified about the search warrant application process:

A. Okay. So the applicant states that, [h]e received information from a true and reliable confidential source within the last 24 hours, that said source has observed, saw, the quantity of crack cocaine inside the premises of 1040 Goolsby Mobile Home Park in Belews Creek, North

Carolina 27009, within the last six days. The source who related the above information is familiar with various controlled substances including crack cocaine. The source who related the above information has been proven true and reliable in the past and that source has led to seizures of controlled substances and [the] arrest of individuals who have sold and used controlled substances. The source is familiar with crack cocaine by sight and smell, touch in that the source has admitted to the use of crack cocaine in the past. The source has also relayed to the applicant that 1040 Goolsby's Mobile Home Park, Belews Creek, North Carolina 27009, is a residence that is used to keep, sell, and use crack cocaine.

Q. And then that next paragraph.

A. Yes, sir. The applicant states that 1040 Goolsby's Mobile Home Park, Belews Creek, North Carolina 27009[,] is a residence used as a secured operational base to sell crack cocaine. Crack cocaine is not perishable and is of enduring utility to its holder, and all things considered would lead a reasonable and prudent person to believe that fruits of the crime exist described above.

The jury returned verdicts finding Defendant guilty of all charges. Defendant also pled guilty to obtaining habitual felon status. Defendant timely appeals from the judgments entered upon the jury verdicts and his guilty plea.

II. Analysis

Defendant contends the trial court plainly erred by allowing the investigating detective to read portions of a search warrant containing statements of a confidential informant to the jury. Defendant also asks this Court to invoke Rule 2 of the North Carolina Rules of Appellate Procedure to address the unpreserved issue of whether section 14-415.1 of the North Carolina General Statutes is unconstitutional. We hold

the trial court did not err by allowing the testimony, and we decline to invoke Rule 2.

A. Hearsay

Defendant alleges the trial court plainly erred by allowing a detective to repeat statements made by a confidential informant contained in a search warrant to the jury. Specifically, Defendant contends this infringed upon his constitutional right to confront witnesses against him. The State argues the testimony was not hearsay because it was not offered to prove the truth of the matter asserted and, even if the statements were hearsay, Defendant has failed to show plain error. We agree with the State and hold the challenged testimony was not hearsay.

Defendant argues this issue was preserved at the trial court by objection and thus subject to harmless error review. To preserve an error for appellate review, a “party must have presented to the trial court a *timely* request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make[.]” N.C. R. App. P. 10(a)(1) (2023) (emphasis added). “To be timely, an objection to the admission of evidence must be made ‘at the time it is actually introduced at trial.’” *State v. Ray*, 364 N.C. 272, 277, 697 S.E.2d 319, 322 (2010) (quoting *State v. Thibodeaux*, 352 N.C. 570, 581, 532 S.E.2d 797, 806 (2000)).

Defendant did not object to the testimony he now argues is hearsay when it was introduced; instead, he objected to later testimony after the State moved the search warrant into evidence, asked additional questions about the procedure for obtaining a search warrant, and then asked more questions about the facts

underlying the warrant. The court also directly questioned Defendant's trial counsel about whether he objected to introducing the search warrant into evidence, thus providing him with an opportunity to object in even closer temporal proximity than the objection he now argues sufficient for preservation. Defendant seemingly concedes the issue in his briefing, stating "[t]here was no objection when the quoted portions of the search warrant were read into evidence."

After reviewing the record, we hold this later objection untimely and therefore insufficient to preserve the current issue on appeal. N.C. R. App. P. 10(a)(1). Thus, we review this unpreserved evidentiary error for plain error. *State v. Maddux*, 371 N.C. 558, 564, 819 S.E.2d 367, 371 (2018) (citing *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012)).

Under plain error review, "the defendant must show that a fundamental error occurred at trial." *State v. Reber*, 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024) (citation omitted). Next, "the defendant must show [] the error had a 'probable impact' on the outcome, meaning that 'absent the error, the jury probably would have returned a different verdict.'" *Id.* (citation omitted). Lastly, "the defendant must show that the error is an 'exceptional case' that warrants plain error review, typically by showing that the error seriously affects 'the fairness, integrity or public reputation of judicial proceedings.'" *Id.* (citation omitted). However, if testimony alleged to be hearsay is in fact not hearsay, "analysis of the plain error argument is unnecessary." *State v. Leyva*, 181 N.C. App. 491, 500, 640 S.E.2d 394, 399 (2007).

“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.” N.C. R. Evid. 801(c) (2023). Hearsay is generally not admissible at trial. *State v. McNeill*, 371 N.C. 198, 245, 813 S.E.2d 797, 827 (2018). We have consistently held that statements made by a confidential informant during the course of a criminal investigation are not hearsay because they are offered to explain the investigating officers’ course of conduct and not to prove the truth of the matter asserted. See *Leyva*, 181 N.C. App. at 500, 640 S.E.2d at 399 (“[T]he evidence [alleged to be hearsay] was introduced to explain the officers’ presence at Salsa’s Restaurant that night, not for the truth of the matter asserted.”); *State v. Wiggins*, 185 N.C. App. 376, 384–85, 648 S.E.2d 865, 871 (2007) (holding a deputy’s testimony relaying statements made to him by a confidential informant were not hearsay as they were not offered to prove the truth of the matter asserted); *State v. Singletary*, 73 N.C. App. 612, 616, 327 S.E.2d 11, 13 (1985) (“Because it was not introduced to prove the truth of the matter asserted, the testimony did not include hearsay evidence.”). Non-hearsay statements also do not offend the Confrontation Clause because they are not testimonial in nature. *State v. Batchelor*, 202 N.C. App. 733, 736, 690 S.E.2d 53, 55 (2010).

Here, the detective’s statements were not hearsay because they were not offered to prove the truth of the matter asserted. The colloquy between the State and the detective in which the alleged hearsay testimony was stated began with the following:

Q. Did you investigate [Defendant] for this incident on August 19th, 2021?

A. Yes, sir.

Q. And had the Narcotics Division been surveilling [Defendant]'s home?

A. Yes, sir.

Q. Okay. And had you been in contact with a confidential informant regarding the purchase of narcotics at his home?

A. Yes, sir. That's correct.

Q. All right. And due to that information, did you apply for a search warrant?

A. We did apply for a search warrant.

...

Q. And the address of that location, what is that address?

A. That is 1042 East Mobile Home Park in Belews Creek.

The detective then read portions of the search warrant stating the information he received from the confidential informant. This testimony, as the introductory portion shows, was offered to explain why law enforcement investigated Defendant and his address. The portion of the testimony in question simply provides the factual basis—the confidential informant's statements—initiating the investigation. As such, it was not offered for the truth of the matter asserted and is not hearsay. Therefore, the testimony also did not offend the Confrontation Clause. *Batchelor*, 202 N.C. App. at 736, 690 S.E.2d at 55.

Accordingly, because the challenged testimony was not hearsay, Defendant

has failed to show the requisite error to carry his burden under the plain error standard. *See Reber*, 386 N.C. at 158, 900 S.E.2d at 786 (“First, the defendant must show that a fundamental error occurred at trial.” (citation omitted)).

B. Rule 2

Next, Defendant argues section 14-415.1 is unconstitutional on its face and as applied to him. Defendant concedes “the constitutionality of N.C. Gen. Stat. § 14-415.1 was not contested in the trial court,” and asks this Court to invoke Rule 2 of the North Carolina Rules of Appellate Procedure to waive the preservation requirements of Rule 10. Specifically, Defendant contends this issue is widely occurring so “review is warranted in the public interest.”

Rule 2 allows this Court, in order “to expedite decision in the public interest . . . [to] suspend or vary the requirements or provisions of any of [the Rules of Appellate Procedure.]” N.C. R. App. P. 2. However, “[c]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal.” *State v. Gainey*, 355 N.C. 73, 87, 558 S.E.2d 463, 473 (2002) (citations and internal marks omitted).

For context, section 14-415.1 provides that “[i]t shall be unlawful for any person who has been convicted of a felony to [] own, possess, or have in his custody, care, or control any firearm[.]” N.C. Gen. Stat. § 14-415.1 (2023). We recently addressed the constitutionality of section 14-415.1 under both the North Carolina State Constitution and the United States Constitution at length in *State v. Nanes*, __

N.C. App. __, 912 S.E.2d 202 (2025). There, we upheld section 14-415.1's constitutionality on both federal and state constitutional grounds. *Nanes*, __ N.C. App. at __, 912 S.E.2d at 209, 211. In light of this Court's recent decision, we disagree with Defendant's argument that review is warranted in the public interest and decline to invoke Rule 2 to reach the merits of Defendant's argument.

III. Conclusion

We hold Defendant received a fair trial, free from error and decline to suspend the Rules of Appellate Procedure to reach Defendant's unpreserved argument about the constitutionality of section 14-415.1.

NO ERROR.

Chief Judge DILLON and Judge CARPENTER concur.

Report per Rule 30(e).