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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-317

Filed 4 November 2026

Chatham County, No. 24CR301021-180

STATE OF NORTH CAROLINA

v.

LARRY RAYMOND SMITH

Appeal by defendant from judgment entered 5 May 2025 by Judge R. Allen Baddour, Jr., in Chatham County Superior Court. Heard in the Court of Appeals 15 October 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Phillip H. Liles, for the State.

The Sweet Law Firm, PLLC, by Kaelyn N. Sweet, for defendant-appellant.

ZACHARY, Judge.

Defendant Larry Raymond Smith appeals from the trial court's judgment entered upon a jury's verdict finding him guilty of possession of a firearm by a felon. On appeal, Defendant argues that the trial court erred and plainly erred by admitting testimony as to a witness's out-of-court statements. After careful review, we discern no error.

I. Background

On 6 May 2024, Larry Raymond Smith, Sr., ("Mr. Smith"), reported to the Chatham County Sheriff's Office that his son, Defendant, had been using drugs, had threatened him, and had an AR-15 which "he had recently shot off the back . . . porch at a possum." Detective Jedidiah Bristow spoke with Mr. Smith and obtained a search warrant for Defendant's home, where he lived with his mother.[1]

Concerned for Mr. Smith's safety, Detective Bristow and the Special Incident Response Team ("SIRT") executed the search warrant the following day. Once the residence was cleared, Detective Bristow and SIRT began the search of the house.

In Defendant's bedroom, officers found a number of keys, a wallet containing Defendant's identification, and a shell casing behind the headboard of the bed. The door to the bedroom at the end of the hall was locked and SIRT kicked it in to gain access. There, an officer located a .556-style AR-15 on the floor behind a mattress and box spring that were propped up against the wall; officers determined that the shell casing was "consistent with" the AR-15. Thereafter, Detective Bristow determined that one of the keys found in Defendant's bedroom fit the lock for the bedroom in which the firearm was found. Additionally, officers discovered an unfired .233 bullet on the ground outside Defendant's open bedroom window.

[1] On 25 April 2024, Mr. Smith moved out of the residence he shared with Defendant and Defendant's mother. On 4 May 2024, he returned to the residence to retrieve some of his personal belongings.

Following the search, Detective Bristow arrested Defendant. On 8 July 2024, a Chatham County grand jury returned an indictment charging Defendant with possession of a firearm by a felon. The grand jury returned an amended indictment for the same charge on 28 April 2025.

Also on 28 April 2025, Defendant's case came on for trial in Chatham County Superior Court. On 5 May 2025, the jury returned its verdict finding Defendant guilty of possession of a firearm by a felon. The trial court entered judgment sentencing Defendant to 12 to 24 months' imprisonment in the custody of the North Carolina Department of Adult Correction.

Defendant gave oral notice of appeal.

II. Discussion

On appeal, Defendant contends that "[t]he trial court erred by admitting the hearsay statements of [Mr. Smith] . . . that he 'saw [Defendant] with a firearm' and 'knew there was an AR-15 inside the house' as substantive evidence to show that [Defendant] possessed a firearm as a convicted felon." He further contends that "[t]he trial court plainly erred by admitting the hearsay statements of [Mr. Smith] as substantive evidence in violation of the confrontation clause[.]"

A. Hearsay

Defendant first argues that "Mr. Smith's hearsay statements exceeded the scope of explaining subsequent conduct and were instead offered to prove the truth of the matter asserted that [Defendant] possessed a firearm as a convicted felon." We

disagree.

1. Standard of Review

This Court reviews de novo "a trial court's ruling on the admission of evidence over a party's hearsay objection[.]" *State v. Cook*, 246 N.C. App. 266, 279, 782 S.E.2d 569, 578 (citation omitted), *disc. review denied*, 369 N.C. 34, 792 S.E.2d 778 (2016). Under this standard of review, this Court "considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Hicks*, 243 N.C. App. 628, 639, 777 S.E.2d 341, 348 (2015) (citation omitted), *disc. review denied*, 368 N.C. 686, 781 S.E.2d 606 (2016). "The failure of a trial court to admit or exclude this evidence will not result in the granting of a new trial absent a showing by the defendant that a reasonable possibility exists that a different result would have been reached absent the error." *State v. Burke*, 343 N.C. 129, 142–43, 469 S.E.2d 901, 907, *cert. denied*, 519 U.S. 1013, 136 L. Ed. 2d 409 (1996).

2. Analysis

"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. Gen. Stat. § 8C-1, Rule 801(c) (2025). "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion." *Id.* § 8C-1, Rule 801(a).

It is well settled that "[s]tatements by non-testifying witnesses which may implicate the defendant in a crime are permissible when they are only used to explain

the subsequent actions of the testifying witness." *State v. Rollins*, 226 N.C. App. 129, 139, 738 S.E.2d 440, 448 (2013), *disc. review denied*, 367 N.C. 324, 755 S.E.2d 610, *cert. denied*, 574 U.S. 851, 190 L. Ed. 2d 96 (2014). "The reason such statements are admissible is not that they fall under an exception to the rule, but that they simply are not hearsay because they do not come within the above legal definition of the term." *State v. Miller*, 197 N.C. App. 78, 87, 676 S.E.2d 546, 552 (extraneity omitted), *disc. review denied*, 363 N.C. 586, 683 S.E.2d 216 (2009).

In the present case, Defendant contends that these "hearsay statements exceeded the scope of explaining subsequent conduct and were instead offered to prove the truth of the matter asserted that [Defendant] possessed a firearm as a convicted felon," citing *State v. Canady*, 355 N.C. 242, 559 S.E.2d 762 (2002).

In *Canady*, a police detective testified to statements made to him by a prison inmate, who did not testify at the trial. *Id.* at 246, 559 S.E.2d at 764. The defendant raised a hearsay objection to the testimony; the State responded that the statements were not hearsay because they were offered solely to explain the detective's subsequent actions. *Id.* The trial court ultimately admitted the testimony with a limiting instruction to the jury. *Id.*

On appeal, our Supreme Court concluded that the detective's "testimony provided more than a mere explanation of his subsequent actions":

> [The detective] provided details contained in [the inmate]'s statement including how [the] defendant broke into the victims' house through a window, went into the bathroom

> with a rifle, shot one of the victims, and fled with a bag of money. Moreover, the State relied upon [the detective]'s recitation of [the inmate]'s detailed statement during the State's closing argument.

Id. at 249, 559 S.E.2d at 765. In fact, "the State relied on [the detective]'s testimony . . . to imply [the] defendant had given a detailed confession of his alleged crimes." *Id.* at 249, 559 S.E.2d at 766. Thus, the Supreme Court concluded that the trial court erred in admitting the hearsay because it exceeded the scope necessary to explain the detective's subsequent conduct. *Id.*

The case at bar is clearly distinguishable from *Canady*. Here, Detective Bristow testified regarding Mr. Smith's out-of-court statements for less than a minute.

> [Bristow]: Mr. Smith said that his son [Defendant] had threatened him recently multiple times, said that he had used drugs, methamphetamine.
>
> . . . .
>
> [Bristow]: Said that [Defendant] had been using drugs, methamphetamine, fentanyl, and had been acting crazy; also said that [Defendant] had firearms --
>
> . . . .
>
> [Bristow]: AR-15 rifle --
>
> . . . .
>
> [Bristow]: -- a shotgun. Said that he had recently shot off the back -- back porch at a possum.

This testimony served to explain why Detective Bristow acted so quickly to

obtain and execute the search warrant:

> [The State]: And did you find out any more information that caused you to do something in your investigation?
>
> [Bristow]: I did. In the search warrant [Mr. Smith] mentioned shooting at the possum on the back porch, that was from when I spoke with him.
>
> [The State]: And why did that concern you when he told you that [Defendant] had firearms?
>
> [Bristow]: From the threats that [Mr. Smith] said that [Defendant] had made and [Defendant] having a firearm, I believed that he could carry out the threats; so I wanted to act [as] quick as I could to make sure nothing happened.

Additionally, the court delivered a limiting instruction prior to Detective Bristow's testimony as to these out-of-court statements, instructing the jury to "consider [the] testimony only in so far as it explains what the witness did." As this Court has often noted, "[t]he law presumes that the jury heeds limiting instructions that the trial judge gives regarding the evidence." *State v. Riley*, 202 N.C. App. 299, 303, 688 S.E.2d 477, 480, *cert. denied*, 364 N.C. 246, 699 S.E.2d 644 (2010).

Accordingly, we conclude that Mr. Smith's out-of-court statements were admitted to explain Detective Bristow's subsequent actions, rather than for the truth of the matter asserted. Thus, the statements were not hearsay and were properly admitted into evidence.

B. Confrontation Clause

Defendant next argues that "[t]he trial court plainly erred by admitting the hearsay statements of [Mr. Smith] as substantive evidence in violation of the

confrontation clause[.]" We disagree.

1. Standard of Review

Defendant concedes that he did not properly preserve a constitutional challenge to the admission of testimony regarding Mr. Smith's out-of-court statements. Defendant, therefore, "specially and distinctly requests th[is] Court consider [the confrontation clause] issue pursuant to plain error review."

In criminal cases, certain evidentiary and instructional issues that were not properly preserved by objection at trial and that are not otherwise "deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C.R. App. P. 10(a)(4).

"For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial[.]" *State v. Caballero*, 383 N.C. 464, 473, 880 S.E.2d 661, 668 (2022) (citation omitted). Additionally, the defendant is "required to show 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, 880 S.E.2d at 668 (extraneity omitted). Probable impact "requires a showing that the outcome is significantly more likely than not." *State v. Reber*, 386 N.C. 153, 159, 900 S.E.2d 781, 787 (2024). "In ordinary English usage, an event will 'probably' occur if it is 'almost certainly' the expected outcome[.]" *Id.* (citation omitted).

"Finally, the defendant must show that the error is an exceptional case that

warrants plain error review, typically by showing that the error seriously affected the fairness, integrity or public reputation of judicial proceedings." *Id.* at 158, 900 S.E.2d at 786 (extraneity omitted).

2. Analysis

The Sixth Amendment of the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. Const. amend. VI; *see also* N.C. Const. art. I, § 23 ("In all criminal prosecutions, every person charged with crime has the right . . . to confront the accusers and witnesses with other testimony[.]"). The Confrontation Clause "bars admission of testimonial evidence unless the declarant is unavailable to testify and the accused has had a prior opportunity to cross-examine the declarant." *State v. Locklear*, 363 N.C. 438, 452, 681 S.E.2d 293, 304 (2009).

However, the Confrontation Clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." *Crawford v. Washington*, 541 U.S. 36, 60 n.9, 158 L. Ed. 2d 177, 197 n.9 (2004). "Specifically, statements are not hearsay if they are made to explain the subsequent conduct of the person to whom the statement was directed." *State v. Gainey*, 355 N.C. 73, 87, 558 S.E.2d 463, 473, *cert. denied*, 537 U.S. 896, 154 L. Ed. 2d 165 (2002). "Statements by non-testifying witnesses which may implicate the defendant in a crime are permissible when they are only used to explain the subsequent actions of the testifying witness." *Rollins*, 226 N.C. App. at 139, 738 S.E.2d at 448.

As discussed above, Mr. Smith's out-of-court statements do not fit within the definition of hearsay because they were not offered to prove the truth of the matter asserted. Instead, the State offered the statements "to explain the subsequent actions of" Detective Bristow, *id.*, such as why he quickly obtained and executed the search warrant. Accordingly, the admission of Detective Bristow's testimony as to Mr. Smith's out-of-court statements did not implicate the Confrontation Clause and the trial court did not err, much less plainly err, by admitting this testimony.

III. Conclusion

For the foregoing reasons, we discern no error.

NO ERROR.

Judges ARROWOOD and STADING concur.

Report per Rule 30(e).