

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA09-300-2
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v.

Greene County
07-CRS-50574
07-CRS-50575

AUBREY ALBERTO MUMFORD

On remand from order of the Supreme Court in *State v. Mumford*, 364 N.C. 394, 699 S.E.2d 911 (2010), reversing and remanding the unanimous decision of the Court of Appeals in *State v. Mumford*, ___ N.C. App. ___, 688 S.E.2d 458 (2010), for consideration of an issue raised by Defendant that was not addressed in the initial Court of Appeals opinion. Originally appealed by Defendant from judgments entered 10 September 2008 by Judge Paul L. Jones in Greene County Superior Court. Heard in the Court of Appeals 3 September 2009.

Attorney General Roy Cooper, by Special Deputy Attorney General Philip A. Telfer, for the State.

McCotter, Ashton & Smith, P.A., by Rudolph A. Ashton, III, and Kirby H. Smith, III, for Defendant-appellant.

HUNTER, JR., Robert N., Judge.

This case comes before us on remand from the North Carolina Supreme Court in light of the Supreme Court's holding in *State v. Mumford*, 364 N.C. 394, 699 S.E.2d 911 (2010), to address an issue raised by Defendant that we declined to discuss in our initial opinion. The factual and procedural background for purposes of this review remains the same as in *State v. Mumford*, ___ N.C. App. ___, 688 S.E.2d 458 (2010) (*Mumford I*).

In *Mumford I*, this Court held Defendant's felony serious injury by vehicle and driving while impaired verdicts were legally inconsistent and contradictory, and vacated Defendant's five convictions for felony serious injury by vehicle. We further held the trial court erred in requiring Defendant to pay restitution and vacated that portion of the trial court's order.

After reversing both holdings in *Mumford I*, the Supreme Court remanded for consideration of an issue not addressed in our initial opinion. The remaining issue is whether the trial court erred in allowing the introduction of Defendant's DMV driving record at trial when he previously pled guilty to driving while license revoked and did not contest that charge. For the following reasons, we find Defendant has waived appellate review of this issue.

Defendant argues the following verbal exchange qualifies as an objection to the admission of his DMV driving record:

[Prosecutor]: The State would move [to enter into evidence] State's Exhibit Number 28 [(the DMV driving record)].

The Court: Any objection?

[Defense Counsel]: Your Honor, I think we've already stipulated and that matter has been resolved prior to the trial of this case.

The Court: It's admitted.

Defendant's argument is without merit. This exchange does not qualify as an objection. As we have consistently held, an objection must be timely and must be clearly presented to the trial court. *State v. Boyd*, ___ N.C. App. ___, ___, 705 S.E.2d 774 (2011). The objection must also "stat[e] the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." *Hill v. Hill*, 173 N.C. App. 309, 321, 622 S.E.2d 503, 512 (2005) (quoting N.C.R. App. P. 10(a)(1) (formerly N.C.R. App. P. 10(b)(1))). The above exchange does not clearly present the objection to the trial court; furthermore, as specific grounds for the alleged objection are not apparent from the context of the exchange, Defendant has failed to state the specific grounds for the ruling desired from the trial court. As Defendant did

not object, and did not argue plain error in his appellate brief, we decline to address this issue. N.C.R. App. P. 10; see *State v. Dennison*, 359 N.C. 312, 312–13, 608 S.E.2d 756, 757 (2005) (“[B]ecause defendant did not ‘specifically and distinctly’ allege plain error as required by [Rule 10(a)(4)], defendant is not entitled to plain error review of this issue.”).

No error.

Judges STEPHENS and BEASLEY concur.

Report per Rule 30(e).