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NO. COA12-1550
NORTH CAROLINA COURT OF APPEALS

Filed: 1 October 2013

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 11 CRS 54377, 230416-17

SHEILA ANN CARTER

Appeal by defendant from judgment entered 16 August 2012 by Judge Richard D. Boner in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 September 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Karen A. Blum, for the State.

J. Edward Yeager, Jr., for defendant-appellant.

ERVIN, Judge.

Defendant Sheila Ann Carter appeals from a judgment entered based upon her convictions for possession of a firearm by a felon, possession of drug paraphernalia, and having attained the status of an habitual felon. On appeal, Defendant contends that the trial court committed plain error by failing to preclude the admission of certain statements that Defendant made to investigating officers and erred by denying Defendant's motion

to dismiss the possession of a firearm by a felon charge. After careful consideration of Defendant's challenges to the trial court's judgment in light of the record and the applicable law, we conclude that the trial court's judgment should remain undisturbed.

I. Factual Background

A. Substantive Facts

On 1 July 2011, officers of the Charlotte-Mecklenburg Police Department went to a residence located at 3123 Mint Leaf Drive in Charlotte after receiving information to the effect that drug-related activities had been taking place at that location. After knocking on the door of the residence in question, investigating officers determined that no one was home.

As they were departing, the officers noticed a trash barrel on the curb at the front of the house. According to Sergeant Eric Brady of the Charlotte-Mecklenburg Police Department, "[i]t's common practice for us when we detect drug activity to sometimes go through the person's trash. A lot of times they'll throw out evidence of drug activity in the trash, and once it's on the curbside it no longer has an expectation of privacy[.]" As a result, after taking the trash found outside the residence into their possession and returning to their division office for

the purpose of examining it, investigating officers found "plastic baggies indicative of drug trafficking or drug business because the corners were cut off to utilize the corners to wrap up the drugs inside of it" and "a baggie with some white residue inside of it, which would be indicative of possible cocaine."

Upon making these discoveries, Sergeant Brady directed the investigating officers to obtain a search warrant authorizing a search of the Mint Leaf Drive residence and told Officer Derrick Hill of the Charlotte-Mecklenburg Police Department to go to the area in which the Mint Leaf Drive residence was located in order to "make sure that there wasn't any traffic coming in and out of the house." In order to permit him to carry out his orders effectively, Officer Hill was provided with a description of Defendant and her vehicle.

After observing the Mint Leaf Drive residence for some time, Officer Hill observed Defendant pull into the residence's garage and then leave again five minutes later. As a result, Officer Hill followed Defendant's vehicle from the Mint Leaf Drive residence to a gas station, at which Officer Hill watched as Defendant drove to a location where a white male was sitting on a riding lawn mower at the rear of the gas station. After Defendant arrived, the white male got off his lawn mower, leaned inside the driver's side of Defendant's vehicle, emerged from

the interior of Defendant's vehicle, got on his lawn mower, and left. Officer Hill notified the other investigating officers that he had observed a possible hand-to-hand transaction and followed Defendant back to the Mint Leaf Drive residence.

After Defendant returned to the Mint Leaf Drive residence, she was stopped by Officer John Cherry of the Charlotte-Mecklenburg Police Department before she could enter her home. At that time, Officer Cherry advised Defendant that investigating officers had received information to the effect that she was involved in drug activity and told Defendant that additional law enforcement officers were on their way to the Mint Leaf Drive residence for the purpose of executing a search warrant. Shortly thereafter, Sergeant Brady arrived, informed Defendant that investigating officers would be arriving shortly with a warrant authorizing them to search the Mint Leaf Drive residence and obtained Defendant's consent to search the residence.

In the course of their search of the Mint Leaf Drive residence, investigating officers found a set of digital scales with a "white substance residual [sic] on the weight portion of the scales" in the master bedroom. After hearing Defendant state that there was a gun in the nightstand in her bedroom, investigating officers examined the location in question and

found a revolver. According to Sergeant Brady, Defendant stated that she kept the handgun "for protection purposes." In addition, investigating officers found a shotgun and a rifle in the guest bedroom closet. At the time that the investigating officers seized the shotgun, Defendant stated that she "use[d it] to hunt rabbits with."

B. Procedural History

On 1 July 2011, Magistrate's Orders charging Defendant with possession of cocaine with the intent to sell or deliver and possession of drug paraphernalia were issued. On 3 October 2011, the Mecklenburg County grand jury returned bills of indictment charging Defendant with possession of cocaine with the intent to sell or deliver, possession of drug paraphernalia, possession of a firearm by a felon, and having attained the status of an habitual felon. The charges against Defendant came on for trial before the trial court and a jury at the 13 August 2012 criminal session of the Mecklenburg County Superior Court. On 16 August 2012, the jury returned verdicts convicting Defendant of possession of a firearm by a felon, possession of drug paraphernalia, and having attained the status of an habitual felon and indicated that it could not reach a unanimous verdict with respect to the possession of cocaine with the

intent to sell or deliver charge.¹ At the conclusion of the ensuing sentencing hearing, the trial court consolidated Defendant's convictions for judgment and sentenced Defendant to a term of 88 to 115 months imprisonment. Defendant noted an appeal to this Court from the trial court's judgments.

II. Substantive Legal Analysis

A. Admission of Defendant's Statements

In her first challenge to the trial court's judgment, Defendant argues that the trial court committed plain error by allowing the admission of testimony regarding statements that Defendant made in the presence of investigating officers during the search of her residence. In her brief, Defendant argues that the statements in question were obtained in violation of the right against self-incrimination as defined by *Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 706-07 (1966) (holding that a statement made by a criminal defendant "stemming from custodial interrogation," which consists of "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way," may not be admitted into evidence unless the defendant has been

¹In light of the jury's verdict, the State voluntarily dismissed the possession of cocaine with the intent to sell or deliver charge.

warned that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed"). We do not find this argument persuasive.

At trial, Sergeant Brady testified that Defendant referred to the shotgun seized from the guest bedroom closet as "my shotgun" and claimed that she used the pistol seized from the nightstand in her bedroom for "protection." Although she now contends that these statements were obtained in violation of her *Miranda* rights and should not have been admitted into evidence, Defendant never filed a motion to suppress the challenged statements, N.C. Gen. Stat. § 15A-979, or otherwise objected to their admission into evidence at trial. As a result, we are limited to reviewing Defendant's contention utilizing a plain error standard of review. N.C.R. App. P. 10(a)(4) (stating that, "[i]n criminal cases, an issue that was not preserved by objection noted at trial and that is not 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").

For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a

defendant must establish prejudice--that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (quotation marks and citations omitted) (alterations in original). As a result, the ultimate issue raised by this aspect of Defendant's challenge to the trial court's judgment is whether the evidence in question was, in fact, admissible and, if so, whether its admission had "a probable impact on the jury's finding that the defendant was guilty." *Id.* at 517, 723 S.E.2d at 333.

As we have already noted, the necessity for the administration of *Miranda* warnings does not arise unless the defendant has been subjected to custodial interrogation. Despite the fact that Defendant claims to have been subjected to custodial interrogation, the record simply does not support that contention. Although Defendant was handcuffed after making several attempts to leave the premises at the time of her initial contact with investigating officers, her handcuffs were removed and she was allowed to remain in the residence and sit on the couch during the search. Defendant has not identified

any instance in which investigating officers questioned her at any time during the search, and our examination of the record reveals that the statements to which Defendant now objects were made spontaneously and voluntarily rather than in response to official interrogation. As a result, the trial court did not err, much less commit plain error, by allowing the admission of Defendant's statements acknowledging ownership of the firearms found in her residence.

B. Denial of Dismissal Motion

Secondly, Defendant argues that the trial court erred by denying her motion to dismiss the possession of a firearm by a felon charge because the record did not contain sufficient evidence to support her conviction. More specifically, Defendant argues that the evidence did not support a determination that she possessed one or more of the firearms which were seized from her residence on 1 July 2011. We disagree.

"Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.'" *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quoting

State v. Barnes, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 121 S. Ct. 213, 148 L. Ed. 2d 150 (2000). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 115 S. Ct. 2565, 132 L. Ed. 2d 818 (1995) (citation omitted).

A conviction for possession of a firearm by a convicted felon requires proof (1) that the defendant was previously convicted of a felony and (2) that the defendant thereafter possessed a firearm. *State v. Wood*, 185 N.C. App. 227, 235, 647 S.E.2d 679, 686, *disc. review denied*, 361 N.C. 703, 655 S.E.2d 402 (2007). Given that the undisputed evidence tends to show that Defendant had a prior felony conviction, the only issue raised by Defendant's challenge to the correctness of the trial court's decision to deny her dismissal motion is whether the record contained sufficient evidence to permit a reasonable juror to determine that she possessed a firearm on the occasion in question. Although Defendant contends that the only evidence tending to show that she possessed a firearm on 1 July 2011

consisted of her statements to investigating officers and that these statements were improperly admitted into evidence, this argument fails because we consider all of the evidence admitted at trial, regardless of its admissibility, in determining the correctness of a trial court's decision to deny a defendant's dismissal motion, *Rose*, 339 N.C. at 192, 451 S.E.2d at 223, and because, as we have already concluded, the statements in question were not admitted in error. As a result, given that the record contains substantial evidence tending to show that Defendant admitted owning the guns found at her residence on 1 July 2011, the trial court did not err by denying Defendant's dismissal motion.

III. Conclusion

Thus, for the reasons set forth above, we conclude that neither of Defendant's challenges to the trial court's judgment have merit. As a result, the trial court's judgment should, and hereby does, remain undisturbed.

NO ERROR.

Judges GEER and DILLON concur.

Report per Rule 30(e).