

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-32  
NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2012

STATE OF NORTH CAROLINA

v. Iredell County  
Nos. 11 CRS 050623  
MARVIN WADE MILLSAPS 11 CRS 001571

Appeal by defendant from judgment entered 16 August 2011 by Judge Theodore S. Royster in Iredell County Superior Court. Heard in the Court of Appeals 6 August 2012.

*Attorney General Roy Cooper, by Assistant Attorney General Barry H. Bloch, for the State.*

*Gilda C. Rodriguez, for defendant-appellant.*

MARTIN, Chief Judge.

Defendant Marvin Wade Millsaps appeals from a judgment entered after a jury found him guilty of possession of a firearm by a felon and having attained habitual felon status. Defendant contends the trial court committed plain error by admitting evidence that showed he had fired the shotgun he was accused of possessing. We find no error.

On 27 January 2011, Larry Connor witnessed defendant fire a shotgun three times while defendant was standing on the porch of the duplex where both men lived. Mr. Connor testified he had been renting a room to defendant, his cousin, for about six to eight months at the time of the incident. Mr. Connor asked defendant to put the gun in the house, and when he refused Mr. Connor called the police.

Mr. Connor's house was about six blocks from the police department, and Captain David Onley and Sergeant Jason York responded to the call within about thirty seconds. The officers saw defendant on the front porch of the house. Captain Onley testified that when he and Sergeant York arrived at the scene, he saw "complete haze in the yard; and when we got out of the car, we could tell that the haze was gunsmoke [sic]." Sergeant York also testified about the heavy gun smoke.

When the officers ordered defendant to get down from the porch, defendant immediately began pointing at the railing and saying "it's right here." When the officers approached defendant, they saw he was pointing at a shotgun. After the officers handcuffed defendant, they searched the area and found spent shell casings and a box of shotgun shells on the porch.

At trial, the State introduced evidence that defendant had a prior felony conviction. Defendant testified on his own behalf, stating that he was not related to Mr. Connor and was present at Mr. Connor's home because it was a "liquor house." Defendant also testified that the shotgun belonged to another man who had tried to sell it to Mr. Connor. The jury found defendant guilty of possession of a firearm by a felon. In a separate habitual felon proceeding, the jury also found defendant guilty of having attained habitual felon status. Defendant appeals.

In his sole argument on appeal, defendant contends the trial court committed plain error by admitting evidence that indicated he fired the shotgun. Defendant specifically contends the evidence that Mr. Connor saw defendant fire the shotgun and that the officers observed gun smoke and found shotgun shells on the porch is irrelevant. We disagree.

Defendant acknowledges he did not object to the admission of any of the evidence that he now claims is irrelevant, and that we must therefore review the admission of that evidence for plain error. N.C.R. App. P. 10(a)(4). Plain error is "a *fundamental* error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done[.]"

*State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (citation and quotation marks omitted) (emphasis in original). Under plain error analysis, a defendant is entitled to reversal "only if the error was so fundamental that, absent the error, the jury probably would have reached a different result." *State v. Jones*, 355 N.C. 117, 125, 558 S.E.2d 97, 103 (2002).

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C.R. Evid. 401. Generally, relevant evidence is admissible. N.C.R. Evid. 402. Our courts "have interpreted Rule 401 broadly and have explained on a number of occasions that in a criminal case every circumstance calculated to throw any light upon the supposed crime is admissible and permissible." *State v. Collins*, 335 N.C. 729, 735, 440 S.E.2d 559, 562 (1994) (citation omitted).

"[T]here are two elements to the offense [of possession of a firearm by a felon]. The State must provide substantial evidence that the defendant has a prior felony conviction, and a firearm in his possession." *State v. Hussey*, 194 N.C. App. 516, 521, 669 S.E.2d 864, 867 (2008).

Contrary to defendant's argument, Mr. Connor's testimony that he witnessed defendant discharge the shotgun was highly relevant to proving defendant possessed the shotgun. In fact, Mr. Connor's testimony constituted direct evidence of defendant's actual possession of the shotgun. Further, the officers' testimony that they observed the gun smoke haze and found the shotgun shells corroborated Mr. Connor's testimony, particularly in light of the officers' additional testimony that defendant was still on the porch when they arrived and that he knew the location of the shotgun. Accordingly, we hold that the trial court did not err, much less commit plain error, in admitting evidence that tended to prove defendant possessed the shotgun.

No error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).