

Felony Possession of Firearm

Convictions of Possession of Firearm by Felon and Habitual Felon Are Affirmed

State v. Taylor, ___ N.C. App. ___, ___ S.E.2d ___ (20 April 2010).

The defendant was convicted of possession of a firearm by felon and habitual felon. The court ruled: (1) the indictments for both charges were not insufficient based on errors in the allegations of the date of a felony offense that resulted in a conviction (the indictments alleged “12/8/1992” but the evidence showed “12/18/92”); (2) the discrepancies in the dates of offenses for both indictments did not result in a fatal variance; (3) the trial court did not err in allowing the state to amend the habitual felon indictment to correct the date of the commission of the felony; and (4) there was sufficient evidence of the defendant’s constructive possession of a firearm to support the conviction of possession of a firearm by felon (see the facts set out in the court’s opinion).

(1) G.S. 14-415.1(b) Provides Sufficient Basis for Admission of Felony Conviction in Trial of Possession of Firearm by Felon

(2) Defendant Was Not Unfairly Prejudiced Under Rule 403(b) by Admission of Felony Conviction in Trial of Possession of Firearm by Felon

State v. Fortney, ___ N.C. App. ___, 687 S.E.2d 518 (5 January 2010).

The defendant was on trial for possession of firearm by felon, possession of a Schedule II controlled substance, possession of marijuana, possession of drug paraphernalia, and carrying a concealed weapon. The defendant offered to stipulate to having a prior felony conviction, an element of possession of a firearm by a felon. After the state declined to accept the stipulation, the trial court, over the defendant’s objection, allowed the state to introduce into evidence the defendant’s first-degree rape conviction. The court ruled: (1) G.S. 14-415.1(b) provides a sufficient basis for the admission of a felony conviction; and (2) the defendant was not unfairly prejudiced under Rule 403(b) by the admission of the felony conviction. Relying on *State v. Jackson*, 139 N.C. App. 721 (2000), *rev’d in part on other grounds*, 353 N.C. 495 (2001), and *State v. Little*, 191 N.C. 655 (2008), the court noted that the prior conviction in this case was not substantially similar to the other offenses being tried.

Sufficient Evidence to Support Defendant’s Conviction of Possession of Firearm by Felon Based on Constructive Possession

State v. Mewborn, ___ N.C. App. ___, ___ S.E.2d ___ (3 November 2009).

Officers patrolling a high crime area in a marked car saw the defendant and another person walking in the middle of the street. They pulled alongside them and asked if they would wait a minute because they needed to speak with them for a few minutes. As the officers were getting out of their car, the defendant turned and started to run away. A chase ensued, and the officers eventually took physical control of the defendant. During the chase, the defendant appeared to throw a gun from his pocket. Based on this evidence, he was convicted of possession of a firearm by a felon. The court ruled that there was sufficient evidence to support the defendant’s conviction of possession of a firearm by a felon based on constructive possession of the firearm. The defendant ran through an open field in a high traffic area. He appeared to have something heavy in his back pocket and appeared to make throwing motions from that pocket. The grass in the field was wet.

When officers found the weapon, it was dry, clean, and had no leaves or other debris on it.

Court Rules Unconstitutional Under Art. I, Sec. 30 of North Carolina Constitution (Right of People to Keep and Bear Arms) Application of 2004 Amendment to G.S. 14-415.1 (Convicted Felon Cannot Possess Firearm, With No Exceptions) to Person With Specified History Since 1979 Felony Conviction—Ruling of Court of Appeals Is Reversed

Britt v. State of North Carolina, 363 N.C. 546, 681 S.E.2d 320 (28 August 2009), reversing, 185 N.C. App. 610 (2007).

Plaintiff in 1979 was convicted of a felony drug offense that did not involve violence or the use of a firearm. He completed probation in 1982 and in 1987 his civil rights were restored, including his right to possess a firearm. Then-existing G.S. 14-415.1 prohibited possession of a handgun and certain short-barreled firearms within five years of the later date of a conviction, discharge from prison, or termination of a suspended sentence, probation, or parole. In 1995, G.S. 14-415.1 was amended to prohibit the possession of such firearms by a convicted felon regardless of the date of conviction; it still allowed possession of a firearm in the convicted felon's own house or lawful place of business. In 2004, G.S. 14-415.1 was amended to prohibit possession of all firearms, even within one's own home or place of business. As a result of the 2004 amendment, the plaintiff divested himself of all his firearms, including rifles and shotguns he had used for game hunting on his own land. In the thirty years since the plaintiff's conviction, he had not been charged with any other crime nor was there any evidence that he had misused a firearm. No court or agency had determined that the plaintiff was violent, potentially dangerous, or more likely than the general public to commit a crime involving a firearm. The plaintiff in 2004 brought a civil action against the State of North Carolina, alleging G.S. 14-415.1 as amended violated various constitutional rights. The court ruled that the 2004 amendment to G.S. 14-415.1 (prohibiting a convicted felon from possessing any kind of firearm, with no exceptions), as applied to the plaintiff, violated Art. I, Sec. 30 of North Carolina Constitution (right of people to keep and bear arms). The court stated that it was unreasonable to assert that a nonviolent citizen who had responsibly, safely, and legally owned and used firearms for seventeen years (from 1987 to 2004) was in reality so dangerous that any possession of a firearm would pose a significant threat to public safety.

(2) Sufficient Evidence to Support Conviction of Possession of Firearm by Felon

State v. Fuller, ___ N.C. App. ___, 674 S.E.2d 824 (21 April 2009).

The court ruled: (2) there was sufficient evidence to support the defendant's conviction of possession of a firearm by felon by linking the defendant to the trailer in which the weapon was found

Sufficient Evidence of Defendant's Construction Possession of Firearm in Vehicle to Support Conviction of Possession of Firearm by Felon

State v. Smith, ___ N.C. App. ___, 666 S.E.2d 191 (16 September 2008).

The defendant was convicted of possession of firearm by felon. An officer stopped a Ford pick-up truck for failing to display a proper registration tag. After the stop, the officer smelled the odor of marijuana emanating from the vehicle. Two other officers conducted a warrantless search (the defendant refused to give consent) and recovered a handgun in the bed (cargo area) of the vehicle. The bed was fitted with a lift-up cover. The officers did not find any marijuana. The court ruled that there was sufficient evidence of the defendant's construction possession of the firearm in the vehicle to support the conviction of possession of firearm by a felon. The evidence tended to show: (i) the defendant was the owner and driver of the vehicle; (ii) the defendant exclusively controlled the vehicle; (iii) the vehicle's cargo area contained other objects owned by the defendant; (iv) the defendant stated that everything in the cargo area belonged to him; and (v) the handgun was found in the cargo area wrapped in a man's jacket.

(2) Defendant Was Not Prejudiced in Joint Trial of Felonious Assault and Possession of Firearm by Felon by Admission of Prior Conviction of Possession of Cocaine to Prove Element of Possession of Firearm by Felon

State v. Tice, ___ N.C. App. ___, 664 S.E.2d 368 (5 August 2008).

The defendant was convicted of assault with a deadly weapon inflicting serious injury and possession of a firearm by felon. (2) The defendant argued on appeal that he was denied effective assistance of counsel when his trial lawyer agreed to stipulate that the defendant had a prior felony conviction (possession of cocaine) for the charge of possession of firearm by felon without insisting, as a condition of that stipulation, that the nature of the conviction not be disclosed to the jury. The court rejected the defendant's argument, ruling that the defendant was not prejudiced in the trial of the felonious assault charge by the revelation of the conviction of possession of cocaine, a nonviolent crime.

Only One Conviction of Possession of Firearm by Felon Is Permitted When More Than One Weapon Is Possessed Simultaneously

State v. Garris, ___ N.C. App. ___, 663 S.E.2d 340 (15 July 2008).

The court ruled, relying on federal and state case law, that only one conviction of possession of firearm by felon (G.S. 14- 415.1) is permitted when more than one weapon is possessed simultaneously.

No Error in Calculating Prior Record Level For Murder and Attempted Murder Convictions to Assign Points to Both Prior Felony Drug Conviction and To Prior

Conviction of Possession of Firearm by Felon, in Which Felony Drug Conviction Was Element of Possession of Firearm by Felon

State v. Goodwin, ___ N.C. App. ___, 661 S.E.2d 46 (20 May 2008).

The court ruled that there was no error in calculating the defendant's prior record level for second-degree murder and attempted first-degree murder convictions to assign points to both a prior felony drug conviction and to a prior conviction of possession of firearm by felon, in which the felony drug conviction was an element of possession of firearm by felon. The court reasoned, distinguishing *State v. Gentry*, 135 N.C. App. 107 (1999), that possession of firearm by felon is a separate substantive offense from the defendant's prior felony drug conviction on which his status as a felon was based.

(1) Trial Judge Did Not Err in Allowing State to Amend Indictment Alleging Possession of Firearm by Felon

(2) No Double Jeopardy Violation Involving Conviction of Possession of Firearm by Felon

State v. Coltrane, 188 N.C. App. 498, 656 S.E.2d 322 (5 February 2008).

The defendant was convicted of possession of a firearm by felon. (1) The court ruled, relying on *State v. Lewis*, 162 N.C. App. 277 (2004), that the trial judge did not err in allowing the state to amend the indictment to correct the date of offense (from December 9, 2004, to April 25, 2005) and the county in which the defendant was convicted of the underlying felony. (2) The court ruled, relying on *State v. Wood*, 185 N.C. App. 227, 647 S.E.2d 679 (2007), that there was no double jeopardy violation involving the defendant's conviction. The defendant was not punished twice for the underlying felony conviction; instead, he was punished for the first time for the offense under G.S. 14-415.1(a).

(2) Possession of Firearm by Felon Is Substantive Criminal Offense

(3) Possession of Firearm by Felon Does Not Violate Double Jeopardy

State v. Wood, ___ N.C. App. ___, 647 S.E.2d 679 (7 August 2007).

(2) The court ruled that possession of a firearm by a felon is a substantive criminal offense, not a recidivist offense. (3) The court ruled that possession of a firearm by felon does not violate double jeopardy.

(1) Sufficient Evidence of Possession of Firearm to Support Conviction of Possession of Firearm by Felon

State v. Barksdale, 181 N.C. App. 302, 638 S.E.2d 579 (2 January 2007).

The defendant was convicted of attempted assault with a deadly weapon on a law enforcement officer and possession of firearm by a felon. After chasing the defendant, three officers tackled him and then struggled in trying to subdue him on the ground. After an officer had handcuffed the defendant's right wrist, he noticed a chrome-plated handgun in the grass about six inches from the defendant's left hand. Although none of the officers saw the defendant touch the gun, the defendant was reaching for the gun with his outstretched hand. They applied even greater force and finally subdued him. They then retrieved the gun, which was dry and warm even though the ground was wet from rain earlier in the evening and the weather was cool. (1) The court ruled that there was sufficient circumstantial evidence of the defendant's possession of the firearm before he was tackled to support the conviction of possession of a firearm by a felon.

Constitutional Law_double jeopardy_possession of firearm by felon_basis for second conviction_habitual felon sentence

State v. Crump, 178 NCA 717 (2006)

Defendant was not subjected to multiple punishments in violation of double jeopardy by the State's use of his 1998 conviction for possession of a firearm by a felon to support his current conviction of possession of a firearm by a felon and his sentence as a habitual felon.

Constitutional Law_double jeopardy_firearms possession by felon_two offenses_no violation

State v. Crump, 178 NCA 717 (2006)

Defendant was not subjected to double jeopardy where he was convicted of a cocaine offense in 1991, possession of a firearm by a felon in 1998, and possession of a firearm by a felon again in 2003. Defendant was convicted and punished in 2003 only for the latest offense and did not receive multiple punishments for the 1991 conviction.

Firearms and Other Weapons--possession of firearm by convicted felon--failure of indictment to allege date of prior felony conviction

State v. Inman, 174 NCA 567 (2005)

The trial court did not lack jurisdiction to try defendant for the charge of possession of a firearm by a convicted felon even though the indictment charging defendant with this offense failed to allege the date of the prior felony conviction, because: (1) the provision of N.C.G.S. § 14-415.1(c) that requires the indictment to state the conviction date for the prior offense is merely directory; and (2) the omission was not material and does not affect a substantial right, and this conclusion is especially appropriate in this case when defendant stipulated to the prior conviction at trial and challenged only whether he was in possession of a firearm.

Criminal Law--instruction--constructive possession

State v. Inman, 174 NCA 567 (2005)

The trial court did not commit plain error in a possession of a firearm by a convicted felon case by its instruction concerning constructive possession, because: (1) a defendant's control over an area may be such that the jury may infer a defendant's constructive possession of contraband from his control of the premises; and (2) the trial court properly instructed the jury that it could infer defendant's constructive possession of the handgun based on his control over the area in which it was found which was between his leg and the inner console of the vehicle he was driving.

Firearms and Other Weapons_possession of firearm by felon_category of gun_variance

State v. Langley, 173 NCA 194 (2005)

There was a fatal variance between the indictment and the evidence where the indictment charged possession of a handgun by a felon and the evidence showed possession of a sawed-off shotgun. The Felony Firearms Act, N.C.G.S. § 14-415.1(a), banned possession of categories of firearms by convicted felons; when an indictment alleges possession of a handgun rather than a firearm, the State

must prove the essential element that defendant possessed a handgun.

Firearms and Other Weapons--status as convicted felon--prayer for judgment continued

Friend v. State, 169 NCA 99 (2005)

A defendant who pled guilty to felony sale and delivery of a controlled substance and felony conspiracy to sell a controlled substance and received a prayer for judgment continued for those charges was a convicted felon for purposes of N.C.G.S. § 14-404 and was thus not entitled to obtain a permit to purchase a handgun.

Constitutional Law; Firearms and Other Weapons--possession of firearm by convicted felon--amendment of statute--not ex post facto law

State v. Johnson, 169 NCA 301 (2005)

Defendant's conviction for possession of a firearm by a felon under N.C.G.S. § 14-415.1, as amended in 1995, does not violate the constitutional prohibitions against ex post facto laws even though defendant asserts that at the time of his prior felony conviction in 1983 the statute permitted him to possess a firearm five years after the date of discharge of the conviction, because: (1) the relevant time period to be considered when determining whether a statute creates an ex post facto law is the date on which the criminal offense defendant is currently being charged with was committed, which in the instant case was 15 December 2001; (2) no ex post facto problem occurs when the legislature creates a new offense that includes a prior conviction as an element of the offense as long as the other relevant conduct took place after the law was passed; (3) by 2001, defendant had more than adequate notice that it was illegal for him to possess a firearm based on his status as a convicted felon, and he could have conformed his conduct to the requirements of the law; (4) N.C.G.S. § 14-415.1 does not aggravate a crime or make it greater than it was at the time of its commission; and (5) the amendment to N.C.G.S. § 14-415.1 constituted a retroactive civil or regulatory law and as such does not violate the ex post facto clause.

Constitutional Law; Firearms and other weapons--possession of firearm by convicted felon--amendment of statute-- not bill of attainder

State v. Johnson, 169 NCA 301 (2005)

The 1995 amendment to N.C.G.S. § 14-415.1 regarding possession of a firearm by a convicted felon did not constitute an unconstitutional bill of attainder even though defendant contends it stripped him of his restored right to possess a handgun, because: (1) nothing in N.C.G.S. § 14-415.1 indicates the legislature enacted it as a form of retroactive punishment, nor does it fall within the historical meaning of punishment; (2) defendant's conviction was not punishment imposed without judicial process since he received a trial; and (3) the disability this law imposes can be said to further the nonpunitive legislative purpose of lessening the danger to the public in the case of convicted felons and is not excessive in light of that purpose.

Constitutional Law--possession of firearm by convicted felon--due process--vested right--right to bear arms

State v. Johnson, 169 NCA 301 (2005)

The 1995 amendment to N.C.G.S. § 14-415.1 regarding possession of a firearm by a convicted felon did not have the effect of unconstitutionally stripping defendant of a vested right in violation of due process, because: (1) the right to bear arms is not absolute, but is subject to regulation that is reasonable and related to the achievement of preserving public peace and safety; (2) the pertinent regulation is reasonably related to further securing the public's safety; and (3) defendant has not been completely divested of his right to bear arms as N.C.G.S. § 14-415.1 allows him to possess a firearm at his home or place of business.

Firearms and Other Weapons--possession of firearm by felon--special instruction--justification defense--failure to request in writing

State v. Craig, 167 NCA 793 (2005)

The trial court did not err by denying defendant's request to give a special instruction on the defense of justification of possession of a firearm by a felon, because: (1) defendant failed to request the special instruction in writing as required by N.C.G.S. § 1-181 and Rule 21 of the General Rules of Practice for the Superior and District Courts; and (2) assuming arguendo that defendant had properly presented the special instruction, the trial court still did not err by declining to instruct the jury on the justification defense since the uncontroverted evidence in this case shows that, after leaving the altercation, defendant kept the gun and took it with him to a friend's house where he was not under an imminent threat while possessing the gun.

Firearms and Other Weapons--possession of firearm by felon--cocaine possession a felony

State v. Leach, 166 NCA 711 (2004)

The trial court did not err by using defendant's prior cocaine possession convictions to charge him with possession of a firearm by a felon, because cocaine possession is a felony despite statutory references under N.C.G.S. § 90-95(d)(2) to it as a misdemeanor.

Firearms and Other Weapons--possession of firearm by felon--sufficiency of evidence

State v. Leach, 166 NCA 711 (2004)

The trial court did not err in a possession of a firearm by a felon case by concluding that the evidence was sufficient to show that defendant possessed a firearm, because: (1) the State's evidence tended to show that an officer saw an object coming out of the van which was controlled solely by defendant, and that sparks flew when the object hit the ground; and (2) a firearm was recovered within minutes from a nearby roadside.

Firearms and Other Weapons--possession of firearm by felon--penalty for underlying

offense—substantial right not affected

State v. Boston, 165 NCA 214 (2004)

The trial court did not err by denying defendant's motion to dismiss an indictment for possession of a firearm by a felon where the indictment did not state the penalty for the underlying conviction. The provision of N.C.G.S. § 14-415.1(c) that requires the indictment to state the penalty is not material and does not affect a substantial right. Defendant is no less apprised of the conduct which is the subject of the accusation than he would have been if the penalty had been included.

Evidence—possession of firearm by felon--probation for underlying offense revoked—relevant

State v. Boston, 165 NCA 214 (2004)

Evidence that defendant's probation had been revoked was admissible in a prosecution for possession of a firearm by a felon. The evidence was relevant to proving defendant's status as a felon and the court's limiting instructions were sufficient to cure any prejudice.

Firearms and Other Weapons—possession by felon—no instruction on justification

State v. Boston, 165 NCA 214 (2004)

The trial court did not err by refusing to give an instruction on justification in a prosecution for possession of a firearm by a felon. Defendant was involved in an ongoing dispute, but there was no evidence that he was under an imminent threat of death or injury when he decided to carry a gun.

Firearms and Other Weapons—possession by felon—operability of weapon

State v. McCree, 160 NCA 200 (2003)

The operability of a firearm is not an essential element of possession of a firearm by a felon, nor is it an affirmative defense.

Firearms and Other Weapons--possession of a firearm by a convicted felon--motion to dismiss--sufficiency of evidence

State v. Glasco, 160 NCA 150 (2003)

The trial court did not err by denying defendant's motion to dismiss the charge of possession of a firearm by a convicted felon under N.C.G.S. § 14-415.1 based on alleged insufficient evidence that defendant had possession of the firearm because circumstantial evidence tended to show that defendant had discharged a gun, giving rise to a reasonable inference that he possessed that gun at least long enough to fire it.

Firearms--constructive possession by felon--evidence sufficient

State v. Boyd, 154 NCA 302 (2002)

The evidence was sufficient to show that defendant, a felon, constructively possessed a firearm where the gun was found under the front passenger seat of a car, where defendant was sitting; the only other person in the car was the driver; the driver and defendant did not have equal access to the gun; officers saw defendant reaching under the seat; the driver did not own the gun; and the gun had been seen at defendant's mother's house.

Firearms and Other Weapons--possession of handgun by convicted felon--constructive possession--acting in concert

State v. Walker, 154 NCA 645 (2002)

The trial court did not err by failing to dismiss the charge of possession of a handgun by a convicted felon and by instructing the jury on constructive possession even though defendant contends the evidence is insufficient to show that he possessed a handgun during the commission of a burglary and armed robbery, because: (1) defendant acted in concert with three other men to commit burglary and armed robbery; and (2) possession of the gun found in the car that fits the description of one of the guns used by a coparticipant is imputed to defendant through his acting in concert.

Firearms—possession by felon—building not used as home

State v. Smith, 155 NCA 500 (2002)

The trial court did not err by refusing to dismiss a charge of possession of a firearm by a felon under the “home” exception; there was substantial evidence to permit a reasonable juror to conclude that the premises did not constitute defendant’s home.

Firearms and Other Weapons—possession by felon—inducement of others—sentence enhanced

State v. Kemp, 153 NCA 231 (2002)

The trial court did not abuse its discretion by imposing an aggravated sentence for possession of a firearm by a felon based on inducement where defendant initiated the idea of a robbery, convinced others to participate, and obtained a firearm from one of the conspirators, who also provided a gun to another conspirator.

Firearms and Other Weapons—possession of a firearm by a felon--justification not a defense

State v. Napier, 149 NCA 462 (2002)

The trial court did not abuse its discretion by denying defendant's request for a jury instruction stating that justification is a defense for possession of a firearm by a felon under N.C.G.S. § 14-415.1, because: (1) defendant's case does not fit within the statute's exception limiting its applicability to the confines and privacy of the convicted felon's own premises since defendant was not within his own premises; and (2) North Carolina courts have not recognized justification as a defense to a charge of possession of a firearm by a felon, and the instruction is not justified in this case since the evidence does not support a conclusion that defendant was under a present or imminent threat of death or injury.

Firearms and Other Weapons--possession by felon--operability

State v. Jackson, 353 N.C. 495 (2001)

The trial court did not err in a prosecution for possession of a firearm by a felon by denying defendant's requested instruction that inoperability constituted an affirmative defense. Although N.C.G.S. § 14-415.1 addresses the size of handguns or firearms which fall under its purview, it does not address whether the handgun or firearm has to be operational at the time of the charge. Cases relied upon by the Court of Appeals in holding to the contrary are not determinative because they involved other statutes or dicta; however, *In re Crowley*, 120 N.C. App. 274, involved a similar issue, similar statute, and similar analysis. The focus of the words "purchase, own, possess, or have in custody, care, or control" in N.C.G.S. § 14-415.1 is on the felon's access to the firearm and not the firearm's operability at any given point, and this focus is consistent with the logical objective of preventing a show of force by felons, real or apparent. Finally, it is illogical to conclude that the legislature intended that a felon in possession of an unloaded firearm was not in violation of the prohibition of possession of firearms by felons.

Evidence and Witnesses § 3030 (NCI4th) - possession of firearm by felon - name and nature of previous offense - probative value not outweighed by prejudice

State v. Faison, 128 N.C. App. 745 (1998)

The trial court did not err in a prosecution for possession of a firearm by a felon by admitting evidence of previous convictions for assault with a deadly weapon and voluntary manslaughter. Although the official commentary to N.C.G.S. § 8C-1, Rule 403 states that the federal rule is identical to North Carolina's, North Carolina is not bound by *Old Chief v. United States*, 136 L.Ed. 2d, which held that the government's evidence of a prior conviction should have been excluded because petitioner's requested stipulation would have been equal in probative value without the same danger of unfair prejudice. Moreover, defendant did not offer to stipulate that he had a prior felony conviction and did not argue that his stipulation would render evidence of the name and nature of the prior offense inadmissible pursuant to Rule 403. The State in this case had no alternative to introducing evidence of defendant's prior convictions.

Firearms and Other Weapons - possession of firearm by felon - constructive possession

State v. Alston, 131 N.C. App. 514 (1998)

The trial court erred by denying defendant's motion to dismiss charges of possession of a firearm by a felon where defendant was a passenger in the front seat of his brother's automobile, which was being driven by his wife, and a handgun owned by his wife was found lying on the console. Both defendant and his wife had equal access to the handgun, but there was no evidence otherwise linking the handgun to defendant.

Weapons and Firearms 10 (NCI4th) possession of firearm by felon in his own home – defendant not in his home at time of offense

State v. Locklear, 121 N.C. App. 355 (1996)

The trial court did not err in refusing to dismiss a charge of possession of a handgun by a felon based on the exception of N.C.G.S. 14-415.1(a) which allows a felon to possess a firearm within his own home, since defendant in this case was in the yard of a trailer which he owned but did not live in; he had plainly

surrendered dominion and control of the property to another family; and it was thus not his "home" within the meaning of the statute.