

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-985
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v.

Union County
Nos. 07 CRS 53732
08 CRS 6448

RICKY STEWART

Appeal by defendant from judgments entered 7 April 2011 by Judge Kevin M. Bridges in Union County Superior Court. Heard in the Court of Appeals 17 January 2012.

Attorney General Roy Cooper, by Assistant Attorney General Mary S. Mercer, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender David W. Andrews, for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant was tried on charges of breaking or entering a motor vehicle, misdemeanor larceny, and attainment of habitual felon status. He was found guilty of all three charges.

Defendant contends the trial court committed plain error during the habitual felon phase by admitting evidence which indicated defendant had: (1) been charged with and convicted of

crimes not charged in the habitual felon indictment; (2) violated a condition of probation in one of the three cases forming the basis for the habitual felon charge; (3) been deemed a substance abuser by another judge; and (4) engaged in plea discussions with the State. Defendant argues this evidence should have been redacted from the court records which were offered to prove the three convictions forming the basis of the habitual felon charge.

Defendant did not object to the admission of any of this evidence, and thus we review for plain error. *State v. Davis*, 349 N.C. 1, 29, 506 S.E.2d 455, 470 (1998), *cert. denied*, 526 U.S. 1161, 144 L. E. 2d 219 (1999). Accordingly, we examine the record to determine whether the jury would probably have reached a different verdict if this evidence had not been admitted. *State v. Hammett*, 361 N.C. 92, 98, 637 S.E.2d 518, 522 (2006).

"Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon." N.C. Gen. Stat. § 14-7.1 (2009).

A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by

which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein.

N.C. Gen. Stat. § 14-7.4 (2009). Certified copies of the court record of convictions bearing the same name and date of birth as the defendant, without any evidence in contradiction, is substantial evidence to establish the defendant's status as an habitual felon. *State v. Tyson*, 189 N.C. App. 408, 421, 658 S.E.2d 285, 294 (2008).

In the case at bar, the trial court received into evidence certified copies of court records showing that a person having defendant's same name, race, and date of birth was convicted of three felony offenses at three different sessions of court. Defendant did not present any evidence to contradict this showing. We conclude that it is not reasonably probable that a different result would have occurred if the extraneous information in the court records had been redacted.

Defendant also contends that the court erred by failing to conduct a charge conference with regard to the habitual felon charge. A judge in a criminal trial is required to hold a recorded conference on instructions out of the presence of the jury before final arguments are made to the jury. N.C. Gen.

Stat. § 15A-1231(b) (2009). The failure of the judge to comply fully with the provisions of this statute is not "grounds for appeal unless his failure, not corrected prior to the end of the trial, materially prejudiced the case of the defendant." *Id.*

The stenographic transcript filed with this Court does not contain a recorded charge conference. It does, however, contain the charge given by the court. The transcript also reflects that defendant was offered the opportunity to object to the instructions given by the court and that no objection was asserted by defendant. An invitation to make final arguments to the jury was also declined by defendant. Under these circumstances, we fail to see how defendant was materially prejudiced by the court's failure to hold a recorded charge conference. See *State v. Brunson*, 120 N.C. App. 571, 575, 463 S.E.2d 417, 419 (1995), *cert. denied*, 346 N.C. 181, 486 S.E.2d 211 (1997).

No error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).