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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-528

Filed: 18 December 2018

Pitt County, No. 16CRS426

STATE OF NORTH CAROLINA

v.

LINWOOD EARL STANCILL, Defendant.

Appeal by State from order entered 27 November 2017 by Judge Marvin K. Blount, III, in Pitt County Superior Court. Heard in the Court of Appeals 15 November 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

No brief filed for Defendant-Appellee Linwood Earl Stancill.

INMAN, Judge.

The State appeals from the superior court's order on 27 November 2017 dismissing Linwood Earl Stancill's ("Defendant") prosecution for lack of subject matter jurisdiction. After careful review of the record and applicable law, we affirm in part, reverse in part, and remand.

Factual and Procedural Background

STATE V. STANCILL

Opinion of the Court

Resolution of this appeal is controlled by this Court’s decision in *State v. Baker*, __ N.C. App. __, __ S.E.2d __ (2018) (No. COA18-527), filed concurrently with this opinion. As in *Baker*, the State’s appeal arises from an impaired driving prosecution involving the same trial judge, prosecutor, defense attorney, and procedural posture. Because this appeal involves a different defendant and different facts underlying the impaired driving prosecution, we briefly recite the facts below.

Defendant was arrested and charged with impaired driving by uniform citation on 20 January 2016 in Pitt County. A grand jury returned a presentment and indictment on that charge in superior court on 13 March 2017. The parties stipulated that the submission and return of the presentment and indictment against Defendant “proceeded in an identical fashion” as the procedure performed in *Baker*. On 3 July 2017, Defendant filed a motion to dismiss, mirroring the argument in *Baker* that the presentment and indictment were invalid and did not convey subject matter jurisdiction over the action to the Pitt County Superior Court. Defendant’s motion came on for hearing on 22 September 2017 and, following the arguments of counsel, the trial court granted the motion “consistent with its ruling [] in the State versus Baker matter.” The trial court entered its written order dismissing the action on 27 November 2017, and the State timely appealed.

Analysis

STATE V. STANCILL

Opinion of the Court

As noted *supra*, the legal issue on appeal in this case is identical to that resolved by our decision in *Baker*. Consistent with that opinion, we affirm the trial court's determinations that it lacked subject matter jurisdiction and that the prosecution violated Sections 7A-271 and 15A-641 of our General Statutes and Article I, Section 22 of the North Carolina Constitution without addressing the prejudice of that constitutional violation. Also for the reasons set forth in *Baker*, we reverse the trial court's determination that Defendant's constitutional rights under Article I, Sections 19 and 23 of the North Carolina Constitution were violated and hold the trial court erred in dismissing the action in lieu of transferring it to the district court.

AFFIRMED IN PART; REVERSED IN PART; REMANDED FOR FURTHER PROCEEDINGS.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).