IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1001

Filed: 16 April 2019

Guilford County, Nos. 17 CRS 87036, 24702

STATE OF NORTH CAROLINA

v.

BILLY RAY WOODY

Appeal by defendant from judgment entered 2 May 2018 by Judge Susan E. Bray in Guilford County Superior Court. Heard in the Court of Appeals 12 March 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Whitney Hendrix Belich, for the State.*

*Warren D. Hynson for defendant.*

DIETZ, Judge.

Defendant Billy Ray Woody challenges his conviction for failing to report a change of address under our sex offender registration laws. As explained below, we hold that the indictment charging Woody was sufficient to confer jurisdiction on the trial court; that the trial court properly denied Woody's motion to dismiss; and that the trial court did not err, and certainly did not plainly err, by admitting certain

challenged testimony from Woody's probation officer. Accordingly, we find no error in the trial court's judgment.

## Facts and Procedural History

Billy Ray Woody is subject to our State's sex offender registration program. On 17 July 2017, Woody notified the Guilford County Sheriff's Department that he would be living at an address in Greensboro owned by Woody's longtime friend, James Terry. On 23 August 2017, Woody stopped by the Guildford County Sherriff's office to meet his new probation officer, Kim Shearon. He confirmed to Officer Shearon that he would be living at that Greensboro address and would be there later that evening around 8:00 p.m. That night, around 8:00 p.m., Officer Shearon stopped by the Greensboro address. Nobody answered the door. On 5 September 2017, Officer Shearon went back to the Greensboro address Woody provided. After no one responded to her knocks on the door, Officer Shearon slipped a card under the door providing Woody with an office visit date of 8 September 2017. Woody failed to appear for that office visit.

On 10 September 2017, Officer Shearon once again returned the Greensboro address that Woody provided, where she met Terry for the first time. Terry confirmed to Officer Shearon that Woody had been living at that address since July. But he also admitted that he had not seen Woody for nearly a week and that he could not confirm

when Woody last stayed at his place. Before leaving, Officer Shearon left Terry a written note for Woody, instructing Woody to visit her office the next day.

Woody did not come to Officer Shearon's office the next day. Officer Shearon went to speak again with Terry, who was surprised that Woody failed to appear at his office visit. Officer Shearon left another note for Woody, and also called Woody's phone and left him a voicemail instructing him to visit her office.

Ultimately, after failing to confirm Woody's location for nearly two months, Officer Shearon contacted the Guilford County Sheriff's Department, who issued a warrant for Woody's arrest. On 21 September 2017, law enforcement arrested Woody. After his arrest, Woody told Officer Shearon that the reason she had been unable to locate him was that he had been staying in Mebane temporarily for work.

On 27 November 2017, a Guilford County grand jury indicted Woody for failing to report his change of address to the Sheriff and for attaining habitual felon status. On 16 April 2018, a jury found Woody guilty of failing to report his address and Woody then pleaded guilty to attaining habitual felon status. After finding one mitigating factor and no aggravating factors, the trial court sentenced Woody to 88 to 118 months in prison. Woody timely appealed.

## Analysis

### I. Defective Indictment

Woody first argues that the trial court lacked jurisdiction because the

indictment charging him was defective. Woody did not challenge the indictment in the trial court, but an allegation that an indictment is facially invalid is a jurisdictional argument that may be raised for the first time on appeal. *State v. Wallace*, 351 N.C. 481, 503, 528 S.E.2d 326, 341 (2000). We review this jurisdictional argument *de novo*. *State v. McKoy*, 196 N.C. App. 650, 652, 675 S.E.2d 406, 409 (2009).

"A valid warrant or indictment is an essential of jurisdiction. The warrant or indictment must charge all the essential elements of the alleged criminal offense." *State v. McBane*, 276 N.C. 60, 65, 170 S.E.2d 913, 916 (1969) (citations omitted). "Nevertheless, it is not the function of an indictment to bind the hands of the State with technical rules of pleading; rather, its purposes are to identify clearly the crime being charged, thereby putting the accused on reasonable notice to defend against it and prepare for trial, and to protect the accused from being jeopardized by the State more than once for the same crime." *State v. Sturdivant*, 304 N.C. 293, 311, 283 S.E.2d 719, 731 (1981).

Here, the indictment charged Woody with an "Offense in Violation of G.S. 14-208.11." The body of the indictment stated:

> [T]he defendant named above unlawfully, willfully and feloniously did as a person required by Article 27A of Chapter 14 of the General Statutes to register as a sexual offender knowingly and with the intent to violate the provisions of that Article fail to register as a sexual offender, fail to notify the last registering sheriff (Guilford

> County) of his change of address within three business days as required by North Carolina General Statute 14-208.9.

There is no dispute that this indictment contains all the essential elements of a violation of N.C. Gen. Stat. § 14-208.11(a)(2). This Court has held that an indictment sufficiently charges a violation of Section 14-208.11(a)(2) if it alleges (1) the defendant is a person required to register; (2) the defendant changes his address; and (3) the defendant fails to notify the last registering sheriff of the change of address within three business days of the change. *State v. Fox*, 216 N.C. App. 153, 156–57, 716 S.E.2d 261, 264–65 (2011). Here, the indictment alleges that Woody is "a person required by Article 27A of Chapter 14 of the General Statutes to register as a sexual offender" and that he changed his address but failed "to notify the last registering sheriff (Guilford County) of his change of address within three business days." Thus, the indictment properly charges a violation of N.C. Gen. Stat. § 14-208.11(a)(2). *Fox*, 216 N.C. App. at 156–57, 716 S.E.2d at 264–65.

Woody nevertheless contends that the indictment is defective because it "presents a fundamental ambiguity by the apparent reference to two different subsections of N.C.G.S. § 14-208.11(a)." He points to the language in the indictment alleging that he "did . . . fail to register as a sexual offender, fail to notify the last registering sheriff (Guilford County) of his change of address." Woody contends that the reference to failing to "register as a sexual offender" could be interpreted as a

violation of N.C. Gen. Stat. § 14-208.11(a)(1), which addresses a sex offender's initial registration, and not part of the alleged violation of N.C. Gen. Stat. § 14-208.11(a)(2), which addresses the failure to notify the sheriff of a change in address. Thus, he argues, the indictment "is unclear as to which particular provision of § 14-208.11(a) Mr. Woody was accused of violating."

The flaw in this argument is that the indictment alleges that Woody failed to notify the "last registering sheriff" of his change of address—meaning the indictment alleged that Woody was a registered sex offender who already had registered with a sheriff. This, in turn, defeats Woody's argument that the language in the indictment could be interpreted as alleging that he failed to register as a sex offender in violation of the law. More importantly, the allegations in the indictment end with the phrase "as required by North Carolina General Statute 14-208.9." That statutory provision addresses the obligations of registered sex offenders to take various notification steps after changing addresses. By contrast, the obligation to register as a sex offender is governed by separate statutes, N.C. Gen. Stat. §§ 14-208.7 and 14-208.8, which are not cited or referenced in the indictment. We thus reject Woody's argument that the indictment was "ambiguous" or that it alleged more than one offense; it properly alleged a single violation of N.C. Gen. Stat. § 14-208.11(a)(2) for failure to notify the last registering sheriff of a change of address within three days, and thus was

sufficient to confer jurisdiction on the trial court. *See Sturdivant*, 304 N.C. at 311, 283 S.E.2d at 731.

## II. Motion to Dismiss

Woody next argues that the trial court should have granted his motion to dismiss because the State failed to present substantial evidence "of Mr. Woody's moving or living at a different address."

"When ruling on a defendant's motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* "This Court reviews the trial court's denial of a motion to dismiss *de novo*." *Id.*

As noted above, a violation of N.C. Gen. Stat. § 14-208.11(a)(2) requires the State to prove the following essential elements: (1) the defendant is a person required to register; (2) the defendant changes his address; and (3) the defendant failed to notify the last registering sheriff of the change of address within three business days of the change. *Fox*, 216 N.C. App. at 156–57, 716 S.E.2d at 264–65. Importantly, this Court has held that, to prove a violation of N.C. Gen. Stat. § 14-208.11(a)(2), "[t]he State is not required to show what defendant's new address was. The State is simply

required to show that defendant changed his address." *State v. McFarland*, 234 N.C. App. 274, 280, 758 S.E.2d 457, 463 (2014).

Here, the State presented evidence that Woody's probation officer repeatedly visited the address where Woody claimed to be residing, but was never able to locate Woody there. After nearly two months of failed attempts to locate Woody, law enforcement issued a warrant for his arrest. After being arrested, Woody admitted that "he had been staying temporarily in Mebane" for work.

This evidence is sufficient to survive a motion to dismiss. The "purpose of the sex offender registration program is to assist law enforcement agencies and the public in knowing the whereabouts of sex offenders and in locating them when necessary." *State v. Worley*, 198 N.C. App. 329, 334–35, 679 S.E.2d 857, 862 (2009). Because "sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration . . . even a *temporary* 'home address' must be registered so that law enforcement authorities and the general public know the whereabouts of sex offenders in our state." *State v. Abshire*, 363 N.C. 322, 330–31, 677 S.E.2d 444, 450–51 (2009). In light of this precedent, the State presented substantial evidence from which a reasonable jury could conclude that Woody had changed his address and was no longer living at his previous address in Greensboro. Accordingly, the trial court properly denied Woody's motion to dismiss.

## III. Hearsay Testimony

Lastly, Woody argues that the trial court plainly erred by admitting hearsay testimony from his probation officer regarding statements made by Terry, Woody's former roommate in Greensboro, about Woody's current whereabouts. Woody concedes that he did not object to the testimony and we therefore review it for plain error. N.C. R. App. P. 10(a).

"For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "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." *Id.* In other words, the defendant must show that, "absent the error, the jury probably would have returned a different verdict." *Id.* at 519, 723 S.E.2d at 335.

Woody cannot satisfy the high burden to show plain error. First, the challenged testimony from Woody's probation officer largely corroborated Terry's own testimony at trial. It thus was admissible as an exception to the hearsay rule. *State v. Lee*, 348 N.C. 474, 484, 501 S.E.2d 334, 340–41 (1998). In any event, in light of Terry's testimony and Woody's own statements to law enforcement, Woody has not shown that, but for the challenged portion of the probation officer's testimony, the jury probably would have reached a different result. *Lawrence*, 365 N.C. at 519, 723 S.E.2d

at 335. Accordingly, we find no error and certainly no plain error in the trial court's admission of the challenged evidence.

**Conclusion**

We find no error in the trial court's judgment.

NO ERROR.

Chief Judge McGEE and Judge COLLINS concur.

Report per Rule 30(e).