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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-521

Filed: 16 April 2019

Wake County, No. 17 CRS 729755

STATE OF NORTH CAROLINA

v.

JOE WILLARD WILLIAMSON, JR.

Appeal by defendant from judgment entered 10 January 2018 by Judge Winston Miller Rozier in Wake County Superior Court. Heard in the Court of Appeals 8 April 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Lisa B. Finkelstein, for the State.*

*Joe Willard Williamson, Jr., pro se, defendant-appellant.*

ARROWOOD, Judge.

Joe Willard Williamson, Jr. (“defendant”), appeals from a judgment entered upon his convictions for driving while license revoked (“DWLR”) and failure to reduce speed. Upon review, we conclude that defendant received a fair trial free from prejudicial error.

I. Background

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At approximately 7:00 a.m. on 25 May 2017, defendant was driving his pickup truck southbound on Capital Boulevard near Wake Forest, North Carolina on his way to work. The road was wet from rain the previous night. According to defendant, he was approaching a traffic light that changed to red, and the traffic in front of him came to a sudden stop. Defendant applied his brakes but was unable to avoid hitting the car in front of him, which was operated by Harriet Cannady. Ms. Cannady was transported by EMS to the hospital.

As a result of the accident, defendant was cited for DWLR pursuant to N.C. Gen. Stat. § 20-28(a) (2017) and for failure to reduce speed pursuant to N.C. Gen. Stat. § 20-141(m) (2017). Defendant was convicted of both offenses in Wake County District Court and gave notice of appeal to the superior court for a trial *de novo*. See N.C. Gen. Stat. § 15A-1431(b) (2017) (“A defendant convicted in the district court before the judge may appeal to the superior court for trial *de novo* with a jury as provided by law.”). At trial in the superior court on 10 January 2018, defendant waived his right to counsel and represented himself. Defendant agreed to a bench trial. See N.C. Gen. Stat. § 15A-1201(b) (2017) (“A defendant accused of any criminal offense for which the State is not seeking a sentence of death in superior court may, knowingly and voluntarily, in writing or on the record in the court and with the consent of the trial judge, waive the right to trial by jury.”). The trial court found

defendant guilty of both charges and sentenced defendant to 20 days in Wake County Jail. Defendant gave oral notice of appeal in open court.

## II. Discussion

Defendant first contends that the trial court erred in failing to dismiss the charges against him for insufficiency of the evidence. However, while defendant sought dismissal at trial for lack of subject matter jurisdiction, he never moved to dismiss for insufficiency of the evidence. Thus, defendant failed to preserve this issue for appellate review. *See* N.C.R. App. P. 10(a)(3) (2019) (“[A] defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dismiss the action . . . is made at trial.”).

Defendant next contends that the trial court erred by not “proving” subject matter jurisdiction. Defendant relatedly contends that the State “did not demonstrate beyond a reasonable doubt that [the trial] court had jurisdiction[.]”

“‘Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it[.]’ ” *State v. Petty*, 212 N.C. App. 368, 371, 711 S.E.2d 509, 512 (2011) (quoting *In re McKinney*, 158 N.C. App. 441, 443, 581 S.E.2d 793, 795 (2003)). “[A] trial court must have subject matter jurisdiction over a case in order to act in that case[,] and [ ] a court’s lack of subject matter jurisdiction is not waivable and can be raised at any time.” *Id.* (internal quotation marks and citations omitted). “The State bears the burden in criminal matters of

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demonstrating beyond a reasonable doubt that a trial court has subject matter jurisdiction.” *State v. Williams*, 230 N.C. App. 590, 595, 754 S.E.2d 826, 829 (2013), *disc. review denied*, 367 N.C. 298, 753 S.E.2d 670 (2014).

Subject matter jurisdiction “ ‘is conferred upon the courts by either the North Carolina Constitution or by statute.’ ” *Petty*, 212 N.C. App. at 371, 711 S.E.2d at 512 (quoting *McKinney*, 158 N.C. App. at 443, 581 S.E.2d at 795). Article IV, section 1 of the North Carolina Constitution vests the judicial power of the State in a General Court of Justice. N.C. Const. art IV, § 1. The General Court of Justice consists “of an Appellate Division, a Superior Court Division, and a District Court Division.” N.C. Const. art. IV, § 2. N.C. Gen. Stat. § 7A-272(a) provides, in pertinent part, that “the district court has exclusive, original jurisdiction for the trial of criminal actions . . . below the grade of felony[.]” N.C. Gen. Stat. § 7A-272(a) (2017).

“ ‘There can be no trial, conviction, or punishment for a crime without a formal and sufficient accusation. In the absence of an accusation the court acquires no jurisdiction whatever, and if it assumes jurisdiction a trial and conviction are a nullity.’ ” *State v. Allen*, 247 N.C. App. 179, 181, 783 S.E.2d 799, 800 (2016) (quoting *McClure v. State*, 267 N.C. 212, 215, 148 S.E.2d 15, 17-18 (1966)). The North Carolina Constitution provides that, “[e]xcept in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment.” N.C. Const. art. I, § 22. “The General

Assembly may . . . provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.” N.C. Const. art. I, § 24. “[A] citation . . . serves as the pleading of the State for a misdemeanor prosecuted in the district court, unless the prosecutor files a statement of charges, or there is objection to trial on a citation.’” *Allen*, 247 N.C. App. at 181, 783 S.E.2d at 800 (alterations in original) (quoting N.C. Gen. Stat. § 15A-922(a) (2017)).

Pursuant to N.C. Gen. Stat. § 15A-302(c), a citation must:

- (1) Identify the crime charged, including the date, and where material, identify the property and other persons involved,
- (2) Contain the name and address of the person cited, or other identification if that cannot be ascertained,
- (3) Identify the officer issuing the citation, and
- (4) Cite the person to whom issued to appear in a designated court, at a designated time and date.

N.C. Gen. Stat. § 15A-302(c) (2017).

Following trial on a citation in the district court, “[a]ppeals by the State or the defendant from the district court are to the superior court. The jurisdiction of the superior court over misdemeanors appealed from the district court to the superior court for trial de novo is the same as the district court had in the first instance[.]” N.C. Gen. Stat. § 7A-271(b) (2017). “[A] [d]efendant may not be tried *de novo* in the superior court on the original warrant without a trial and conviction in the district

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court.” *State v. Wesson*, 16 N.C. App. 683, 689, 193 S.E.2d 425, 429 (1972), *cert. denied*, 282 N.C. 675, 194 S.E.2d 155 (1973).

“Whether a trial court has subject-matter jurisdiction is a question of law, reviewed *de novo* on appeal.” *State v. Collins*, 245 N.C. App. 478, 482-83, 783 S.E.2d 9, 13 (2016) (quoting *State v. Herman*, 221 N.C. App. 204, 209, 726 S.E.2d 863, 866 (2012)). Our review of the record shows that the trial court had subject matter jurisdiction in this instance.

Defendant was charged in this case by a uniform citation meeting the requirements of N.C. Gen. Stat. § 15A-302(c). That citation identified driving while license revoked and failure to reduce speed as the crimes charged, identified the date the offenses allegedly occurred, and identified the date of the issuance of the citation. N.C. Gen. Stat. § 15A-302(c)(1). The citation further identified defendant’s name and address, as well as the name of the officer issuing the citation. N.C. Gen. Stat. § 15A-302(c)(2), (3). Finally, the citation directed defendant to appear in Wake County District Court on 11 July 2017 between the hours of 7:45 a.m. and 3:30 p.m. N.C. Gen. Stat. § 15A-302(c)(4).

The Wake County District Court, where defendant was first tried on the charges, is a component of the General Court of Justice established by the North Carolina Constitution. N.C. Const. art IV, §§ 2, 10. The Wake County District Court had original jurisdiction to try defendant on the charges of driving while license

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revoked and failure to reduce speed. *See* N.C. Gen. Stat. § 7A-272(a) (district courts have original jurisdiction to try criminal actions “below the grade of felony”); *see also* N.C. Gen. Stat. §§ 20-28(a), -141(m) (2017) (driving while license revoked and failure to reduce speed are below the grade of felony).

Following defendant’s conviction on the charges in the district court, defendant appealed to the superior court for a trial *de novo*. *See* N.C. Gen. Stat. § 7A-290 (2017) (“Any defendant convicted in district court before the judge may appeal to the superior court for trial de novo.”). The Wake County Superior Court is also a court in the General Court of Justice. N.C. Const. art. IV, §§ 2, 9. Defendant was tried in the superior court on the uniform citation. “[T]his Court has held that a defendant may not challenge the derivative jurisdiction of the superior court to try a misdemeanor offense on a citation, where that challenge was not raised before the district court.” *Allen*, 247 N.C. App. at 181, 783 S.E.2d at 800. There is no indication in the record that defendant objected to trial on the citation in district court or superior court. The evidence of record supports the superior court’s subject matter jurisdiction to try defendant on the citations, and defendant’s contention is without merit.

Defendant next contends that the trial court erred in admitting hearsay evidence into the record. Specifically, defendant points to the admission of his driving record into evidence, arguing that he “had no opportunity at any time to question[ ]

the compiler or certifier of this document thus rendering it inadmissible[.]” However, when the State moved to admit defendant’s driving record into evidence at trial, the trial court specifically asked defendant if he had any objection to the court receiving the exhibit into evidence, and defendant replied “I don’t.” Thus, defendant failed to preserve this argument for review on appeal. *See* N.C.R. App. P. 10(a)(1) (“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.”).

Defendant also contends that it was hearsay for the officer who arrived at the scene of the accident and charged defendant, Officer J. Simmons, to testify as to what happened without having first-hand knowledge of what transpired. Defendant did not object to any portion of the officer’s testimony at trial, nor does he now point specifically to what portion of the officer’s testimony constituted hearsay. Defendant failed to preserve his argument for appellate review. N.C.R. App. P. 10(a)(1).

Finally, defendant contends that the trial court erred “by not addressing constitutional and Supreme Court case challenges to the charges against the defendant.” While defendant correctly notes that, in challenging the constitutionality of a statute, the burden of proof is on the challenger, *State v. Sullivan*, 201 N.C. App. 540, 544, 687 S.E.2d 504, 508 (2009), *appeal denied*, 364 N.C. 247, 699 S.E.2d 921



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(2010), *cert. denied*, 562 U.S. 1138, 178 L. Ed. 2d 754 (2011), defendant does not identify in his brief what statute he challenges. From the transcript of the trial, it appears that defendant sought to challenge the constitutionality of N.C. Gen. Stat. § 20-28(a), which prohibits driving upon the highways of the State with a revoked license. Defendant argued to the trial court that this impeded his right to travel. However, this Court rejected a similar argument in *Sullivan*, involving a constitutional challenge to N.C. Gen. Stat. § 20-111(1), which makes it unlawful to drive an unregistered vehicle on the highway. *Sullivan*, 201 N.C. App. at 544-46, 687 S.E.2d at 508-09. This Court noted that “the right to travel is not synonymous with the right to operate a motor vehicle on the highways of this State.” *Id.* at 545, 687 S.E.2d at 508. This Court further stated:

[A] State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles. . . . And to this end it may require the registration of such vehicles and the licensing of their drivers. . . . This is but an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety and comfort of their citizens[.]

*Id.* (alterations in original) (quoting *Hendrick v. Maryland*, 235 U.S. 610, 622, 59 L. Ed. 385, 391 (1915)). Defendant’s argument that N.C. Gen. Stat. § 20-28(a) is unconstitutional has no merit.

### III. Conclusion

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In sum, defendant's challenges on appeal were either not properly preserved or without merit. As a result, we conclude that defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).