IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-760

Filed: 17 September 2019

Wake County, No. 16CRS223566

STATE OF NORTH CAROLINA

v.

BRETT ALFRED HENDERSON, Defendant.

Appeal by Defendant from judgment entered 26 September 2017 by Judge A. Graham Shirley in Wake County Superior Court. Heard in the Court of Appeals 21 August 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General James Bernier, Jr., for the State.

Winifred H. Dillon for the Defendant.

DILLON, Judge.

Defendant Brett Alfred Henderson appeals from a judgment entered upon a jury verdict finding him guilty of failing to comply with North Carolina's sex offender registration laws. After thorough review, we hold the trial court did not commit plain error by not intervening when the State introduced the warrant for Defendant's arrest into evidence and published it to the jury.

I. Background

In October 1996, Defendant was convicted of a number of sexual offenses. As a result of his convictions, Defendant was required to register as a sex offender and to verify his address in person with his county sheriff on a regular basis. *See* N.C. Gen. Stat. § 14-208.9A (2017). Defendant was informed of and acknowledged the requirements imposed upon him under North Carolina's sex offender registration law. Defendant had also previously fully complied with the requirement that he verify his address in person.

Twenty years later, in April 2016, Defendant personally submitted a sex offender change of address form to the Wake County Sheriff's Office, indicating his new address in Garner. Six months later, in October 2016, Defendant was mailed an address verification notice via certified mail. Defendant signed the receipt accepting delivery of the notice. Defendant was required to appear at the Sheriff's Office to verify his address within three business days of receiving his address verification notice. N.C. Gen. Stat. § 14-208.9A(a)(2). Defendant received the notice on Friday, 26 October 2016, and was required to appear in person at the Sheriff's Office on or before Wednesday, 31 October 2016. Defendant did not appear as required.

On 7 November 2016, a deputy with the Wake County Sheriff's Office telephoned Defendant regarding his failure to verify his address. Defendant informed the deputy that he had received the notice but had forgotten about it and

left it in his girlfriend's car, which was at a dealership for repairs. Defendant stated that he would get the notice in the next day or two and bring it to the Sheriff's Office.

Defendant did not bring the notice to the Sheriff's Office as stated, and, on 10 November 2016, the deputy again contacted Defendant by phone. The deputy informed Defendant that he was in "failure-to-notify status" and instructed Defendant to bring the notice to her office as soon as possible. Defendant became very argumentative and hung up on the deputy. Defendant did not comply with the deputy's instructions.

On 6 December 2016, the deputy obtained a warrant for Defendant's arrest for failure to return a verification notice, and Defendant was subsequently arrested.

Defendant testified at trial, offering a number of reasons why he had not returned his verification form in person to the Sheriff's Office, as follows: He had been thrown off a bull and suffered severe injuries to his elbow and ribs that required surgery and he was also assisting with the care of his parent's debilitating medical problems. Defendant had left the notice in his girlfriend's car, which broke down and had to be sent off for repairs. The car was not returned to her until the week before Christmas, but the following week it was sent back for additional work on its transmission. He could not drive to get the notice from his girlfriend's car, because his license was suspended as a result of a prior conviction for driving while intoxicated; however, he lived with his parents, both of whom had cars and could

drive. Defendant testified that he had to have the notice in his possession before going into the Sheriff's Office, but the deputy stated that is not the case, and she regularly reprints notices for registrants who have lost them. Once Defendant had the notice in his possession, he stated he did not go to the Sheriff's Office because he knew the arrest warrant had already been drawn.

The jury found Defendant guilty of failure to comply with North Carolina's sex offender registration law, and the trial court sentenced Defendant to a term of twenty-five (25) to thirty-nine (39) months imprisonment. Defendant gave oral notice of appeal.

II. Analysis

Defendant now argues the trial court committed plain error in allowing the State to admit and publish to the jury the arrest warrant charging him with failure to comply with North Carolina's sex offender registration law. He contends that "stilted language" in the warrant describing the magistrate's determination that there was probable cause to believe Defendant had willfully committed the charged offense "improperly swayed" the jury's decision and "distorted" their view of the evidence. If the warrant had not been admitted, Defendant contends, it was reasonably probable that the jurors would have found him not guilty. We disagree.

Defendant concedes that he did not object to the admission of the arrest warrant at trial, and thus his argument is reviewed only for plain error. *See* N.C. R.

App. P. 10(a)(4) ("In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error."); *see also State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) ("[T]he plain error standard of review applies on appeal to unpreserved instructional or evidentiary error."). Our Supreme Court has explained that only a showing by the defendant of a fundamental error which had a probable impact on the jury's decision will be considered plain error. *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334.

Our General Statutes prohibit the reading of the indictment to the jury. N.C. Gen. Stat. § 15A-1221(b) (2015). Our Court has extended this prohibition to the arrest warrant, holding that a trial court errs when it allows a defendant's arrest warrant into evidence. *See State v. Bryant*, 244 N.C. App. 102, 111, 779 S.E.2d 508, 514 (2015).

Assuming, *arguendo*, that the trial court erred in this case, we hold that given the evidence before the jury in this case, any such error did not have a *probable* impact on the jury's verdict. *See Bryant*, 244 N.C. App. 102, 111, 779 S.E.2d 508, 514 (holding that, though admission of an arrest warrant at trial was error, it did not amount to plain error in light of other, overwhelming evidence at trial). The evidence at trial showed that Defendant knew he was required to appear personally at the

Sherriff's Office to confirm his address upon receiving notice to do so. Defendant received notice but never personally appeared as required, even though a deputy contacted him multiple times and reminded him to do so. Defendant claimed he could not appear as required because he had left the notice in his girlfriend's car, but he took no action to obtain the notice and relied on his lack of possession of the notice as an excuse not to appear. When Defendant's girlfriend had possession of her car, and Defendant had access to the notice mailed to him, he still did not appear as required.

The State offered substantial evidence of Defendant's willful refusal to personally appear at the Sheriff's Office to confirm his address, in violation of N.C. Gen. Stat. § 14-208.11(a) (2017). We, therefore, hold that the publishing of the magistrate's probable cause determination on his arrest warrant to the jury did not rise to the level of plain error.

NO ERROR.

Judges ZACHARY and YOUNG concur.

Report per Rule 30(e).