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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-182

Filed: 1 October 2019

Catawba County, Nos. 17 CRS 925, 926, 3137

STATE OF NORTH CAROLINA

v.

RANDY ALLEN MCDONALD, Defendant.

Appeal by defendant from judgments entered 1 May 2018 by Judge Carla Archie in Catawba County Superior Court. Heard in the Court of Appeals 4 September 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Jason R. Rosser, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for defendant-appellant.

YOUNG, Judge.

Where the Clerk of Court testified that a certified ACIS printout was a true copy, the trial court did not err in admitting it as evidence of defendant's prior felony conviction. We find no error.

I. Factual and Procedural Background

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On 20 February 2017, the Catawba County Grand Jury indicted Randy Allen McDonald (defendant) for felony fleeing to elude arrest with a motor vehicle, and the related misdemeanor of reckless driving to endanger, as well as having attained habitual felon status. The indictment for habitual felon status cited three prior felony convictions: (1) breaking or entering, in December of 1986; (2) breaking or entering, in October of 1995; and (3) possession of methamphetamine with intent to sell or distribute, in July of 2015. Defendant pleaded guilty to fleeing to elude arrest and reckless driving. The jury returned a verdict finding defendant guilty of having attained habitual felon status. The trial court consolidated the three offenses for judgment, and sentenced defendant to a minimum of 88 months and a maximum of 118 months, in the presumptive range, in the custody of the North Carolina Department of Adult Correction.

Defendant appeals.

II. Habitual Felon Status

In his sole argument on appeal, defendant contends that the trial court erred, or committed plain error, in admitting a certified printout from the Automated Criminal/Infraction System (ACIS printout) as evidence of a felony conviction to support a determination of habitual felon status. We disagree.

A. Standard of Review

“Evidentiary errors are harmless unless a defendant proves that absent the error a different result would have been reached at trial.” *State v. Ferguson*, 145 N.C. App. 302, 307, 549 S.E.2d 889, 893, *disc. review denied*, 354 N.C. 223, 554 S.E.2d 650 (2001).

B. Analysis

At trial, the State presented evidence of each of the convictions alleged in the habitual felon indictment, to wit: (1) a certified judgment showing defendant’s conviction for possession of methamphetamine with intent to manufacture, sell and deliver; (2) a certified printout from the ACIS system showing defendant’s conviction for breaking and entering in 1986; and (3) a certified judgment showing defendant’s conviction for breaking and entering in 1995. At both voir dire and the hearing proper, defendant objected to the introduction of the certified ACIS printout, alleging that it constituted “insufficient evidence to show a conviction[.]” The trial court overruled these objections and allowed the admission of the ACIS printout to establish defendant’s prior felony record. On appeal, defendant contends that the ACIS printout was insufficient to establish his prior felony record, and therefore that the judgment convicting him of attaining habitual felon status was in error.

Defendant offers two bases for his argument. First, defendant contends that the ACIS printout was inadmissible under N.C. Gen. Stat. § 14-7.4, which provides that a prior felony 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.” N.C. Gen. Stat. § 14-7.4 (2017). Second, defendant contends that, even if the ACIS printout was admissible pursuant to statute, it was inadmissible under the Best Evidence Rule, Rule 1005 of the North Carolina Rules of Evidence, which provides that the contents of an official record or document, if admissible, “may be proved by a copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original.” N.C.R. Evid. 1005. Defendant contends that, because the ACIS printout was not an original or certified copy of the original court record or judgment of the prior conviction, nor testified to be correct by a witness, its admission was erroneous.

This Court has previously addressed this or similar issues. In *State v. Wall*, 141 N.C. App. 529, 539 S.E.2d 692 (2000), the defendant was charged with attaining the status of an habitual felon. The State offered copies of court records as evidence of the defendant’s prior felony convictions, and the defendant objected to one such record, on the grounds that it was not a certified copy, but a facsimile of a certified copy. The trial court overruled the objection, and on appeal, this Court held that the language of N.C. Gen. Stat. § 14-7.4 “is permissive, not mandatory, in that it provides a prior conviction ‘may’ be proven by stipulation or a certified copy of a record.” *Id.* at 533, 539 S.E.2d at 695. We further held that although the statute “contemplates the most appropriate means to prove prior convictions for the purpose of establishing

habitual felon status, it does not exclude other methods of proof.” *Id.* We therefore found no error.

Likewise, in our decision in *State v. Waycaster*, ___ N.C. App. ___, 818 S.E.2d 189 (2018), we addressed a nearly identical fact pattern to that at issue here. In that case, the defendant was charged with attaining habitual felon status. The State offered true certified copies of judgments in support of two of the defendant’s prior convictions, and a certified ACIS printout, supported by the testimony of the Clerk of Court, in support of the third. The defendant objected to the ACIS printout, and the trial court overruled his objection. On appeal, this Court relied upon *State v. Wall* and similar decisions, and held that “the ACIS printout was sufficient evidentiary proof” of the defendant’s prior felony conviction. *Id.* at ___, 818 S.E.2d at 195.

We noted that the Clerk “testified that the printout was a certified true copy of the information in ACIS regarding this judgment[,]” and held that “[t]he Clerk’s certification of the ACIS printout as a true copy of the original information is significant[.]” *Id.* We further held that “[t]he Best Evidence Rule does not bar the admission of this ACIS printout merely because the original judgment was unaccounted for at trial[,]” and that “[t]he plain reading of N.C. Gen. Stat. § 14-7.4 and our habitual felon jurisprudence makes clear that the statute is permissive and does not exclude other methods of proof that are not specifically delineated in the Act.” *Id.* For these reasons, and because the Clerk of Court certified the ACIS

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printout as a true copy, we held that the trial court did not err in admitting the ACIS printout as evidence of the defendant's prior felony conviction. *Id.*

In the instant case, the State presented the testimony of Lisa Baker, Clerk of Superior Court of Catawba County. Ms. Baker testified in support of each exhibit introduced by the State, including the two judgments and the certified ACIS printout. Moreover, she specifically certified the ACIS printout as a true copy. Pursuant to our decisions in *Wall* and *Waycaster*, it is clear that this evidence was admissible to show defendant's prior conviction. We therefore hold that the trial court did not err in admitting the ACIS printout, and find no error in its judgment.

NO ERROR.

Judges DIETZ and TYSON concur.

Report per Rule 30(e).