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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-547

Filed: 21 January 2020

Wayne County, No. 17 CRS 50993

STATE OF NORTH CAROLINA

v.

LYNEIL ANTONIO WASHINGTON, JR., Defendant.

Appeal by Defendant from judgment entered 24 October 2018 by Judge John E. Nobles, Jr., in Wayne County Superior Court. Heard in the Court of Appeals 4 December 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Corrine Lusic, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Michele A. Goldman, for the Defendant-Appellant.

COLLINS, Judge.

Defendant Lyneil Antonio Washington, Jr., appeals from judgment entered upon a jury verdict of guilty of identity theft. Defendant contends that the trial court erred by instructing the jury that a person's name and date of birth constitute identifying information under the felony identity theft statute. We discern no error.

I. Procedural History

Defendant was indicted on 5 February 2018 on charges of driving while impaired, unsafe movement, identity theft, and resisting a public officer. A trial began on 23 October 2018 in Wayne County Superior Court. Defendant pled guilty to driving while impaired and unsafe movement. The State dismissed the charge of resisting a public officer. On 24 October 2018, a jury found Defendant guilty of identity theft. The trial court sentenced Defendant to 60 days of confinement for impaired driving, suspended for 12 months of supervised probation, and 10 to 21 months of imprisonment for identity theft and unsafe movement, suspended for 18 months of supervised probation. Defendant gave oral notice of appeal in open court.

II. Factual Background

Defendant had been drinking on the night of 3 March 2017 when he backed into a Goldsboro Police Department patrol car. Specialized Traffic Enforcement Unit Officer Matthew Habermas of the Goldsboro Police Department was called to investigate. When the officer asked Defendant to identify himself, Defendant said his name was Glenn Darden, III, and his birth date was 21 November 1988, which was the name and birth date of Defendant's cousin.

When the officer ran the name and birth date through two law enforcement databases, he located Glenn Darden's driver's license number and other identifying information, which he used to create an accident report and an arrest report. At the

time the officer was completing the reports, he reviewed with Defendant the information as he entered it, and Defendant did not deny its truth. Defendant also used his cousin's name when he signed an implied consent notice for submitting to chemical analysis.

III. Discussion

Defendant's sole argument on appeal is that the trial court erred when giving the jury instruction on identity theft. Defendant specifically argues that the trial court erred by instructing the jury that a person's name and date of birth constitute identifying information under the felony identity theft statute.

"Whether a jury instruction correctly explains the law is a question of law, reviewable by this Court *de novo*." *State v. Barron*, 202 N.C. App. 686, 694, 690 S.E.2d 22, 29 (2010) (citation omitted).

Identity theft occurs when "[a] person . . . knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person . . . for the purpose of avoiding legal consequences." N.C. Gen. Stat. § 14-113.20(a) (2018).

(b) The term "identifying information" as used in this Article includes the following:

- (1) Social security or employer taxpayer identification numbers.
- (2) Drivers license, State identification card, or passport numbers.
- (3) Checking account numbers.

- (4) Savings account numbers.
- (5) Credit card numbers.
- (6) Debit card numbers.
- (7) Personal Identification (PIN) Code as defined in [N.C. Gen. Stat. §] 14-113.8(6).
- (8) Electronic identification numbers, electronic mail names or addresses, Internet account numbers, or Internet identification names.
- (9) Digital signatures.
- (10) Any other numbers or information that can be used to access a person's financial resources.
- (11) Biometric data.
- (12) Fingerprints.
- (13) Passwords.
- (14) Parent's legal surname prior to marriage.

N.C. Gen. Stat. § 14-113.20(b) (2018).

In *State v. Miles*, 833 S.E.2d 27 (N.C. Ct. App. 2019), this Court determined that a person's name, date of birth, and address constitute identifying information under N.C. Gen. Stat. § 14-113.20(b). The *Miles* defendant argued that the trial court gave a jury instruction as to identifying information that was "contrary to existing law" by instructing the jury that "[a] person's name, date of birth, and address would be personal identifying information" within the meaning of N.C. Gen. Stat. § 14-113.20(b). *Id.* at 35. This Court disagreed, and explained:

Defendant contends that the General Assembly intended for th[e] list [in N.C. Gen. Stat. § 14-113.20(b)] to be "distinctive and exclusive" However, the statute itself disproves defendant's contention of exclusivity by usage of

the term “includes” before listing the fourteen examples. *See* [N.C. Gen. Stat.] § 14-113.20(b) (“The term ‘identifying information’ as used in this Article *includes* the following [examples]” (emphasis added)). We consider the purpose behind enacting the identity theft statute was to protect against *using* misrepresentation to achieve a benefit. Where a person presents himself to be another person and then *uses* that identification to obtain a favorable result, such actions were intended to be covered under N.C. Gen. Stat. § 14-113.20 to support identity theft convictions. Thus, we reject the notion that a conviction for identity theft is restricted to just the fourteen examples and the General Assembly intended for the list of these examples to be exclusive.

Moreover, *assuming arguendo*, that we were to view the list as exclusive, defendant’s conduct would fall under subsection (10)—“[a]ny other numbers or information that can be used to access a person’s financial resources[.]” Another person’s name, date of birth, and address are possible forms of identifying information where a defendant, like defendant in the instant case, uses the information for the purposes of escaping arrest or other legal consequences and possibly to receive hospital services for his injuries.

Id. at 34. We accordingly found no error in the challenged jury instruction on identity theft. *Id.* at 35.

We are bound by *Miles* and hold that the trial court did not err by instructing the jury that “[n]ame, date of birth, [and] driver’s license number would be personal identifying information.” *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (citations omitted) (“Where a panel of the Court of Appeals has decided the

same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”).

Defendant argues that we are not bound to follow *Miles* under *In re Civil Penalty* because *Miles* was incorrectly decided. Defendant contends that “the *Miles* Court’s decision conflicts with prior panels of this Court and decisions of our Supreme Court by failing to adhere to recognized rules of statutory construction.” We disagree. The *Miles* decision is not in conflict with prior panels of this Court nor with our North Carolina Supreme Court, and Defendant’s argument that *Miles* was incorrectly decided is misplaced before this Court. *See In re Civil Penalty*, 324 N.C. at 384, 379 S.E.2d at 37.

Because another person’s name and date of birth are possible forms of identifying information under N.C. Gen. Stat. § 14-113.20(b), the trial court’s instruction to this effect was not erroneous.

IV. Conclusion

The trial court’s jury instruction on identity theft properly explained the law regarding what constitutes identifying information under the felony identity theft statute. Accordingly, we discern no error.

NO ERROR.

Judges BRYANT and HAMPSON concur.

Report per Rule 30(e).