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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-693

Filed: 5 May 2020

Columbus County, Nos. 15 CRS 50062, 16 CRS 918

STATE OF NORTH CAROLINA

v.

JAMES ISAAC FAULK

Appeal by defendant from judgment entered 15 January 2019 by Judge Paul L. Jones in Columbus County Superior Court. Heard in the Court of Appeals 19 February 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Dylan Sugar, for the State.*

*William D. Spence for defendant.*

DIETZ, Judge.

James Isaac Faulk appeals his conviction for robbery with a dangerous weapon and his guilty plea to attaining habitual felon status. As explained below, the trial court properly denied Faulk's motion to dismiss. The State presented evidence that Faulk approached the victim while holding a large machete; made threatening remarks toward the victim's unborn child; and struck the victim in the face so hard

with his fist that it chipped the victim's tooth. This is substantial evidence of all the essential elements of robbery with a dangerous weapon.

Moreover, although the trial court's colloquy when Faulk pleaded guilty to attaining the status of a habitual felon failed to comply with several enumerated statutory requirements, our precedent requires us to apply a prejudice analysis. Faulk has not shown prejudice. Accordingly, we find no error in Faulk's conviction for robbery with a dangerous weapon and no prejudicial error in Faulk's guilty plea to attaining the status of a habitual felon and his resulting sentence.

### **Facts and Procedural History**

In 2014, Lisa Diane Stewart was driving to a family member's home. As Stewart pulled into the driveway, she noticed Defendant James Isaac Faulk standing in a field near the home. Faulk approached Stewart's car and opened the door while holding a 12-inch-long machete in his hand. Faulk told Stewart to get out of her car and to give him her phone.

Stewart complied with his demands. Once outside the car, Stewart fell to her knees and begged Faulk not to harm her because she was eight months pregnant. Faulk responded, "I don't give a damn about your baby" and punched Stewart in the mouth, cracking her front tooth. While Stewart was on the ground, Faulk ordered another passenger in Stewart's car to give him Stewart's purse. The purse contained

\$140 in cash, Stewart's medication, and her driver's license. Faulk then told Stewart to get back in her car and leave, which she did.

Stewart reported the incident to law enforcement, who charged Faulk with robbery with a dangerous weapon. Faulk's case went to trial.

Faulk timely moved to dismiss the charges for insufficiency of the evidence and the trial court denied the motion. The jury found Faulk guilty of robbery with a dangerous weapon. Faulk then pleaded guilty to attaining the status of a habitual felon. The trial court sentenced Faulk to 146 to 188 months in prison. Faulk appealed.

### **Analysis**

#### **I. Motion to dismiss for insufficiency of the evidence**

Faulk first argues that the State failed to present sufficient evidence that he committed robbery with a dangerous weapon. Specifically, Faulk argues that, although he may have possessed a machete at the time of the robbery, he did not use that weapon or make any threats to use it. We reject this argument.

On review of a motion to dismiss for insufficiency of the evidence, this Court determines "whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). Substantial evidence "is such relevant evidence as a reasonable mind

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might accept as adequate to support a conclusion.” *State v. Cody*, 135 N.C. App. 722, 727, 522 S.E.2d 777, 780 (1999).

The essential elements for robbery with a dangerous weapon are: “(1) the unlawful taking or an attempt to take personal property from the person or in the presence of another (2) by use or threatened use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened.” *State v. Hill*, 365 N.C. 273, 275, 715 S.E.2d 841, 843 (2011). Thus, to satisfy the essential elements of this offense, the State must present substantial evidence “that [D]efendant endangered or threatened the life of the victim by possession of that weapon, aside from the mere fact of the weapon’s presence.” *State v. Gibbons*, 303 N.C. 484, 490, 279 S.E.2d 574, 578 (1981).

The State presented substantial evidence of these elements. To be sure, as Faulk emphasizes, “mere possession” of a weapon is not enough. But Faulk did not merely possess the machete. He approached Stewart and robbed her while wielding that weapon in his hand. He used shockingly threatening language—responding to Stewart’s plea not to harm her unborn baby with “I don’t give a damn about your baby.” And he used physical violence, striking Stewart in the face so hard that it chipped a tooth.

In this context, the State’s evidence was sufficient to show that Faulk’s threatened use of the machete was a key part of the robbery. Without that weapon,

Stewart might have tried to flee, or the passenger in her car might have come to her aid. But Faulk used that weapon, combined with his violent threats and displays of actual violence, to instill such fear in Stewart that she was compelled to part with her property without resistance to ensure her safety and that of her unborn child. This conduct readily satisfies all the essential elements of robbery with a dangerous weapon. *State v. Norris*, 264 N.C. 470, 473, 141 S.E.2d 869, 872 (1965). Accordingly, the trial court properly denied Faulk's motion to dismiss.

## **II. Habitual felon status**

Faulk next argues that the trial court failed to engage in the required statutory colloquy under N.C. Gen. Stat. § 15A-1022 before accepting his guilty plea to attaining habitual felon status. We reject this argument because Faulk cannot show prejudice.

Whether the trial court acted contrary to a statutory mandate is a question of law which is reviewed *de novo* on appeal. *See State v. Love*, 156 N.C. App. 309, 317–18, 576 S.E.2d 709, 714 (2003). Further, it is automatically preserved for appeal despite the lack of objection at trial. *Id.* Before a judge accepts a guilty plea to attaining habitual felon status, section 15A-1022 requires the trial court to address the defendant personally and inform him of a series of enumerated consequences of the plea, such as the nature of the charge; the right not to plead guilty; and the

maximum possible sentence the trial court could impose. N.C. Gen. Stat. § 15A-1022(a).

“Nonetheless, just because the trial court failed to comply with the strict statutory requirements does not entitle defendant to have his plea vacated.” *State v. Hendricks*, 138 N.C. App. 668, 670, 531 S.E.2d 896, 898 (2000). A defendant in this situation must also show that he was prejudiced by the trial court’s failure to do so. *Id.*

In later cases, this Court has drawn a distinction between situations in which “there is no record of a valid plea of guilty, either from the trial court’s questioning the defendant in accordance with N.C. Gen. Stat. § 15A-1022 or by means of a properly executed plea transcript,” *State v. Jester*, 249 N.C. App. 101, 108, 790 S.E.2d 368, 374 (2016), and cases in which the trial court engaged in that colloquy and the defendant “simply alleges technical non-compliance with G.S. § 15A-1022, but fails to show resulting prejudice.” *Compare State v. Glover*, 156 N.C. App. 139, 146–47, 575 S.E.2d 835, 839–40 (2003), *with State v. Williams*, 133 N.C. App. 326, 329, 515 S.E.2d 80, 82 (1999). In the former, this Court vacated the guilty plea without assessing prejudice; in the latter, the Court applied a prejudice analysis. *Id.*

This case is analogous to *Williams* and similar cases involving technical noncompliance in the context of a guilty plea to attaining habitual felon status, and distinguishable from *Glover* and similar cases involving substantial or total

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noncompliance in the context of a guilty plea to an underlying criminal charge. The trial court in this case accepted Faulk's guilty plea to attaining habitual felon status after a colloquy that complied with most of the requirements of section 15A-1022. But Faulk contends that the court's colloquy omitted certain information, such as the *minimum* sentence that Faulk could receive (the trial court properly informed him of the *maximum* possible sentence); questions concerning Faulk's satisfaction with the representation of his appointed counsel; and the potential immigration consequences of this guilty plea.

Under *Hendricks*, *Williams*, and other analogous cases, we "must look to the totality of the circumstances and determine whether noncompliance with the statute either affected defendant's decision to plead or undermined the plea's validity." *Hendricks*, 138 N.C. App. at 670, 531 S.E.2d at 898. The noncompliance in this case did not affect Faulk's decision or undermine the validity of the plea. Faulk "has not argued that he would have changed his plea had the judge complied strictly with the procedural requirements, nor has he asserted that his plea was not in fact knowingly, voluntarily, and with understanding, made." *Id.* "In sum, defendant simply points out the court's non-compliance and contends that he is entitled to replead as a result." *Id.* Under controlling case law, this is insufficient to establish prejudice and we therefore reject Faulk's argument.

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**Conclusion**

We find no error in Faulk's conviction for robbery with a dangerous weapon and no prejudicial error in Faulk's guilty plea to attaining the status of a habitual felon and his resulting sentence.

NO ERROR IN PART; NO PREJUDICIAL ERROR IN PART.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).