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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-27

No. COA20-286

Filed 16 February 2021

Buncombe County, No. 15 CRS 088399

STATE OF NORTH CAROLINA

v.

MELISSA BRIDGES GADDY, Defendant.

Appeal by Defendant from judgment entered 7 February 2019 by Judge R. Gregory Horne in Buncombe County Superior Court. Heard in the Court of Appeals 27 January 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Colin Justice, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for the Defendant.

JACKSON, Judge.

¶ 1 Melissa Gaddy (“Defendant”) argues that the State’s failure to include the alleged false statements in an indictment for perjury rendered the indictment defective and deprived the trial court of subject matter jurisdiction. The State concedes this error on appeal. We agree and therefore vacate the trial court’s judgment.

I. Facts and Procedural History

¶ 2

On 27 July 2015, Defendant and her husband, Robert Gaddy (the “Gaddys”), who owned a mechanic’s shop, stopped at a gas station on their way to meet a customer. While the Gaddys were parked at a gas pump, Carly Shepherd and her boyfriend, Allen Owen, pulled into the gas station and entered the store. Carly Shepherd recognized the Gaddys because she had previously filed a small claims action against them for failing to make necessary repairs to her car.

¶ 3

After exiting the store, Mr. Owens approached the Gaddys, who had moved their car to the front of the store. While the Gaddys and Mr. Owens engaged in a verbal altercation, Ms. Shepherd watched from a distance. When Defendant saw Ms. Shepherd, she informed her husband that she knew what the altercation was about and suggested they leave. As the Gaddys attempted to drive away, Mr. Owens walked alongside them and hit their car. The Gaddys exited the car and exchanged more words with Mr. Owens. The interaction turned physical when Mr. Owen struck Mr. Gaddy and threw Defendant to the ground. Afterward, Mr. Owens returned to the driver’s seat of the vehicle he occupied with Ms. Shepherd and they left the gas station. Defendant ran after Ms. Shepherd’s car before returning to her own vehicle.

¶ 4

On 29 July 2015, following the gas station incident, Defendant appeared before a magistrate to have a warrant issued against Ms. Shepherd. The warrant alleged that Ms. Shepherd, had “unlawfully and willfully” assaulted Defendant with “a

deadly weapon, a motor vehicle, by striking [Defendant's] arm and running over [Defendant's] foot with [a] motor vehicle causing arm contusion and foot fracture."

¶ 5

Sometime after the incident, Detective William Olson of the Asheville Police Department visited the Gaddys' residence to discuss an unrelated matter with Mr. Gaddy. During the visit, Defendant informed Detective Olson about the assault at the gas station and demanded that Detective Olson review the surveillance. Upon retrieving a copy of the video surveillance, Detective Olson met with Mr. Owen, Ms. Shepherd, and the magistrate who issued the warrant against Ms. Shepherd. After reviewing the surveillance, the magistrate issued an arrest warrant for Defendant for perjury.

¶ 6

On 7 March 2016, Defendant was indicted by a Buncombe County grand jury for perjury and making a false police report. The charge of making a false police report was subsequently dismissed.

¶ 7

The matter came on for trial before the Honorable R. Gregory Horne in Buncombe County Superior Court on 5 February 2019. On 7 February 2019, following a three-day trial, the jury found Defendant guilty of perjury. Defendant was sentenced to a term of 20 to 33 months of imprisonment suspended for 30 months of supervised probation. Defendant was also ordered to serve an active term of 45 days as a condition of special probation. Defendant gave oral notice of appeal.

II. Analysis

¶ 8 “North Carolina law has long provided that ‘[t]here 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. Neville*, 108 N.C. App. 330, 332, 423 S.E.2d 496, 497 (1992) (quoting *McClure v. State*, 267 N.C. 212, 215, 148 S.E.2d 15, 17-18 (1966)). Because challenges to the validity of an indictment implicate subject matter jurisdiction, we review these issues *de novo*. *State v. Rogers*, 256 N.C. App. 328, 337, 808 S.E.2d 156, 162 (2017).

¶ 9 To be valid, “an indictment must allege every essential element of the criminal offense it purports to charge” within “the four corners of the charging instrument[,] . . . without making reference to additional factual information contained elsewhere in the record.” *State v. Courtney*, 248 N.C. 447, 451, 103 S.E.2d 861, 864 (1958); *State v. White*, 372 N.C. 248, 255, 827 S.E.2d 80, 84 (2019). The form of indictment for perjury, in particular, is prescribed in N.C. Gen. Stat. § 15-145, which provides that the indictment must “set out the statement or statements alleged to be false.” N.C. Gen. Stat. § 15-145 (2019). Thus, failure to include the alleged false statement in the indictment renders the indictment invalid.

¶ 10 Here, the indictment charging Defendant with perjury reads in pertinent part:

[Defendant] unlawfully, willfully and feloniously [] did
commit perjury upon the trial of an action in District Court
in Buncombe County wherein the State of North Carolina

was the plaintiff and Carly Marie Shepherd was the defendant, by falsely asserting on solemn affirmation statements alleged to be false, knowing the statement, which was material, to be false.

¶ 11 It is undisputed that the indictment in this case failed to allege the false statement rendered by Defendant. The indictment is therefore facially defective. *See* N.C. Gen. Stat. § 15-145 (2019). Accordingly, the trial court lacked jurisdiction over the charge, as the State rightfully concedes.

III. Conclusion

¶ 12 We vacate the judgment because the indictment charging Defendant with perjury did not include the alleged false statement, as required.

VACATED.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).