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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-415

No. COA20-502

Filed 3 August 2021

Burke County, No. 19 CRS 588-589

STATE OF NORTH CAROLINA,

v.

CHRISTOPHER GENE CRAWFORD, Defendant.

Appeal by Defendant from judgment entered 5 February 2020 by Judge Marvin P. Pope, Jr. in Burke County Superior Court. Heard in the Court of Appeals 13 April 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Mary S. Crawley, for the State.

Law Office of Sandra Payne Hagood, by Sandra Payne Hagood, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Defendant Christopher Crawford ("Defendant") appeals his convictions of willful failure to appear for a felony and attaining habitual felon status. On appeal, Defendant contends the trial court erred in denying his motion to dismiss for insufficient evidence. After careful consideration of Defendant's challenge to his

conviction in light of the record and the applicable law, we conclude Defendant is not entitled to any relief on appeal.

I. Factual and Procedural History

¶ 2 On May 13, 2019, Defendant pled guilty to larceny of a motor vehicle and possession of a stolen motor vehicle in Burke County Superior Court. The trial court continued Defendant's sentencing until June 3, 2019. Defendant was ordered to appear for sentencing at 10:00 a.m. on June 3, 2019. Specifically, the trial court instructed Defendant "[b]e back here on June 3." The trial court also noted, "sentencing will be on June 3, 2019," and "we are going to continue sentencing until June 3." Defendant acknowledged the trial court's instructions by responding, "Thank you." Defendant was to be sentenced in Burke County Superior Court before being transferred to Caldwell County to appear on charges there.

¶ 3 On the docket for the week of May 13, 2019, under Defendant's name, a Burke County assistant clerk of court noted, Defendant was "to return to court" on June 3, 2019. A judgment was entered, in which it stated, "prayer for judgment continued for sentencing until [June 3, 2019]." The conditions of the release order states, "you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order . . . ."

¶ 4 Defendant did not appear during the June 3, 2019 Criminal Session in the Burke County Superior Court. Defendant also failed to appear in Caldwell County Superior Court. Both courts asked their bailiffs to "call and fail" Defendant. The bailiffs called out Defendant's name as required and recorded that he failed to appear in court on their respective call-out lists. Both courts issued an order for Defendant's arrest and issued a bond forfeiture.

¶ 5 On June 14, 2019, Defendant was arrested. Defendant was indicted for felony failure to appear and attaining habitual felon status. On February 4, 2020, Defendant's trial for willful failure to appear commenced.

¶ 6 The State's evidence consisted of the testimony of Shawn Annas, the Burke County Sherriff's Office courtroom deputy and two Burke County assistant clerks of court, Julie French and Greta Keller. The State's witnesses testified that the Burke County Clerk's Office prepared and published superior court calendars two weeks prior to the scheduled session. The calendar dockets are published on the internet, the N.C. Courts website, and the bulletin board in the lobby of the Burke County courthouse. At the start of each superior court session, the assistant district attorney ("ADA") performs the "calendar call." During the calendar call, the ADA "will go through the entire calendar and call every defendant's name that's on the calendar for the week." If a defendant fails to appear when his name is called, the defendant's name will be recorded by the bailiff on a "call-out list." "Toward the end of the week

whenever defendants have not shown up for court, the [ADA] will inform the judge," and the judge will instruct the bailiff to call the defendant's name. The bailiff will then record the defendant's name, the date, and the bailiff's initials in a notebook.

¶ 7 At the close of the State's evidence, Defendant moved to dismiss the charges "based on the State's failure to prove the element of willfulness." The motion was denied. Defendant did not testify or present any evidence. The jury convicted Defendant of willful failure to appear. The following day, Defendant's trial for attaining habitual felon status occurred. Defendant did not testify or present evidence. After the jury was excused, Defendant moved for a mistrial. His motion was denied. The jury convicted Defendant of attaining habitual felon status. Defendant timely appealed in open court.

II. Discussion

¶ 8 In his sole argument on appeal, Defendant contends the trial court erred in denying his motion to dismiss the charge of failure to appear for a felony as "the State has not proved or shown in any way willfulness." We disagree.

¶ 9 "In making a determination as to whether a motion to dismiss for insufficiency of the evidence should be granted, the trial court must decide 'whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense.' " *State v. Davis*, 130 N.C. App. 675, 678, 505 S.E.2d 138, 141 (1998) (quoting *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d

811, 814 (1990)). "Whether evidence presented constitutes substantial evidence is a question of law[,]" reviewed *de novo*. *State v. Vause*, 328 N.C. 231, 236, 400 S.E.2d 57, 61 (1991); *see also State v. Golder*, 374 N.C. 238, 250, 839 S.E.2d 782, 790 (2020). Substantial evidence may be direct or circumstantial. *Davis*, 130 N.C. App. at 678, 505 S.E.2d at 141. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If there is substantial evidence of each element of the charged offense, the motion should be denied." *State v. Key*, 182 N.C. App. 624, 629, 643 S.E.2d 444, 448 (2007) (citations and quotation marks omitted). The evidence must be considered "in the light most favorable to the State, drawing all reasonable inferences in the State's favor." *State v. Miller*, 363 N.C. 96, 98, 678 S.E.2d 592, 594 (2009). Any discrepancies or contradictions "are properly left for the jury to resolve and do not warrant dismissal." *Davis*, 130 N.C. App. at 679, 505 S.E.2d at 141 (citation and internal quotation marks omitted).

¶ 10 Pursuant to N.C. Gen. Stat. § 15A-543, any person who willfully fails to appear before a court as required is guilty of a Class I felony when "(1) The violator was released in connection with a felony charge against him; or (2) The violator was released under the provisions of [N.C. Gen. Stat. §] 15A-536." N.C. Gen. Stat. § 15A-543 (2020). Section 15A-536(a) allows the pre-sentencing release of a criminal "defendant whose guilt has been established in the superior court." N.C. Gen. Stat. § 15A-536(a) (2020).

> Thus, to survive a motion to dismiss a charge of felonious failure to appear, the State must present substantial evidence: (1) the defendant was released on bail pursuant to Article 26 of the North Carolina General Statutes in connection with a felony charge against him or, pursuant to [S]ection 15A–536, after conviction in the superior court; (2) the defendant was required to appear before a court or judicial official; (3) the defendant did not appear as required; and (4) the defendant's failure to appear was willful.

State v. Messer, 145 N.C. App. 43, 47, 550 S.E.2d 802, 805 (2001).

¶ 11 Here, Defendant does not contest he failed to appear in both Burke County Superior Court and Caldwell County Superior Court on June 3, 2019, despite being required to do so. Nor does Defendant argue the State failed to prove he was released on bail after a conviction in superior court. Defendant only contends the State failed to meet its burden in showing he *willfully* failed to appear for sentencing.

¶ 12 " 'Willful' as used in criminal statutes means the wrongful doing of an act without justification or excuse . . . . 'Willfulness' is a state of mind which is seldom capable of direct proof, but which must be inferred from the circumstances of the particular case." *State v. Davis*, 86 N.C. App. 25, 30, 356 S.E.2d 607, 610 (1987) (citing *State v. Arnold*, 264 N.C. 348, 348, 141 S.E.2d 473, 474 (1965)); *see also State v. Salter*, 264 N.C. App. 724, 733, 826 S.E.2d 803, 809 (2019) (citation omitted); *State v. Dickens*, 215 N.C. 303, 303, 1 S.E.2d 837, 839 (1939). "The term implies the act is done knowingly and of stubborn purpose or resistance." *Salter*, 264 N.C. App. at 733,

826 S.E.2d at 809 (citing *McKillop v. Onslow Cty.*, 139 N.C. App. 53, 61-62, 532 S.E.2d 594, 600 (2000)). "Willfulness also connotes a 'bad faith disregard for authority and the law.' " *Id.* at 733-34, 826 S.E.2d at 809 (quoting *Forte v. Forte*, 65 N.C. App. 615, 616, 309 S.E.2d 729, 730 (1983)). "Willfulness is an essential element which the fact-finder must determine, often by inference." *State v. Ramos*, 363 N.C. 352, 355, 678 S.E.2d 224, 226 (2009) (citing *Arnold*, 264 N.C. at 349, 141 S.E.2d at 474).

¶ 13 Here, the State presented evidence that Defendant, who had attained the status of a habitual felon and was familiar with our State's criminal sentencing process, was represented by counsel when he pled guilty to larceny of a motor vehicle and possession of a stolen motor vehicle. Defendant was present when the trial court continued his sentencing until June 3, 2019. Defendant acknowledged he was to be present in Burke County Superior Court on June 3, 2019 after being informed in open court approximately four times that he was required to appear on that date. Defendant was present when the prosecutor discussed sentencing with the trial court. The trial court's order to continue sentencing until June 3 was written on the May 13, 2019 docket calendar, Defendant's conditions of release order, and the May 13, 2019 judgment. Defendant's name was placed on the June 3, 2019 criminal session calendar, which was published online, on the N.C. Court's Website, and hung on a bulletin board in the lobby of Burke County Superior Court two weeks prior to the court date. Defendant was docketed for sentencing in Caldwell County on June 3,

2019 and was present when the prosecutor discussed his proposed transfer from Burke County to Caldwell County for sentencing on that date.

¶ 14 A previous unpublished case from our Court held there was sufficient evidence of "willfulness" under substantially similar facts. *See State v. Griffin*, 209 N.C. App. 755, 710 S.E.2d 707, 2011 WL 721477 (2011). In *Griffin*, this Court affirmed the lower court's denial of a motion to dismiss where the defendant "was released under the terms of an appearance bond"; defendant appeared during a court session in which "the prosecutor and [defense counsel] would have discussed future court dates[]"; "[t]he case against Defendant was calendared . . . having been published one week earlier . . ."; and "the calendar . . . was published on the Internet for viewing by defendants, defense attorneys, and the general public; and was also made available in the offices of the Clerk of Superior Court, the District Attorney, and the Public Defender's office." *Id.* at 4. We find *Griffin* to be persuasive here.

¶ 15 Taken in the light most favorable to the State and drawing all reasonable inferences in favor of the State, the evidence tended to show that Defendant knew he was required to appear in court on June 3, 2019. From this, a jury could reasonably infer that his failure to appear on that date was willful. *See State v. Ramos*, 193 N.C. App. 629, 634, 668 S.E.2d 357, 361 (2008) ("Because willfulness involves a state of mind, ordinarily it must be proved, if proven at all, by circumstantial evidence, that is, by proving facts from which the fact sought to be proven may be reasonably

inferred." (internal quotation marks and citation omitted)). Here, "[t]he evidence . . . will permit but not compel the jury to find that defendant committed the offense charged intentionally and willfully." *Arnold*, 264 N.C. at 349, 141 S.E.2d at 474-75; *see also Davis*, 86 N.C. App. at 30, 356 S.E.2d at 670; *State v. Wendorf*, ___ N.C. App. ___, ___, 852 S.E.2d 898, 906-07 (2020) (holding there was competent evidence to support the trial court's finding that the defendant's failure to appear was willful where the defendant had contact with the victim service's coordinator and was subpoenaed to testify). Therefore, we hold the trial court did not err in denying Defendant's motion to dismiss the charge of willful failure to appear for a felony.

III. Conclusion

¶ 16 As there was sufficient evidence to raise an inference that Defendant's failure to appear was willful, we find no error.

NO ERROR.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).