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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-732

No. COA22-368

Filed 1 November 2022

Jones County, Nos. 16 CRS 50168, 18 CRS 522

STATE OF NORTH CAROLINA

v.

SHARIF HAKIM MOORE

Appeal by defendant from judgment entered 18 November 2021 by Judge Eula E. Reid in Jones County Superior Court. Heard in the Court of Appeals 5 October 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Adrina G. Bass, for the State.

Dysart Willis, by Drew Nelson, for defendant-appellant.

ARROWOOD, Judge.

¶ 1 Sharif Hakim Moore ("defendant") appeals and petitions this Court to review judgments entered upon his conviction for failure to notify of a change of address while registered as a sex offender, and for having attained the status of being a habitual felon. Defendant contends the trial court erred by failing to grant his motion

to dismiss for insufficient evidence. Defendant, recognizing that his notice of appeal was defective and does not convey jurisdiction to this Court, has also filed a petition for a *writ of certiorari*. For the following reasons, in our discretion we allow defendant's petition but hold the trial court did not err.

I. Background

¶ 2 On 12 February 2016, Captain Pete Danza ("Captain Danza") with the Jones County Sheriff's Office "received a fax from Virginia State Highway Patrol" notifying him that a sex offender from out of state was coming to the county and would need to register under North Carolina law. Defendant went to the Jones County Sheriff's Office on 17 February 2016, met with Captain Danza, and completed a "Duty to Register acknowledgement packet" which contained the "rules and regulations [of] the registry." Defendant initialed each paragraph.

¶ 3 The relevant portion of the document stated:

> When an offender that is required to register changes addresses, they must appear IN-PERSON and provide written notification of this address change to the sheriff in the county where they have most currently registered. This IN-PERSON notification must be made to the county sheriff within three (3) business days of the address change. The offender must also register with the new sheriff.

¶ 4 During this meeting, defendant claimed to reside at "4886 North Carolina Highway 58 in Pollocksville" and stated he was currently unemployed. In addition

to the packet, Captain Danza verbally warned defendant about "the individual [check ins][,]" and told him "wherever he registers at is where he lays his head at night[,]" or does his "daily activities like . . . shower[.]"

¶ 5 Captain Danza was familiar with the address since it was on the way to his in-laws, and he drove by the property "four or five times a week" for matters unrelated to defendant. On or around "19 February," Captain Danza went to the residence and observed "the property was not well kept up[,] [the] [g]rass was extremely high, vines [were] growing on the house, [there was] a lot of damage to the outside structure, [and] some windows were open[.]" Captain Danza described the house as "a mess[,]" without running water and possibly without electricity.

¶ 6 Captain Danza went to the residence on 3 March 2016 and was not able to make contact with defendant but left a notice on the window adjacent to the front door stating defendant was "to come into the office[.]" Defendant "didn't come in[to] the office" but did call Captain Danza. After not being able to contact defendant at the residence on 19 April 2016, Captain Danza started "official checks," conducting "multiple checks in a row where [he] videoed it."

¶ 7 On the first check, 2 May 2016, Captain Danza left a notice on the window adjacent to the front door. Captain Danza checked the residence again the next day "[a]t 5:20 p.m." and the notice was still there. Captain Danza returned to the resident on 5 May at "10:30 a.m.[,]" and 10 May at "6:13 p.m." On both occasions, Captain

Danza was unable to locate defendant. At this point, Captain Danza became "concerned that [defendant] wasn't living there."

¶ 8 The notice left on defendant's door "stayed there for months[,]" and Captain Danza testified he "[n]ever" saw anyone at the residence or lights on inside. Defendant was charged with failure to notify of a change of address while registered as a sex offender on 11 May 2016. Defendant was located on 6 August 2016 in Craven County.

¶ 9 The matter came on for trial on 15 November 2021 in Jones County Superior Court, Judge Reid presiding. During the trial, defendant testified in his own defense.

¶ 10 Defendant testified that he did not have electricity or water, but he did reside in the house and never moved. Defendant also denied providing another address to the magistrate after his arrest and telling them that he had lived at this new residence for a few weeks. Additionally, defendant stipulated that he was a sex offender required to register.

¶ 11 At the close of the State's evidence, defense counsel made a motion to dismiss, arguing that there was insufficient evidence to support the charge. Defense counsel renewed the motion to dismiss at the close of all evidence. Both motions were denied. On 18 November 2021, the jury returned a verdict of guilty and found defendant had attained the status of habitual felon. Defendant was sentenced to 96 to 128 months.

¶ 12 On 23 November 2021, defendant filed a *pro se* notice of appeal that was timely, but defective, as it did not indicate that service was directed toward counsel for the State and did not designate the court to which appeal was taken. On 2 December 2021, defense counsel submitted an additional notice of appeal, which was timely, but defective, as it did not include details regarding service. In light of these defective notices, on 31 May 2022, defendant filed a Petition for *Writ of Certiorari* ("PWC"). Defendant's PWC acknowledged these defects but urged this Court to review the case on the merits since defendant's "desire to appeal the criminal judgment . . . is apparent from the record" and "the [S]tate has not been prejudiced[.]"

¶ 13 On 9 June 2022, the State filed a response to defendant's PWC, acknowledging that "it is within this Court's discretion whether to allow [PWC]." The State did not allege that it was misled or otherwise prejudiced by defendant's defective notice to appeal.

II. Discussion

¶ 14 "The decision concerning whether to issue a *writ of certiorari* is *discretionary*, and thus, [this Court] may *choose* to grant such a writ to review some issues . . . ." *State v. Ross*, 369 N.C. 393, 400, 794 S.E.2d 289, 293 (2016) (emphasis added, citations omitted). "This Court has held, however, that an appellant's failure to designate this Court in its notice of appeal is not fatal to the appeal where the appellant's intent to appeal can be fairly inferred and the appellees are not mislead

[sic] by the appellant's mistake." *State v. Ragland*, 226 N.C. App. 547, 552-53, 739 S.E.2d 616, 620 (2013) (citations, brackets, and quotation marks omitted).

¶ 15 Furthermore, "[t]his Court has allowed for the issuance of a *writ of certiorari* despite technical defects in a notice of appeal by a *pro se* defendant in a variety of circumstances, especially where the State has not been misled by the mistake." *State v. Salter*, 264 N.C. App. 724, 729, 826 S.E.2d 803, 807 (2019) (citing *State v. Springle*, 244 N.C. App. 760, 763, 781 S.E.2d 518, 521 (2016) (acknowledging that "a defect in a notice of appeal should not result in loss of the appeal as long as the intent to appeal . . . can be fairly inferred from the notice and the appellee is not misled by the mistake.") (quotation marks omitted)). Here, defendant's intent to appeal is evident from his attempt to submit two notices of appeal. Additionally, the State did not claim it was misled by these defective notices. Thus, in our discretion, we allow defendant's PWC and proceed to address the merits of his argument.

A. Motion to Dismiss

¶ 16 On appeal, defendant's sole argument is that the trial court erred in failing to grant his motion to dismiss for lack of sufficient evidence. We disagree.

¶ 17 Our "Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). In ruling on a motion to dismiss, the trial court must "determine only whether there is substantial evidence of each essential element of the crime and that the defendant is

the perpetrator." *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (internal quotation marks and citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Smith*, 186 N.C. at 62, 650 S.E.2d at 33 (citations omitted).

¶ 18 "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192-93, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). Furthermore, any "[c]ontradictions and discrepancies are for the jury to resolve and do not warrant [dismissal]." *State v. McKinney*, 288 N.C. 113, 117, 215 S.E.2d 578, 581 (1975) (citation omitted).

¶ 19 "In order to be submitted to the jury for determination of defendant's guilt, the evidence need only give rise to a reasonable inference of guilt." *State v. Turnage*, 362 N.C. 491, 494, 666 S.E.2d 753, 755 (2008) (quotation marks and citation omitted). If the court decides that a reasonable inference of the defendant's guilt may be drawn from the circumstances, then "it is for the jury to decide whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty[.]" *State v. Thomas*, 296 N.C. 236, 244, 250 S.E.2d 204, 209 (1978) (citation and emphasis omitted).

¶ 20 "If, however, when the evidence is so considered it is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator, the motion to dismiss must be allowed." *State v. Malloy*, 309 N.C. 176, 179, 305 S.E.2d 718, 720 (1983) (citations omitted). In this case, viewing the evidence in the light most favorable to the State and giving the State the benefit of all reasonable inferences, there was sufficient evidence for a reasonable mind to draw the conclusion that each essential element of the crime was committed, and that defendant was the perpetrator.

¶ 21 Defendant was charged under N.C. Gen. Stat. § 14-208.11(a)(2). "To meet its burden under § 14-208.11(a)(2), the State must prove that: 1) the defendant is a sex offender who is required to register; and 2) that defendant failed to notify the last registering sheriff of a change of address." *State v. Holmes*, 149 N.C. App. 572, 577, 562 S.E.2d 26, 30 (2002). Here, only the second element was at issue since defendant stipulated to being a sex offender required to register. However, defendant contends the State did not meet its burden as to the second element because the State proffered insufficient evidence.

¶ 22 Here, the State offered testimony at trial that Captain Danza repeatedly visited the address defendant claimed to be residing at but was never able to make contact with him. Captain Danza attempted to check the residence at varying times of day, including in the evening, and filmed the last four attempts. Although a notice

was left for defendant to contact Captain Danza on 2 May, the notice remained in place for months, which Captain Danza observed when he drove by the residence four or five times a week for unrelated matters.

¶ 23 Furthermore, Captain Danza testified that when he left a notice for defendant on 3 March 2016, he did receive a phone call from defendant. From this testimony, it could be inferred that defendant was familiar with the notice procedure and would have contacted Captain Danza had he been at the residence to see the notice. Although defendant testified that he had not moved, the trial court correctly concluded that this discrepancy was "for the jury to resolve . . . ." *See State v. McKinney*, 288 N.C. 113, 117, 215 S.E.2d 578, 581 (1975) (citation omitted).

¶ 24 Accordingly, because a reasonable inference of defendant's guilt may be drawn from these circumstances, defendant's motion to dismiss for insufficient evidence was properly denied. Thus, the State's evidence was sufficient.

III. Conclusion

¶ 25 For the foregoing reasons, we conclude that defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).