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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-619

Filed 21 March 2023

Carteret County, No. 20 CRS 701465

STATE OF NORTH CAROLINA

v.

JUSTIN EVERETT ROSE

Appeal by Defendant from judgment entered 13 October 2021 by Judge Douglas B. Sasser in Carteret County Superior Court. Heard in the Court of Appeals 25 January 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Macari, for the State.

Stephen G. Driggers, for Defendant.

WOOD, Judge.

Justin Rose (“Defendant”) appeals from his conviction of reckless driving, in violation of N.C. Gen. Stat. § 20-140(a), arguing the trial court erred by denying his motion to dismiss. For the reasons below, we find no error in the judgment of the trial court.

I. Factual and Procedural Background

On the afternoon of 16 April 2020, an off-duty Carteret County Deputy Sheriff (“Deputy Little”) and his wife were traveling in his personal vehicle to his father-in-law’s residence in Newport. When the couple turned off Nine Foot Road onto Old Fashioned Way, Deputy Little was traveling at a speed of approximately fifteen miles per hour as he completed the turn. As he was completing his turn onto Old Fashioned Way, a pickup truck driven by Defendant, passed on the left at a high rate of speed and quickly cut in front of the couple. According to Deputy Little, he reacted by jumping on the brakes “real fast.” He also observed that the tires of Defendant’s truck started “sliding,” and as the truck turned right, the tires started sliding to the left. Defendant then “violently overcorrected” causing the two left tires to lift off the pavement.

Deputy Little then observed Defendant’s vehicle turn into a Food Lion shopping center, make a high-speed turn to the left, and speed towards the tobacco shop at the end of the Food Lion building. Defendant “made a violent high-speed turn to the right which caused the truck to completely lose traction and spin out and slide up sideways across two handicap spaces [. . .] in front of the tobacco shop.” From Deputy Little’s vantage point at 100 yards away, he observed Defendant nearly hit an elderly pedestrian pushing a grocery cart and estimated Defendant’s speed in the parking lot was thirty-five miles per hour.

After witnessing Defendant drive in this manner, Deputy Little pulled into the parking lot, stopped behind Defendant’s vehicle, and stepped out of his truck to speak

with him. Dismissive of Deputy Little's concerns about his driving, Defendant got back in his truck, drove over curbs, between handicapped parking signs, over a grassy area of the parking lot, through a ditch, circled backed into the parking lot, and again parked at the north end of the parking lot, about 50 yards from Deputy Little. During this episode, Defendant's tires spun, and his truck slid sideways.

After parking, Defendant exited his truck and, while screaming and cursing, started walking toward Deputy Little. When Deputy Little asked Defendant for his identification, Defendant provided his license while stating, "Here's my driver's license, Mr. F[-]ing Deputy Sheriff," and went into the tobacco shop. Deputy Little called 911, to report that Defendant "was acting extremely irrational, driving crazy, [and] had nearly hit a pedestrian in the parking lot." The confrontation between Deputy Little and Defendant became physical when Defendant came out of the tobacco shop and lunged at Deputy Little's wife. Deputy Little wrestled Defendant until he fell into the plate glass window of the tobacco shop and a nearby Food Lion customer, Mr. Bellomy, assisted in holding Defendant. Mr. Bellomy, while standing at the front of the Food Lion, had observed Defendant pass Deputy Little's vehicle on Old Fashioned Way, drive into the congested parking lot at a high rate of speed, heard tires squealing, and observed Defendant come to a sliding stop. Defendant broke loose from Mr. Bellomy and ran back into the tobacco shop. The police arrived at the tobacco shop shortly thereafter. When Deputy Harrell and Captain Alexander entered the shop and approached Defendant, he informed them that he had been

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driving “too fast through the parking lot due to his sandals on his feet.”

Defendant was charged by citation with communicating threats, assault, resisting a public officer, and reckless driving by wanton disregard. On 10 February 2021 in Carteret County District Court, Defendant was found guilty of communicating threats, resisting a public officer, and reckless driving by wanton disregard. Defendant filed written notice of appeal to Carteret County Superior Court. On 1 October 2021, Defendant filed a motion to dismiss which was denied. Before trial, the State dismissed the charge of resisting a public officer. Defendant’s case came on for trial on 11 October 2021.

At trial in Superior Court, the jury heard from witnesses from the State and the Defense. Mr. Macklin, a witness for the Defense, explained that he was coming out of the tobacco shop and saw Defendant driving his truck at about 30 miles per hour, describing his driving as “kind of fast.” Mr. Macklin testified he made eye contact with Defendant, and Defendant slowed down and “veered off to the right into a parking space, handicap.” Mr. Macklin explained that he heard Deputy Little and his wife comment about “how close a call that was,” to which Mr. Macklin opined, “it was kind of close, closer than I’d have liked.”

On 12 October 2021, at the close of State’s evidence and at the close of all evidence, Defendant’s trial counsel made a motion to dismiss each charge for insufficient evidence. The trial court denied the motion to dismiss. On 13 October 2021, the jury found Defendant not guilty of communicating threats but guilty of

reckless driving by wanton disregard. Defendant was sentenced to forty-five days confinement, suspended for twelve months supervised probation. Defendant filed *pro se* written notice of appeal on 25 October 2021.

II. Appellate Jurisdiction

Defendant filed a petition for writ of certiorari pursuant to Rule 21 of our Rules of Appellate Procedure to permit appellate review of the 13 October 2021 judgment. In violation of Rule 4, Defendant served a copy of his *pro se* written notice of appeal upon the Clerk of Court but not upon the State or the assistant district attorney who prosecuted his case. N.C. R. App. P. 4(c). Rule 26(c) provides that service may be made by filing with the office of the Clerk if the address of a party is unknown. N.C. R. App. P. 26(c). While Defendant's manner of service of his written notice of appeal did not satisfy the procedural requirements of Rule 4, his appeal accomplished the "functional equivalent of the requirement" of filing papers with the court. *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 157, 392 S.E.2d 422, 424 (1990) (cleaned up). The Appellate Entries entered by the State demonstrate that it was not misled by Defendant's manner of service of his notice of appeal. Thus, pursuant to Rule 21, we grant Defendant's petition for writ of certiorari in order to conduct a meaningful appellate review of his appeal. N.C. R. App. P. 21.

III. Analysis

In his sole issue on appeal, Defendant argues that the trial court erred in denying his motion to dismiss the charge of reckless driving because the State failed

to present sufficient evidence of each element of the charge. Specifically, Defendant argues the State failed to present sufficient evidence that his operation of his vehicle was done “carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.” Defendant contends that his “excessive speed and sharp turns” were not a violation of N.C. Gen. Stat. § 20-140(a), but rather, if at all, “the pertinent statute here [would be N.C. Gen. Stat. § 20-140(b)], which prohibits driving ‘without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property.’” We disagree.

We review 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 reviewing a defendant’s motion to dismiss, the question is “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. If so, the motion is properly denied.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). “[T]he 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, 451 S.E.2d 211, 223 (1994) (citation omitted).

N.C. Gen. Stat. § 20-140 defines the offense of reckless driving as follows:

(a) Any person who drives any vehicle upon a highway or any public vehicular area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

N.C. Gen. Stat. § 20-140(a)-(b). “A person may violate the reckless driving statute [N.C. Gen. Stat. § 20-140] by either one of the two courses of conduct defined in subsections (a) and (b), or in both respects.” *State v. Dupree*, 264 N.C. 463, 466, 142 S.E.2d 5, 7 (1965) (citation omitted). This statute was enacted for “the protection of persons and property and in the interest of public safety, and the preservation of human life.” *State v. Norris*, 242 N.C. 47, 53, 86 S.E.2d 916, 920 (1955). Since this section constitutes a safety statute, “[t]o be guilty of a violation of subsections (a) and (b) of [N.C. Gen. Stat. §] 20-140, one must be guilty of conduct in the operation of his automobile which evidences a disregard for the rights and safety of others.” *Dupree*, 264 N.C. at 466, 142 S.E.2d at 7.

In the instant case, the State presented evidence sufficient to show that Defendant operated his vehicle on Old Fashioned Way, a public road, and the shopping center’s parking lot, a public vehicular area. The evidence tended to show that Defendant passed Deputy Little on the turn to Old Fashioned Way, at a rate of

speed sufficient to cause Defendant's truck tires to slide and the two left-side tires to leave the pavement as he over-corrected from the turn. The State's witnesses all testified to Defendant's driving at a high rate of speed in a congested parking lot, and Deputy Little estimated that Defendant traveled thirty-five miles per hour in the area. The State's witnesses further testified to hearing Defendant's tires squealing and watching Defendant come to a sliding stop in front of the tobacco shop. Deputy Little observed Defendant almost hit an elderly gentleman in the parking lot and slide perpendicularly across two handicapped spaces to park. Defendant's witness, Mr. Macklin, further testified that as he was leaving the tobacco shop, he saw Defendant's truck moving towards him at approximately thirty miles per hour, which he described as "kind of fast." After Defendant made eye contact with Mr. Macklin and "veered off to the right into a handicap parking space," Mr. Macklin testified that "it was kind of [a] close [call], closer than I'd have liked." Thus, the State presented sufficient evidence to show that Defendant operated his vehicle in a careless and reckless manner with wanton disregard of the rights or safety of others, thereby satisfying the elements of that crime. N.C. Gen. Stat. § 20-140(a).

IV. Conclusion

We hold there was sufficient evidence from which the jury could find Defendant guilty of reckless driving by operating his vehicle in a careless and reckless manner with wanton disregard of the rights or safety of others. Accordingly, the trial court did not err in denying Defendant's motion to dismiss the reckless driving charge.

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NO ERROR.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).