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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-797

Filed 18 April 2023

Forsyth County, Nos. 18 CRS 56536, 18 CRS 720562

STATE OF NORTH CAROLINA

v.

KEDERICK DERNARD RICHARDSON

Appeal by defendant from judgments entered 9 March 2022 by Judge Stanley L. Allen in Forsyth County Superior Court. Heard in the Court of Appeals 22 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Liliana R. Lopez, for the State.

Gilda C. Rodriguez for defendant-appellant.

ARROWOOD, Judge.

Kederick Dernard Richardson (“defendant”) appeals from judgments entered upon his convictions for driving while impaired and displaying an expired vehicle registration. Defendant contends the trial court erred in denying his motion to dismiss the charge of displaying an expired vehicle registration for insufficient evidence. For the following reasons, we hold the trial court did not err.

I. Background

On 15 July 2018, at around 1:30 a.m., Trooper Chandler Byrd (“Trooper Byrd”) was traveling westbound on Interstate 40 when he noticed a vehicle that was “operating at a slow speed on the right shoulder” with its tail lights flickering and dimming, “making it hard to see.” Trooper Byrd got behind the vehicle and activated his blue lights. The vehicle stopped, and Trooper Byrd made contact with the driver, who was later identified as defendant. Defendant explained “that he had just run out of gas[,]” despite having just left a Speedway nearby. While speaking with defendant, Trooper Byrd noticed “a strong odor of alcohol coming from [defendant’s] breath[,]” and that defendant had “red, glassy eyes and heavy eyelids.”

When asked about his alcohol consumption, defendant admitted to having a beer, and Trooper Byrd asked him to exit the vehicle so he could “make sure [defendant] was okay to drive.” While defendant was exiting the vehicle, he was “uneasy on his feet[,]” having “balance issues[,]” and “stumbled stepping over his feet.” Once outside the vehicle, Trooper Byrd conducted a field sobriety test. During the horizontal gaze nystagmus test, Trooper Byrd “observed six of six possible clues” of impairment. Trooper Byrd also conducted “the lack of convergence test[,]” where he noted clues of impairment, the “walk and turn test” where he observed five out of the eight clues of impairment, and the one-legged stand, where defendant displayed two out of the four clues of impairment.

Following these tests, defendant stated to Trooper Byrd, on a scale from zero

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to ten, with zero being completely sober, he was “at a nine.” Trooper Byrd attempted to administer a preliminary breath test, and although defendant initially agreed to participate in the test, he ultimately declined to do so and became “defensive[.]” At this point, Trooper Byrd had formed the opinion that defendant “had consumed a sufficient quantity of . . . [alcohol] to both appreciably impair his physical and mental faculties and deemed him unsafe to drive.” Defendant was placed under arrest for driving while impaired, but became “irate[.]” “vulgar[.]” and resisted arrest to the point where Trooper Byrd had to call for backup.

When they got to the magistrate’s office, defendant refused to provide a breath sample and Trooper Byrd opted not to place EMS or medical personnel at risk so he could get a blood sample, as defendant was still “irate[.]” Trooper Byrd ran the tags of the vehicle and discovered the registration was expired. Defendant was cited for driving while impaired, operating a motor vehicle which displayed an expired registration plate, and operating a motor vehicle without having a current inspection.

Defendant was found guilty of all charges in district court on 6 June 2019, and timely appealed to the superior court for a *de novo* trial. Prior to trial, the State filed notice that they would be seeking one grossly aggravating factor, and defendant filed a motion to suppress the traffic stop that led to defendant’s conviction. The matter came on for trial in Forsyth County Superior Court on 8 March 2022, Judge Allen presiding. As an initial matter, the trial court heard arguments on defendant’s motion to suppress, which was ultimately denied. At trial, Trooper Byrd testified

about the traffic stop that led to defendant's arrest, and defendant did not present any evidence.

At the close of the State's evidence, defense counsel made "a motion to dismiss based on . . . insufficiency of the evidence[.]" and renewed his objection to the denial of his suppression motion. His motion to dismiss was denied. During the charge conference, the trial court dismissed the citation for the inspection violation, as there was no evidence presented on that charge.

Following the jury trial, on 9 March 2022, defendant was found guilty of driving while impaired and displaying an expired registration. Defendant was sentenced at a Level II for his driving while impaired conviction, with a six-to-twelve-month sentence. All but thirty days of his sentence was suspended for twelve months of supervised probation. Defendant was also ordered to pay a fine for his expired registration conviction. Defendant gave notice of appeal in open court following the jury verdict.

II. Discussion

Defendant's sole argument on appeal is that the trial court erred in denying his motion to dismiss the charge of displaying an expired vehicle registration for insufficient evidence. We disagree.

A. Standard of Review

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) (citation and internal quotation marks omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Smith*, 186 N.C. App. at 62, 650 S.E.2d at 33 (citation and internal quotation marks omitted). “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) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

“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) (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, internal quotation marks, and emphasis omitted). However, if the evidence “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) (citation omitted).

B. Motion to Dismiss

Here, 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.

The pertinent statute states:

It shall be unlawful for any person to commit any of the following acts:

. . . .

- (2) To display or cause or permit to be displayed or to have in possession any registration card, certificate of title or registration number plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered, or to willfully display an expired license or registration plate on a vehicle knowing the same to be expired. Violation of this subdivision is a Class 3 misdemeanor.

N.C. Gen. Stat. § 20-111(2) (2022). Although defendant argues that the registration may not have been expired under N.C. Gen. Stat. §§ 20-66(g) and 20-183.4C(a)(6), these issues were not raised or argued below, and we will not address them for the first time in this appeal. *Bethesda Rd. Partners, LLC v. Strachan*, 267 N.C. App. 1, 7, 832 S.E.2d 503, 508 (2019) (citation omitted) (“A party cannot raise on appeal

issues which were not pleaded or raised below.”), *disc. review denied*, 373 N.C. 588, 838 S.E.2d 198 (Mem) (2020).

Here, the only evidence presented by the State regarding the registration was the testimony of Trooper Byrd, who testified he ran the tags of the vehicle and discovered the status was expired. This testimony, in the light most favorable to the State, is enough to rise to a reasonable inference of guilt, such that it was proper for the issue to be submitted to the jury to decide whether defendant was guilty beyond a reasonable doubt. *Thomas*, 296 N.C. at 244, 250 S.E.2d at 209.

Furthermore, defendant’s reliance on *State v. Money*, 271 N.C. App. 140, 843 S.E.2d 257, *writ dismissed*, 374 N.C. 748, 842 S.E.2d 89 (Mem) (2020), is misplaced. There, the defendant did not have *any* tags on his vehicle, and therefore this Court determined there was not enough evidence to support the charge of expired registration and the trial court erred in denying defendant’s motion to dismiss. *Id.* at 145, 843 S.E.2d at 261. This case is distinguishable because there was testimony from Trooper Byrd that defendant had a license plate on his vehicle, which showed an expired status. Accordingly, this argument is without merit.

III. Conclusion

For the foregoing reasons, we hold defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges DILLON and COLLINS concur.

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Report per Rule 30(e).