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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-706

Filed 18 April 2023

Iredell County, Nos. 19 CRS 55365, 20 CRS 1219

STATE OF NORTH CAROLINA

v.

JAMARIO N. EDWARDS, Defendant.

Appeal by Defendant from judgment entered 29 November 2021 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 22 February 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General John R. Green, Jr., for the State.

W. Michael Spivey, for Defendant-Appellant.

CARPENTER, Judge.

Jamario N. Edwards (“Defendant”) appeals from judgment after a jury convicted him of common-law robbery, and he subsequently pleaded guilty to attaining the status of habitual felon. On appeal, Defendant argues this Court should (1) vacate his conviction of common-law robbery because the trial court erred in

admitting dog-tracking evidence, and, as a result, (2) reverse his conviction for attaining the status of habitual felon.

I. Factual and Procedural Background

On 14 October 2019 at approximately 4:00 a.m., an individual robbed the Circle K gas station at the corner of Wilson Avenue and South Main Street in Mooresville. Kendra Kiger, the cashier on duty at the time of the robbery, testified at trial as follows: a man wearing a mask and a teal-colored hoodie approached Kiger while she was outside the store on her phone. The man, whom Kiger identified as Defendant during trial, brandished a silver handgun and told Kiger to come inside. Once inside, Defendant told Kiger to “give him the money out of the register,” and Kiger complied. Kiger was only two to three feet from Defendant at the time. During the robbery, Defendant asked Kiger, “are you going to tell on me?” Kiger replied she did not know who he was. Kiger testified her initial response was a lie, and that she recognized Defendant as a regular customer who shopped at this location “all the time.”

After Defendant left the store, Kiger called the police, and the Mooresville Police Department responded. In her 911 call, Kiger stated that she thought she knew the suspect. Kiger gave a written statement to the police, which was later admitted into evidence. Kiger stated she did not know Defendant’s name but described him as a regular customer with tattoos. Kiger initially described the tattoos as star tattoos on Defendant’s left hand, which she recognized from her previous encounters with Defendant in the store. The State’s Exhibit 9 showed that Defendant

had three star-shaped tattoos on the fingers of his right hand, and one star-shaped tattoo on his left hand. Kiger further testified that she recognized Defendant by his voice, based on conversations during prior transactions. A computer aided dispatch report generated by law enforcement indicated that the suspect was a regular customer who typically drove a silver SUV, though a description of the vehicle was not included in Kiger's statement to police.

Jesse Scott, an officer and K-9 handler with the Mooresville Police Department, also testified for the State. A member of the on-duty shift called Officer Scott to assist in tracking the suspect. Within forty-two minutes, he arrived at the scene with a Belgian Malinois named "Hanzel." First, Officer Scott instructed Hanzel to lay down at the last location Defendant had been standing. Hanzel then began to track the suspect through an opening in the fence, through a trailer park, turning right onto Church Street, taking a left at a roundabout, and continuing until Officer Scott and Hanzel heard dogs barking. Hanzel lost the track at the intersection of Nesbit and Mills, specifically at 355 Nesbit Avenue.

After the track was complete, officers checked the three houses in close proximity to where Hanzel lost the scent, including 361 Nesbit Avenue, and two others which were subsequently ruled out. When police knocked on the door of 361 Nesbit Avenue, no one answered the door. Shortly thereafter, Captain Chris Jorgensen of the Mooresville Police Department developed a lead and searched Defendant's name in "Links Carolina," a database used by law enforcement. The

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database returned descriptive information on Defendant, including the star tattoos on his hands. The search results also revealed Defendant's connection to the address at 361 Nesbit Avenue and a Ms. Waddell ("Waddell") who lived there.

Between 11:00 a.m. and 12:00 p.m. on 14 October 2019, Mooresville detectives Shawn Elliot and Ryan Powers returned to 361 Nesbit Avenue and observed a silver Ford Expedition parked outside. The license plate displayed on the vehicle was registered to Waddell. While officers surveilled the home, Defendant arrived in a vehicle with Waddell. Waddell spoke to the officers outside the home, stated that her boyfriend, Defendant, "had stuff there" and gave verbal and written consent for the officers to search the premises. Officers found a silver BB pistol behind a dresser drawer in the master bedroom, and a teal hoodie between the wall and a mattress in the same room. Officers then arrested Defendant.

A grand jury indicted Defendant for robbery with a dangerous weapon and attaining the status of habitual felon. At the 29 November 2021 session of Iredell County Superior Court, the Honorable Joseph N. Crosswhite presided over Defendant's jury trial.

At trial, Officer Scott testified during voir dire to Hanzel's training, education, certification, experience, and reliability in tracking human scent. Officer Scott testified that he had traveled to Alabama with Hanzel for a six-week handler's course, which included tracking. Officer Scott also documented that he trained Hanzel in human tracking five times over a six-month period, along with personal training at

home. Hanzel performed “strongly” in training events hosted by the United Police Work Dog Association (“UPWDA”). Officer Scott further testified that (1) Hanzel displayed qualities of acuteness of scent and power of discrimination, (2) Hanzel was accustomed to and trained to pursue a human track, (3) Hanzel had the power of discrimination to distinguish human scents from other scents, and (4) Hanzel was found to be experienced and reliable in the track of human scents. Officer Scott’s records reflected that only one time in the six months prior had Hazel executed a human track, which did not lead to an identification of the suspect. After hearing evidence during voir dire, the trial court ruled the testimony admissible, noting Defendant’s concerns with the evidence “would go certainly to any weight in this case rather than the admissibility.”

At the close of the State’s evidence, the court granted Defendant’s motion to dismiss the charge of robbery with a dangerous weapon but denied the motion as to the lesser-included offense of common-law robbery. The jury convicted Defendant of common-law robbery. Defendant then pleaded guilty to attaining the status of habitual felon. Prior to this conviction, Defendant had been convicted of six other felonies. On 2 December 2021, Judge Crosswhite sentenced Defendant to a minimum of 77 months and a maximum of 105 months’ incarceration. Defendant gave oral notice of appeal on 2 December 2021.

II. Jurisdiction

This Court has jurisdiction over Defendant’s appeal pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a), (a2) (2021).

III. Issues

The issues before this Court are whether: (1) the trial court erred by admitting dog-tracking evidence, and (2) Defendant’s conviction of attaining the status of habitual felon must be reversed.

IV. Analysis

In his first substantive argument, Defendant contends Officer Scott’s voir dire testimony failed to establish the requisite elements for admitting the dog tracking evidence. After careful review, we disagree.

A. Standard of Review

As an initial note, Defendant attempts to frame his argument regarding Officer Scott’s testimony as a question of relevance—rather than admissibility of expert testimony—regarding Hanzel’s tracking activities during the search for the robbery suspect. Evidentiary issues of relevance are reviewed *de novo* on appeal. *State v. Coleman*, 254 N.C. App. 497, 502, 803 S.E.2d 820, 824 (2017). After careful review, we reject Defendant’s relevance argument because binding caselaw compels us to apply a more exacting standard.

“A trial court’s determination of an expert witness’s qualifications and admission of testimony is reviewed for abuse of discretion.” *State v. Barrett*, 266 N.C. App. 101, 102, 830 S.E.2d 696, 697 (2019) (holding no error in the trial court’s

admission of the handler's dog-tracking testimony over objection). Our Supreme Court has acknowledged the following with respect to expert testimony:

In the absence of a request by the appellant for a finding by the trial court as to the qualification of a witness as an expert, it is not essential that the record show an express finding on this matter, the finding, one way or the other, being deemed implicit in the ruling admitting or rejecting the opinion testimony of the witness In addition, [the Court] ha[s] determined that when a defendant interposed only general objections to trial testimony and never requested a finding by the trial court as to the witnesses' qualifications as experts, the recognition that the witnesses were qualified to testify as experts was implicit in the trial court's ruling admitting the opinion testimony.

State v. Godwin, 369 N.C. 604, 610, 800 S.E.2d 47, 51 (2017) (internal citation omitted). “[A] trial court may be reversed for abuse of discretion only upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision.” *State v. McGrady*, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016) (quoting *State v. Riddick*, 315 N.C. 749, 756, 340 S.E.2d 55, 59 (1986)).

B. Admissibility of the Dog-Tracking Evidence

Our Supreme Court laid out a four-part test to establish admissibility of dog-tracking evidence. It must be properly shown that the dog in question:

- (1) [is] of pure blood, and of a stock characterized by acuteness of scent and power of discrimination;
- (2) possess[es] these qualities, and have been accustomed and trained to pursue the human track;
- (3) [has] been found by experience reliable in such pursuit; and
- (4) in the particular case [was] put on the trail of the guilty party, which was pursued and followed under such

circumstances and in such way as to afford substantial assurance, or permit a reasonable inference, of identification.

State v. McLeod, 196 N.C. 542, 545–46, 146 S.E. 409, 411 (1929) (internal citations omitted). More recent cases have reduced emphasis on the requirement that the tracking dog be a pure-blood breed so long as the dog has proper training, experience, and proven ability in tracking. *State v. Green*, 76 N.C. App. 642, 645, 334 S.E.2d 263, 265 (1985).

1. Pedigree

Hanzel is a Belgian Malinois. It is not dispositive that Hanzel is not a pure-blood bloodhound because, today, our courts place greater emphasis on a dog's training and ability than its pedigree. *See id.* at 645, 334 S.E.2d at 265. The admissibility of the tracking evidence, therefore, turns on the remaining three prongs of the *McLeod* test.

2. Characteristics and Training

Officer Scott testified during voir dire to Hanzel's training, certification, and reliability in tracking human scent. Specifically, Officer Scott testified that Hanzel displays qualities of acuteness of scent and power of discrimination and has been accustomed and trained to pursue a human track.

In early 2018, Officer Scott was assigned as Hanzel's handler. Officer Scott and Hanzel initially attended a six-week handler's training course in Alabama. Hanzel and Officer Scott are certified in patrol, apprehension, tracking, and

narcotics. Hanzel is recertified in “all the patrol aspects of K-9” once a year. Officer Scott testified that he trains Hanzel in human tracking “at least two or three times a month,” completing one to three tracks during each session. Officer Scott’s voir dire testimony was sufficient to show Hanzel possessed the requisite characteristics of a tracking dog, and Hanzel has “been accustomed and trained to pursue the human track.” *See McLeod*, 196 N.C. at 545, 146 S.E. at 411.

3. Experience and Reliability in Pursuit

In the six months prior to 14 October 2019, Hanzel was only involved in one human-tracking event, involving an individual who stole a bicycle. On that occasion, Hanzel did not locate the suspect.

Officer Scott’s reports show Hanzel had been formally trained in human tracking five times in the six months prior to 14 October 2019. Officer Scott also testified, however, that he trained Hanzel in human tracking many times at home, which would not be recorded on his logs. The at-home training involves Officer Scott, using himself, a friend, or a relative, laying a track for Hanzel to locate and follow. Additionally, Hanzel demonstrated strong performances in the UPWDA’s training events. Officer Scott further testified most of Hanzel’s on-duty involvement is related to drugs, and “at least nine out of ten calls that we receive are based on drugs.”

Hanzel had been a tracking dog for less than two years at the time of the robbery in this case. Given the nature of the calls Mooresville Police Department primarily receives, Hanzel had few opportunities to engage in human tracking

outside of training sessions. Hanzel was trained both formally and informally in tracking human scent and has performed strongly in UPWDA training events. Experience and reliability can be derived from both on-duty tracks and training. A shortage of on-duty opportunities for Hanzel to track humans, therefore, does not preclude the admission of the tracking evidence in this case. Officer Scott's testimony was sufficient to satisfy this prong. *See McLeod*, 196 N.C. at 545, 146 S.E. at 411.

4. Identification

"Where the guilty party is unknown, it is sufficient if the dog is laid on the trail at a point where the circumstances tend clearly to show that the guilty party has been[.]" *State v. Irick*, 291 N.C. 480, 496, 231 S.E.2d 833, 844 (1977) (internal quotations and citation omitted). Additionally, it is not required that a dog be exposed to an article carrying a suspect's scent before tracking begins. *Id.* at 496, 231 S.E.2d at 844. Furthermore, tracking evidence may be admitted even if a track did not result in a positive identification; "[s]o long as a reasonable inference as to defendant's guilt arises on the facts, the evidence is for the jury." *Id.* at 497, 231 S.E.2d at 844.

Officer Scott testified that after Hanzel picked up a scent from the place Defendant was last seen, Hanzel tracked the scent through an opening in a nearby fence, across a trailer park, along various nearby streets, and finally to the intersection of Nesbit and Mills. At that point, Hanzel stopped tracking, distracted by dogs barking behind 355 Nesbit Avenue. When Officer Scott attempted to restart the track at the intersection, Hanzel "kind of just circled around," indicating he was

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no longer on the track. Subsequently, Officer Scott called off the track. Officer Scott then told the other officers:

I know for a fact that Hanzel is on this track. I know that we were on it until we got here and heard dogs barking. And I just wanted everybody that was around, several officers, as I said it. The suspect is in this area. We're in a group of like four houses right here. I said, he is somewhere here, I know 100 percent, just on our training, how many tracks we've done. I know he's here but I don't know which house because we're distracted by this dog. I said, I'm going to call the track here but I can tell you for a fact it's somewhere right here at this intersection.

This Court has previously held the fourth prong of the *McLeod* test—requiring circumstances which permit a reasonable inference of identification—is not met where there is no other evidence establishing that a defendant was the suspect the dog was tracking. *See State v. Lanier*, 50 N.C. App. 383, 273 S.E.2d 746 (1981) (holding there was no reasonable inference of identification where the eyewitness could not identify the defendant as one of the suspects, the defendant was located two miles from where the stolen items were found, and there was no physical evidence linking the defendant to the scene of the crime); *see also State v. Marze*, 22 N.C. App. 628, 207 S.E.2d 359 (1974) (holding there was no reasonable inference of identification where there was “no evidence whatsoever” that the persons who committed the crime were ever at the position where the dogs were released, and no physical evidence linked the defendant to the crime).

Unlike the tracks in *Lanier* and *Marze*, other corroborating evidence in this case supports the conclusion that Defendant was the suspect Hanzel was tracking on 14 October 2019. *See Lanier*, 50 N.C. App. 383, 273 S.E.2d 746; *see also Marze*, 22 N.C. App. 628, 207 S.E.2d 359. First, Kiger recognized Defendant as a regular customer with distinctive tattoos, although she did not know his name. Later that day, officers pursued a lead which connected Defendant to the address of 361 Nesbit Avenue—a house near the intersection where Hanzel’s track ended—and obtained descriptive information about Defendant from a law-enforcement database that appeared to match Kiger’s description of the suspect. While officers were surveilling the house at 361 Nesbit Avenue, Defendant arrived with Waddell, who also lived there. Officers obtained consent to search the premises and found both a teal hoodie and a silver BB pistol in the master bedroom.

The particular circumstances of the case, including that Hanzel tracked the suspect’s scent to an intersection near 361 Nesbit Avenue, Defendant was later found to reside there with his girlfriend, and a teal hoodie and silver BB pistol were found in that residence, constitute “substantial assurance” that Defendant was the suspect Hanzel was tracking. *See McLeod*, 196 N.C. at 545, 146 S.E. at 411. Although Hanzel’s track itself did not immediately lead to the identification of a suspect, a reasonable inference of Defendant’s identification arises on the facts, and therefore, the evidence is for the jury. *See Irick*, 291 N.C. at 497, 231 S.E.2d at 844.

The testimony at trial supports the trial judge's reasoned decision that all four prongs of the *McLeod* test were satisfied. *See McGrady*, 368 N.C. at 893, 787 S.E.2d at 11. As the trial court properly noted, any concerns with the dog-tracking evidence, which Defendant had a full and fair opportunity to explore on cross-examination, go to weight, not admissibility. *See State v. Walker*, 266 N.C. 269, 273, 145 S.E.2d 833, 836 (1966) ("Admissibility is for determination by the judge unassisted by the jury. Credibility and weight are for determination by the jury unassisted by the judge."). Accordingly, the trial court did not abuse its discretion in admitting the dog-tracking evidence. *See Barrett*, 266 N.C. App. at 102, 830 S.E.2d at 697; *see also McGrady*, 368 N.C. at 893, 787 S.E.2d at 11.

C. Habitual Felon Status

Next, Defendant argues that because his conviction of common-law robbery must be vacated, his conviction of attaining the status of habitual felon must be reversed. Obtaining the status of habitual felon justifies increased punishment for a principal felony but is "not a crime and cannot support, standing alone, a criminal sentence." *State v. Justice*, 219 N.C. App. 642, 646, 723 S.E.2d 798, 802 (2012) (internal quotations and citation omitted). This Court must reverse a habitual-felon conviction where "there [i]s no pending felony prosecution to which the habitual felon proceeding could attach as an ancillary proceeding." *Id.* at 646, 723 S.E.2d at 802 (alteration in original).

As previously discussed, there was no error in Defendant's conviction for common-law robbery, which is punishable as a Class G felony. *See* N.C. Gen. Stat. § 14-87.1 (2021). Defendant's habitual-felon prosecution therefore attached to the felony common-law robbery prosecution as an ancillary proceeding. *See Justice*, 219 N.C. App. at 646, 723 S.E.2d at 802. Accordingly, we reject Defendant's contention that his habitual-felon conviction must be reversed. *See id.* at 646, 723 S.E.2d at 802.

V. Conclusion

The trial court did not err in admitting the dog-tracking evidence based on Officer Scott's voir dire testimony and other corroborating evidence. As we discern no error in Defendant's common-law robbery conviction, Defendant's remaining argument as to his conviction for attaining the status of habitual felon is without merit. Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges DILLON and STADING concur.

Report per Rule 30(e).