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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-36

Filed 2 April 2024

Catawba County, Nos. 18 CRS 1848-49, 052417

STATE OF NORTH CAROLINA

v.

JARON MONTE CORNWELL, Defendant.

Appeal by Defendant from judgments entered 11 October 2021 by Judge Martin B. McGee in Catawba County Superior Court. Heard in the Court of Appeals 19 September 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Benjamin O. Zellinger, for the State.

Yoder Law PLLC, by Jason Christopher Yoder, for defendant-appellant.

MURPHY, Judge.

As we recently held in *State v. Guffey*, a sufficient indictment for a continuing criminal enterprise must enumerate the acts alleged to have constituted that continuing criminal enterprise in order to confer subject matter jurisdiction upon the trial court. Here, where Defendant's continuing criminal enterprise indictment names generally offenses in which Defendant was alleged to have engaged and the

other people involved in the continuing criminal enterprise, but it did not enumerate any specific acts, the indictment was insufficient to support subject matter jurisdiction with respect to that charge.

In all other respects, we dismiss Defendant's appeal for failure to properly notice appeal pursuant to Rule 4(a) of our Rules of Appellate Procedure.

BACKGROUND

On 11 October 2021, Defendant Jaron Monte Cornwell was convicted on charges of conspiracy to traffic in cocaine, continuing criminal enterprise ("CCE"), and possession of firearm by felon. The indictment for CCE provided as follows:

THE JURORS FOR THE STATE UPON THEIR OATH PRESENT that from on or about [1 December] 2017, through on or about [30 May] 2018, in Catawba County, [] Defendant named above unlawfully, willfully, and feloniously did engage in a continuing criminal enterprise by violating N.C.G.S. § 90-95(h)(3)(c), by trafficking in cocaine, and by violating N.C.G.S. § 90-95(a)(1) by selling and delivering cocaine. The violations were part of a continuing series of violations of Article 5 of Chapter 90 of the General Statutes, which the defendant undertook in concert with more than five other persons, including, Naeem Mungro, Gevon King, Terrence Geter, John Gaither, Devonta Beatty, Shamaine Edwards, and Robert Jenkins, with respect to whom [] [D]efendant occupied a position of organizer and a supervisory position and from which [] [D]efendant obtained substantial income and resources. This act was done in violation of N.C.G.S. § 90-95.1.

On 13 October 2021, after initially announcing that he was not appealing from the judgment, Defendant returned to open court and attempted to appeal. He now

petitions us for certiorari.

ANALYSIS

On appeal, Defendant, in addition to seeking our review via petition for writ of certiorari, argues that his indictment was fatally defective for failing to separately allege each underlying offense as elements of CCE in the indictment, that he was subject to Double Jeopardy because conspiracy is a lesser included offense of CCE, and that his counsel improperly conceded his guilt in violation of his right to counsel. However, for the reasons discussed below, Defendant has not properly appealed, and we allow his petition for writ of certiorari only in part with respect to the adequacy of his CCE indictment.

A. Appellate Jurisdiction

Under Rule 4(a) of our Rules of Appellate Procedure,

Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

(1) giving oral notice of appeal at trial, or

(2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order or within fourteen days after a ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order.

N.C. R. App. P. 4(a) (2023). Defendant, by his own concession, did not appeal “at th[e] time” of his trial, instead returning to open court two days later to enter notice of

appeal. As a delayed appeal in open court is not a recognized form of appeal under Rule 4(a), our review is dependent upon his petition for writ of certiorari.¹ We allow Defendant's petition in part and deny it in part.

B. Sufficiency of the Indictment

Defendant argues on appeal that his indictment was fatally defective for failing to separately allege each underlying offense as elements of CCE.

“Whether a trial court has subject-matter jurisdiction is a question of law, reviewed *de novo* on appeal.” *State v. Herman*, 221 N.C. App. 204, 209 (2012) (citation omitted). Under *de novo* review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court. *State v. Williams*, 362 N.C. 628, 632-33 (2008). Lack of subject matter jurisdiction may be raised by any party “at any time, even for the first time on appeal[.]” *State v. Kostick*, 233 N.C. App. 62, 72[] . . . (2014).

State v. Briggs, 257 N.C. App. 500, 501-02 (2018).

In *State v. Guffey*, we addressed precisely the argument Defendant now raises as to his CCE indictment. We held that, to be sufficient, an indictment must identify the underlying acts alleged to constitute a CCE. *State v. Guffey*, __ N.C. App. __, __ (2024). In doing so, we relied on the constitutional concerns expressed by the U.S. Supreme Court in *Richardson v. United States*, 526 U.S. 813, 818-20 (1999),

¹ After Defendant's counsel indicated Defendant was not appealing on the day of trial, the trial court specifically requested that counsel speak with Defendant about the possibility of an appeal and return on a different day to enter an appeal if desired. The State, for its part, was present both when the trial court opened the invitation of a delayed appeal to Defendant and when Defendant entered notice of appeal.

remarking that

[t]he United States Supreme Court’s expression of constitutional concern with respect to CCE in *Richardson*, while avoided for prudential reasons in the opinion proper, was well-founded. *Id.* at 820[] . . . ; *cf. Matter of Arthur*, 291 N.C. 640, 642[] . . . (1977) (“If a statute is reasonably susceptible of two constructions, one of which will raise a serious question as to its constitutionality and the other will avoid such question, it is well settled that the courts should construe the statute so as to avoid the constitutional question.”). While the State has some latitude to “define different courses of conduct, or states of mind, as [] alternative means of committing a single offense,” its ability to do so is not boundless under the Fourteenth Amendment’s Due Process Clause. *Schad v. Arizona*, 501 U.S. [624, 632 (1991)]. “The axiomatic requirement of due process that a statute may not forbid conduct in terms so vague that people of common intelligence would be relegated to differing guesses about its meaning carries the practical consequence that a defendant charged under a valid statute will be in a position to understand with some specificity the legal basis of the charge against him.” *Id.* at 632-33[] . . . (citations omitted) (citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453[] . . . (1939)). For this reason, “no person may be punished criminally save upon proof of some *specific* illegal conduct.” *Id.* at 633[] . . . (emphasis added).

Here, the specificity concerns raised by the United States Supreme Court in *Richardson* are fully present in the indictment. The indictment does not allege that the enterprise engaged in any specific conduct, only defining the CCE as “a continuing series of violations of Article 5 of Chapter 90 of the General Statutes” and generally naming the participants and their positions in the trafficking scheme’s hierarchy. A juror would have no way of knowing how many criminal acts were committed within the organization or how Defendant’s acts advanced them; while the indictment specifies that Defendant aided and abetted the CCE “by trafficking in methamphetamine[,]” it says nothing of why the enterprise with which Defendant

dealt constituted a CCE. Moreover, if such an indictment were sufficient as to the establishment of a CCE, a future indictment could permissibly invite little to no agreement from individual jurors as to in which acts a defendant actually participated.

While *Richardson* is not a directly binding authority as to the interpretation of North Carolina's statute, the command of the Due Process Clause is; and we, like the United States Supreme Court, will not construe a statute so as to jeopardize that statute's constitutionality. *Richardson*, 526 U.S. at 820[] . . . ; *Matter of Arthur*, 291 N.C. at 642[] We therefore hold that each underlying act alleged under N.C.G.S. § 90-95.1 constitutes an essential element of the offense. Moreover, as "an indictment . . . must allege all the essential elements of the offense[.]" *State v. Rankin*, 371 N.C. 885, 887[] . . . (2018) (marks and citations omitted), we further hold that a valid indictment under N.C.G.S. § 90-95.1 requires the state to specifically enumerate the acts alleged.

Defendant's charge of aiding and abetting a CCE was therefore fatally defective, and we vacate the judgment on that charge.

Guffey, __ N.C. App. at __.

Here, the same issues that existed with the CCE indictment in *Guffey* are present. While the indictment specifies that "Defendant . . . unlawfully, willfully, and feloniously did engage in a continuing criminal enterprise by violating N.C.G.S. § 90-95(h)(3)(c), by trafficking in cocaine, and by violating N.C.G.S. § 90-95(a)(1) by selling and delivering cocaine" and names the participants of the alleged enterprise, "[a] juror would have no way of knowing how many criminal acts were committed within the organization or how Defendant's acts advanced them[.]" *Guffey*, __ N.C. App. at

__. The indictment was therefore insufficient to confer subject matter jurisdiction over the trial court, and we must vacate the judgment with respect to that charge. *Id.* at __.

CONCLUSION

Defendant's indictment with respect to CCE was insufficient to confer subject matter jurisdiction upon the trial court, and we therefore vacate that judgment. The rest of Defendant's appeal is dismissed.

VACATED IN PART; APPEAL DISMISSED IN PART.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).