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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-800

Filed 7 May 2024

Wake County, Nos. 21 CRS 210926–27

STATE OF NORTH CAROLINA

v.

MUHAMMAD ARSLAN AFZAL, Defendant.

Appeal by Defendant from judgment entered 30 November 2022 by Judge Rebecca W. Holt in Wake County Superior Court. Heard in the Court of Appeals 6 March 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Lisa T. Pakela, for the State.

W. Michael Spivey, for Defendant-Appellant.

CARPENTER, Judge.

Muhammad Arslan Afzal (“Defendant”) appeals from judgment after a jury convicted him of felonious restraint and indecent exposure. On appeal, Defendant argues the trial court lacked subject-matter jurisdiction over his felonious-restraint charge. After careful review, we agree with Defendant. We therefore vacate Defendant’s felonious-restraint conviction and remand for resentencing concerning

his indecent-exposure conviction.

I. Factual & Procedural Background

On 24 August 2021, a Wake County grand jury indicted Defendant for, among other things, first-degree kidnapping. Concerning Defendant's kidnapping charge, the indictment alleged:

that on or about May 9, 2021, in Wake County, the defendant named above unlawfully, willfully, and feloniously did confine or restrain or remove from one place to another, L.P.A. (DOB: 03/07/1998), a person who had attained the age of 16 years or more, without her consent, for the purpose of facilitating the commission of a felony or terrorizing her. The defendant also did not release her in a safe place. This act was done in violation of [N.C. Gen. Stat.] §14-39.

On 8 November 2022, the State began trying Defendant in Wake County Superior Court. At the close of evidence, the trial court instructed the jury on, among other crimes, felonious restraint, as a lesser included offense of first-degree kidnapping. On 30 November 2022, the jury found Defendant guilty of felonious restraint and indecent exposure. The trial court sentenced Defendant to a minimum of fourteen and a maximum of twenty-six months of imprisonment. Defendant gave oral notice of appeal in open court.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Issue

The issue on appeal is whether the trial court lacked subject-matter

jurisdiction over Defendant's felonious-restraint charge due to a deficient indictment.

IV. Analysis

On appeal, Defendant argues that his indictment cannot support a felonious-restraint charge because the indictment fails to allege an essential element of felonious restraint. Therefore, the trial court lacked subject-matter jurisdiction over his felonious-restraint charge, so we must vacate his felonious-restraint conviction. We agree.

Subject-matter jurisdiction may be challenged at any time. *See State v. Harwood*, 243 N.C. App. 425, 427–28, 777 S.E.2d 116, 118 (2015). North Carolina courts lack subject-matter jurisdiction over invalid indictments. *State v. Lyons*, 268 N.C. App. 603, 607, 836 S.E.2d 917, 921 (2019). Thus, the validity of an indictment may be challenged for the first time on appeal. *State v. Sturdivant*, 304 N.C. 293, 308, 283 S.E.2d 719, 729 (1981). Accordingly, despite not challenging the indictment at trial, Defendant can challenge the indictment on appeal. *See id.* at 308, 283 S.E.2d at 729.

We review questions of subject-matter jurisdiction de novo. *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). Under a de novo review, this Court “considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen, Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

“[W]hen a defendant is indicted for a criminal offense, he may be convicted of the charged offense or a lesser included offense [only] when the greater offense which is charged in the bill of indictment contains all of the essential elements of the lesser.” *State v. Wilson*, 128 N.C. App. 688, 692, 497 S.E.2d 416, 419–20 (1998) (second alteration in original) (quoting *State v. Hunter*, 299 N.C. 29, 38, 261 S.E.2d 189, 195 (1980)).

“Felonious restraint, a lesser included offense of kidnap[ing], requires proof that the victim was transported in a motor vehicle or other conveyance.” *Id.* at 689–90, 497 S.E.2d at 418. In *Wilson*, the jury convicted the defendant “of felonious restraint, which was submitted to the jury as a lesser included offense under the kidnap[ing] indictment.” *Id.* at 690, 497 S.E.2d at 418. The challenged kidnapping indictment in *Wilson* alleged that the defendant:

kidnap[ped the victim], a person who had attained the age of 16 years of age, by unlawfully confining and removing her *from one place to another*, without her consent and for the purpose of holding her hostage and terrorizing her[,] and the defendant did not release [the victim] in a safe place.

Id. at 692–93, 497 S.E.2d at 420.

The indictment did not allege “transportation by motor vehicle or other conveyance.” *Id.* at 692–93, 497 S.E.2d at 420. Transportation by motor vehicle or other conveyance, however, “is an essential element of the crime of felonious restraint that must be alleged by the State in a bill of indictment in order to properly indict a

defendant for that crime.” *Id.* at 694, 497 S.E.2d at 421. Thus, we held the kidnapping indictment was “insufficient to support a charge of felonious restraint, and that the trial court, therefore, erred in submitting that charge to the jury as a possible verdict.” *Id.* at 696, 497 S.E.2d at 422.

So too here. The jury convicted Defendant of felonious restraint, but his indictment failed to allege transportation by motor vehicle or other conveyance. Therefore, we must vacate Defendant’s felonious-restraint conviction because Defendant’s kidnapping indictment was “insufficient to support a charge of felonious restraint.” *See id.* at 696, 497 S.E.2d at 422; *In re Civ. Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”).

V. Conclusion

We conclude the trial court lacked subject-matter jurisdiction over Defendant’s felonious-restraint charge because the indictment lacked an essential element of the crime. Accordingly, we vacate Defendant’s felonious-restraint conviction and remand for resentencing concerning his indecent-exposure conviction.

VACATED in part and REMANDED.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).