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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-250

Filed 5 November 2024

Cleveland County, No. 17 CRS 56425

STATE OF NORTH CAROLINA

v.

RYAN SCOTT IVEY

Appeal by Defendant from judgment entered 21 August 2023 by Judge Justin N. Davis in Cleveland County Superior Court. Heard in the Court of Appeals 25 September 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Phillip H. Liles, for the State.

Devereuz & Banzhoff, PLLC, by Andrew B. Banzhoff, for defendant-appellant.

MURPHY, Judge.

Defendant Ryan Scott Ivey appeals judgment of conviction for impaired driving entered against him in the trial court on 21 August 2023. Defendant challenges a pretrial order denying his motion to suppress. Because the pretrial order was entered outside of the session and the term of court during which the motion was heard, we vacate the judgment and remand the matter for a rehearing of the motion to suppress.

BACKGROUND

Defendant was arrested on the charge of impaired driving at the scene of a motor vehicle accident involving multiple vehicles on U.S. Highway 74 near Beaver Creek Church Road in Cleveland County on 8 December 2017. The matter was heard in the district court. Defendant was convicted of impaired driving and sentenced to a level one punishment of twenty-four months' imprisonment. The sentence was suspended, and Defendant was placed on supervised probation for a twenty-four-month term. As special conditions of probation, Defendant was to spend thirty days in an inpatient treatment facility, surrender his driver's license, and abstain from alcohol consumption for sixty days. Defendant appealed the judgment to the superior court (hereinafter, "trial court").

Defendant filed a motion to suppress the evidence seized during his arrest on 8 April 2019. The trial court heard the motion on 26 May 2022. No ruling was made following the hearing; the trial court instead elected to take the matter under advisement. On 26 September 2022, the trial court rendered its ruling in open court denying Defendant's motion to suppress and directed the State to draft a written order. The order was entered on 2 February 2023.

The trial court conducted a bench trial on Defendant's case on 21 August 2023. The trial court found that Defendant's alcohol concentration was 0.15 or greater and entered judgment against Defendant for impaired driving. Defendant was sentenced to a level one punishment and imprisonment for twenty-four months. The term of

incarceration was suspended, and Defendant was placed on supervised probation for twelve months. As special conditions of probation, Defendant was ordered to serve thirty days in an inpatient treatment facility and to surrender his driver's license. Defendant appealed.

ANALYSIS

Defendant argues on appeal that the pretrial order denying his motion to suppress is null and void, that the trial court erred in denying his motion to suppress, and that the trial court erred in admitting the results of his alcosensor test.

Defendant first argues that the pretrial order denying his motion to suppress is null and void because the motion was heard on 26 May 2022, and the order was entered out of session and out of term on 2 February 2023. We agree.

“[A]n order of the superior court, in a criminal case, must be entered during the term, during the session, in the county and in the judicial district where the hearing was held.” *State v. Trent*, 359 N.C. 583, 585 (2005) (quoting *State v. Boone*, 310 N.C. 284, 287 (1984)). However, parties may consent to the entry of an order out of session and out of term. *See State v. Sauls*, 299 N.C. 319, 325 (1980). “Absent consent of the parties, an order entered in violation of these requirements is null and void and without legal effect.” *Trent*, 359 N.C. at 585 (citing *Boone*, 310 N.C. at 287); *but see State v. Palmer*, 334 N.C. 104, 108-09 (1993) (holding written orders entered out of term not invalid where the trial court rendered its rulings in open court during the term). When given, the consent of the parties “‘should always appear certain’ to

avoid ‘misapprehension, distrust and confusion.’” *Trent*, 359 N.C. at 586 (quoting *Bynum v. Powe*, 97 N.C. 374, 378 (1887)).

“The use of ‘term’ refers to the typical six-month assignment of a superior court judge, whereas ‘session’ refers to the typical one-week assignment within a term.” *State v. Johnson*, 238 N.C. App. 500, 503 (2014) (citing *Capital Outdoor Advertising v. City of Raleigh*, 337 N.C. 150, 154 n.1 (1994)). The trial court heard Defendant’s motion to suppress on 26 May 2022 during the 23 May 2022 session of the spring term. At the conclusion of the hearing, the trial court engaged in the following exchange with defense counsel regarding consent to enter an order on the motion out of session:

[THE COURT:] I’m going to take this under advisement. I will think about it and enter a decision. I want to read some cases I understand that I need to do it during this session of court.

[DEFENSE COUNSEL]: I think the session extends to next week. It’s always been my policy to consent to the extension of session.

THE COURT: I don’t think you can consent to an order being entered out of term, out of session. I [will] enter the order in open court. Unlike civil cases, I don’t think you can grant me that authority. So I am going to think about it for a while and I’ll let you know when I reach my decision.

The trial court orally rendered its ruling to deny the motion to suppress in open court on 26 September 2022 and entered the written order on 2 February 2023. Both the rendering of the trial court’s order and the entry of the written order were outside

of the session and spring term during which the motion to suppress was heard. While defense counsel indicated a willingness to consent to entry of the trial court's order out of session, there was no consent to entry of an order out of term. Moreover, the court did not acknowledge the willingness to consent in a manner to avoid "misapprehension, distrust and confusion." *Trent*, 359 N.C. at 586.

Though Defendant does not contend that he was prejudiced by the entry of the trial court's order out of term, our appellate courts have regarded the entry of an order out of session and out of term, absent the consent of the parties, as "creat[ing] an unreasonable delay in the administration of justice." *Id.* at 588. Accordingly, we hold that the order denying Defendant's motion to suppress entered out of term and out of session on 2 February 2023 is null and void. We vacate the trial court's judgment against Defendant for impaired driving entered on 21 August 2023. Defendant's remaining arguments are moot. We remand this matter to the trial court for a rehearing on Defendant's motion to suppress.

VACATED AND REMANDED.

Chief Judge DILLON and Judge THOMPSON concur.

Report per Rule 30(e).