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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-92

Filed 19 February 2025

Buncombe County, Nos. 21 CRS 90691, 21 CRS 90695

STATE OF NORTH CAROLINA

v.

MATILDA RAE BLISS and MELISSA ANN COIT, Defendants.

Appeal by Defendants from judgment entered 16 June 2023 by Judge J. Thomas Davis in Buncombe County Superior Court. Heard in the Court of Appeals 11 September 2024.

Attorney General Josh Stein, by Special Deputy Attorney General Matthew Tulchin, for the State.

First Amendment Clinic at Duke University School of Law, by Sarah H. Ludington, C. Amanda Martin, and Kyle H. Compton; Law Offices of Ben Scales, by Ben C. Scales Jr.; and Alan Stuart Graf, for defendants-appellants.

Elizabeth Jasmund Soja, for Reporters Committee for Freedom of the Press, amicus curiae.

CARPENTER, Judge.

Matilda Rae Bliss and Melissa Ann Coit (collectively, “Defendants”) appeal from judgment entered in Buncombe County Superior Court after a jury found them

each guilty of second-degree trespass in violation of N.C. Gen. Stat. § 14-159.13 (2023), a Class 3 misdemeanor. Due to deficiencies in the record, we are unable to discern on appeal whether the superior court had jurisdiction. Accordingly, we dismiss Defendants' appeal.

I. Factual & Procedural Background

According to the record and the transcripts from the superior court proceedings, on 25 December 2021, at approximately 10:30 p.m., officers arrested Defendants for second-degree trespass for remaining in Aston Park (the "Park"), a public park in Asheville, North Carolina, past curfew. The Park is owned and operated by the city of Asheville and is governed by the Asheville City Code (the "City Code"). According to the City Code, parkgoers are required to leave the Park by 10:00 p.m. See Asheville, N.C., Code § 12-41 ("All public parks . . . shall be closed to the general public between the hours of 10:00 p.m. and 6:00 a.m."). Defendants, who are both journalists for *The Asheville Blade*, were in the Park on 25 December 2021 capturing images and footage of a multi-day protest that began on 19 December 2021.

On 30 May 2023, Defendants filed a pre-trial motion to dismiss the charges of second-degree trespass, arguing their rights under the First and Fourteenth Amendments to the United States Constitution and North Carolina Constitution were violated. On 6 June 2023, the Honorable Alan Thornburg heard arguments in Buncombe County Superior Court on Defendants' motion to dismiss. The trial court denied Defendants' motion and concluded that the challenged ordinance was facially

constitutional.

On 12 June 2023, Defendants' case proceeded to trial with the Honorable Thomas Davis presiding. At the close of the State's evidence, Defendants moved to dismiss, arguing the City Code ordinance was unconstitutional as applied to them. The trial court denied the motion. At the close of evidence, Defendants renewed their motion. Again, the trial court denied Defendants' motion to dismiss.

On 15 June 2023, the jury convicted Defendants of second-degree trespass, and the trial court entered a judgment requiring Defendants to pay a \$100 fine plus court costs. On 16 June 2023, Defendants gave notice of appeal in open court.

II. Analysis

Although the record provides, in the "Statement of Organization of the Trial Court," that Defendants were first tried and convicted in district court before being convicted of second-degree trespass in superior court, there is no supporting documentation in the record. Indeed, the record fails to establish that Defendants were tried in district court on the charges of second-degree trespass giving rise to derivative jurisdiction in superior court. Accordingly, because we are unable to verify jurisdiction, we dismiss Defendants' appeal.

"It is well-established that the issue of a court's jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*." *State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008). Indeed, "[a] party may not waive jurisdiction, and a court has inherent power to inquire into, and determine,

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whether it has jurisdiction and to dismiss an action *ex mero motu* when subject matter jurisdiction is lacking.” *Reece v. Forga*, 138 N.C. App. 703, 704, 531 S.E.2d 881, 882 (2000) (citations omitted). “Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal.” *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). “Under a *de novo* review, the 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) (citation and quotation marks omitted).

With a few exceptions, district courts have exclusive jurisdiction over all misdemeanors. *State v. Felmet*, 302 N.C. 173, 174, 273 S.E.2d 708, 710 (1981); *see* N.C. Gen. Stat. § 7A-272 (2023). “The jurisdiction of the superior court for the trial of a misdemeanor, unless a circumstance enumerated in [N.C. Gen. Stat] § 7A-271(a) arises, is derivative and arises only upon appeal from a conviction of the misdemeanor in district court.” *Id.* at 174–75, 273 S.E.2d at 710. Indeed, absent a Presentment by the Grand Jury, which is not included in the record, the superior court cannot exercise jurisdiction over a misdemeanor “unless [the defendant] is first tried and convicted for such misdemeanor in the inferior court and appeals to the superior court from the sentence pronounced against him by the inferior court on his conviction for such misdemeanor.” *State v. Hall*, 240 N.C. 109, 110, 81 S.E.2d 189, 191 (1954).

Under Rule 9(b)(3) of the North Carolina Rules of Appellate Procedure, the record on appeal must include certain “documents and information.” *See Felmet*, 302

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N.C. at 175–76, 273 S.E.2d at 710–711. An appellant is required to include, among other things, “[a copy] . . . of the judgment, order or other determination from which appeal is taken,” N.C. R. App. P. 9(a)(3)(g), as well as “copies of all other documents filed and statements of all other proceedings had in the trial court which are necessary to an understanding of all the issues presented on appeal unless they appear in another component of the record on appeal,” N.C. R. App. P. 9(a)(3)(i). These requirements “permit routine confirmation by the appellate court of the subject matter jurisdiction or ‘competence’ of the particular trial judge and tribunal” *Felmet*, 302 N.C. at 175, 273 S.E.2d at 710. We emphasize that it is the defendant’s responsibility “to see that the record on appeal [is] properly compiled.” *Id.* at 176, 273 S.E.2d at 711.

Specifically, for a criminal case originating in district court, the record on appeal must include the judgment in district court and the entries showing an appeal of that judgment to superior court. *Id.* at 176, 273 S.E.2d at 711; *see* N.C. R. App. P. 9(a)(3). If “the record is silent and the appellate court is unable to determine whether the court below had jurisdiction, the appeal should be dismissed.” *Felmet*, 302 N.C. at 176, 273 S.E.2d at 711.

Here, the record indicates that on 12 June 2023, Defendants were tried and convicted for second-degree trespass in violation of section 14-159.13, a Class 3 misdemeanor, in Buncombe County Superior Court. The record does not, however, demonstrate how Defendants’ case reached superior court, as there are no records of

district court proceedings. Specifically, the record lacks: a charging instrument, the district court judgment, and the notice of appeal to superior court.

The “Statement of Organization of the Trial Court,” provided on the first page of the record, states that Defendants were “initially tried and convicted at bench trial before the Honorable Calvin Hill at the 19 April 2023 session of Criminal District Court of Buncombe County” and that they “appealed for a trial *de novo* in Superior Court.” But without the necessary records and information from the district court proceedings, we are unable to determine whether the superior court had jurisdiction. Stated differently, we cannot rely on the “Statement of Organization of the Trial Court” alone, to confirm that the superior court had jurisdiction over this case. Because the record before us does not include a charging instrument, a district court judgment, or a notice of appeal to superior court, it “fails to disclose derivative jurisdiction in the superior court through appeal of a district court conviction.” *Felmet*, 302 N.C. at 175, 273 S.E.2d at 710.

In sum, the record is silent on how this case reached superior court and also fails to disclose whether this case was properly before the superior court. Accordingly, we are unable to discern whether the superior court had jurisdiction, and we dismiss Defendants’ appeal. *See id.* at 176, 273 S.E.2d at 711.

III. Conclusion

The cold record before us lacks the necessary information for us to discern whether the superior court had jurisdiction. Accordingly, we dismiss Defendants’

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appeal.

DISMISSED.

Judges FLOOD and STADING concur.

Report per Rule 30(e).