IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-168

Filed: 15 August 2017

Mecklenburg County, Nos. 12 CRS 246706-07, 12 IFS 13038

STATE OF NORTH CAROLINA

v.

KATHRYN ELIZABETH ROLLAND

Appeal by defendant from judgments entered 27 September 2016 by Judge Carla Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Laura M. Cobb for defendant-appellant.

TYSON, Judge.

Kathryn Elizabeth Rolland ("Defendant") appeals from judgments entered upon being found guilty by the court of driving while impaired ("DWI"), driving while license revoked ("DWLR"), and a rear lamp violation. We dismiss the appeal.

I. Factual Background

At around 12:30 a.m. on 27 October 2012, Huntersville Police Department Officer Nicolas Bruining observed Defendant's moving vehicle with a non-functioning taillight. Officer Bruining activated his blue lights and siren and initiated a traffic stop. Defendant made a "wide turn" into a parking lot and stopped her vehicle. Officer Bruining approached Defendant's vehicle and requested her to produce a driver's license and vehicle registration. Defendant presented Officer Bruining with a limited driving privilege and an I.D. Officer Bruining observed Defendant's eyes were red and a strong odor of alcohol emanating from Defendant's vehicle.

Officer Bruining asked Defendant to step out of her vehicle. Upon doing so, Officer Bruining administered a number of field sobriety tests. Defendant performed poorly on most of the tests. She also admitted she had been drinking. Officer Bruining placed Defendant under arrest for DWI and DWLR and also issued a citation for the broken rear taillight.

Officer Bruining transported Defendant to Mecklenburg County Jail North. At 1:26 a.m., he advised Defendant of her rights with respect to N.C. Gen. Stat. § 20-16.2 (2015). Defendant called her mother and asked her to come to the jail. After 30 minutes, Defendant's mother had not arrived, and Officer Bruining administered a breath test. Defendant's breath registered a blood alcohol concentration of 0.11 grams per 210 liters of breath at 2:08 a.m.

At approximately 4:43 a.m., Defendant was brought before a magistrate, who found probable cause to charge her with an implied consent offense. Defendant's secured bond was set at $3,500. Defendant called her mother and informed her bail had been set. Defendant's mother arrived at approximately 5:45 a.m.

Defendant and her mother made multiple attempts to post Defendant's bond using a credit card and cash, but they were unable to successfully do so for several hours. The money was transferred and became available to Defendant around 9:16 a.m. Defendant obtained a release order from the magistrate at 9:40 a.m. and was released at 10:39 a.m.

According to Defendant, she was found guilty of all charged offenses in Mecklenburg County District Court on 8 January 2014. Defendant then purportedly appealed to superior court for a trial *de novo*. Prior to trial, Defendant filed a motion to dismiss the DWI charge based on *State v. Knoll*, 322 N.C. 535, 536-37, 369 S.E.2d 558, 559 (1988) (holding a DWI charge is subject to dismissal for magistrate's failure to "inform [the accused] of the charges against him, of his right to communicate with counsel and friends, and of the general circumstances under which he may secure his release."). After a hearing, the trial court denied the motion on 9 November 2015.

Defendant's case was called for trial on 27 September 2016. Defendant waived her right to a trial by jury. After all evidence was presented, the trial court found

Defendant guilty of all charges. The court sentenced Defendant to two suspended sentences and placed her on supervised probation for 18 months. Defendant appeals.

II. Jurisdiction

As an initial matter, we must address whether this Court has jurisdiction over Defendant's appeal. Defendant originally filed the record on appeal in this case on 14 February 2017. On 14 March 2017, the State filed a motion to dismiss the appeal for Defendant's failure to include the superior court's judgments. In response, Defendant moved to amend the record to include her waiver of jury trial, her superior court judgments, and her prior record level worksheet. On 19 April 2017, this Court allowed the motion to amend and denied the State's motion to dismiss.

The State argues to dismiss because the record on appeal does not include any judgments entered upon Defendant's convictions in district court. "[I]t is defendant's burden to produce a record establishing the jurisdiction of the court from which appeal is taken, and his failure to do so subjects [the] appeal to dismissal." *State v. Phillips*, 149 N.C. App. 310, 313-14, 560 S.E.2d 852, 855, *appeal dismissed*, 355 N.C. 499, 564 S.E.2d 230 (2002).

"The superior court has no jurisdiction to try a defendant on a warrant for a misdemeanor charge unless [s]he is first tried, convicted and sentenced in district court and then appeals that judgment for a trial *de novo* in superior court." *State v. Felmet*, 302 N.C. 173, 175, 273 S.E.2d 708, 710 (1981). "When the record is silent and

the appellate court is unable to determine whether the court below had jurisdiction, the appeal should be dismissed." *Id.* at 176, 273 S.E.2d at 711; *see also Phillips*, 149 N.C. App. at 313, 560 S.E.2d at 855 (holding the appeal was subject to dismissal as defendant had "failed to include in the record on appeal a copy of the district court judgment establishing the derivative jurisdiction of the superior court").

III. Analysis

In this case, the record on appeal is silent on whether Defendant was convicted in district court or whether she properly appealed her purported district court convictions to the superior court. In her "Statement of Organization of Trial Tribunal," Defendant asserts she "was found guilty on all charges on 08 January 2014 in Mecklenburg County District Court and gave timely notice of appeal to Mecklenburg County Superior Court." However, the "Organization of Trial Tribunal" is "merely a statement in the record for informational purposes and is not binding on the parties." *State v. Brown*, 142 N.C. App. 491, 493, 543 S.E.2d 192, 194 (2001).

In her motion seeking to amend the record on appeal, Defendant asserted "all judgments in Defendant-Appellant's cases were missing from her court files, including those from District Court[.]" Nevertheless, the motion to amend only sought to add Defendant's superior court judgments to the record on appeal. It cannot be determined from Defendant's motion whether the district court judgments, if they existed, were ever located. No documents in the record on appeal support Defendant's

statement in her original motion to amend. Defendant has not filed any further motions or petitions seeking appellate review.

IV. Conclusion

Despite Defendant having already been allowed by this Court to amend the record on appeal over the State's motion to dismiss, this Court still is unable determine from the record before us whether the superior court had jurisdiction when it entered Defendant's criminal judgments. Under binding precedent set forth in *Felmet* and *Phillips*, Defendant's appeal must be dismissed. *See Felmet*, 302 N.C. at 176, 273 S.E.2d at 711; *Phillips*, 149 N.C. App. at 313-14, 560 S.E.2d at 855. *It is so ordered*.

DISMISSED.

Judges CALABRIA and MURPHY concur.

Report per Rule 30(e).