IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-591

Filed: 15 December 2020

Wake County, Nos. 17 CRS 215065-66, 218038-39

STATE OF NORTH CAROLINA

v.

SIDDHANTH SHARMA

Appeal by defendant from judgments entered 20 December 2018 by Judge Carl R. Fox in Wake County Superior Court. Heard in the Court of Appeals 7 October 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Douglas W. Corkhill, for the State.

Siddhanth Sharma, pro se.

ZACHARY, Judge.

Defendant Siddhanth Sharma appeals the denial of his motion to suppress, as well as his convictions for multiple firearm-related offenses. For the following reasons, we conclude that he received a fair trial, free from prejudicial error.

Background

On 5 August 2017, Lieutenant Jerry Mumford of the North Carolina Department of Agriculture and Consumer Services was working at the Raleigh

Fairgrounds when he responded to a report that a firearm had been stolen from a vendor at the Dixie Gun & Knife Show. The vendor showed Lieutenant Mumford where the paracord securing a gun for sale had been cut, and the gun removed. After speaking with the vendor, Lieutenant Mumford viewed surveillance footage in which "it appeared that something was being removed from the table" by Defendant. Lieutenant Mumford gave Defendant's description to other officers in the area.

Lieutenant Mumford testified at trial that after tracking down Defendant, he asked Defendant how he arrived at the Fairgrounds. According to Lieutenant Mumford, Defendant "pointed" to a nearby vehicle and twice consented to a search of the vehicle. Lieutenant Mumford first conducted a safety frisk of Defendant and discovered in his pocket a gun that had been reported stolen from a show vendor, together with a pair of wire cutters. Defendant was immediately handcuffed. Officers then searched Defendant's vehicle. Lieutenant Mumford saw a cut wire tie on the ground to the rear of the vehicle, and in the search of Defendant's vehicle found more cut wire ties as well as two pistols in the trunk that were reported stolen from other show vendors. Defendant was arrested and bonded out. Officers told Defendant not to return to the Fairgrounds.

Six weeks later, on 16 September 2018, Defendant returned to the Fairgrounds and attended the Old North State Military Collectors Show. Andrew Austin, a vendor, recognized Defendant as being "the guy that was caught at the Dixie show stealing

the guns[.]" Austin alerted the show promoter to Defendant's presence, and the promoter alerted a law enforcement officer at the show. Austin and Chris Weiser, another vendor, "pretended like [they] were in a conversation, but the whole time [Weiser] was giving [Austin] a play-by-play of [Defendant's] actions." Weiser saw Defendant "put his hand on [a .32 caliber Hungarian pistol], which was in [a vendor's] display case, [and] remove[ ] the handgun from the case." Austin and Weiser confronted Defendant to prevent him from leaving, and a law enforcement officer detained Defendant. The entire incident was recorded by surveillance video cameras.

A Wake County grand jury indicted Defendant for four counts of larceny of a firearm (17 CRS 215065 and 17 CRS 218039), and two counts of possession of a firearm by a felon (17 CRS 215066 and 17 CRS 218038). On 20 November 2017, the State filed a motion for joinder for trial of the offenses leveled against Defendant, to which Defendant objected. On 23 October 2018, a hearing was held in Wake County Superior Court before the Honorable A. Graham Shirley. The trial court granted the State's motion for joinder.

On 29 November 2018, and again on 17 December 2018, Defendant filed motions to sever for trial the offenses with which he was charged. On 29 November 2018, Defendant filed a motion to suppress evidence of the gun found on his person and the two guns found in the car on 5 August 2017.

On 17 December 2018, the Honorable Carl R. Fox denied Defendant's motion to sever and renewed motion to sever, explaining that Judge Shirley had already ruled upon the State's motion for joinder, which presented the same issue.

The trial court then heard Defendant's motion to suppress. The State called as witnesses Lieutenant Mumford and Major Ricky Martin, who was also at the scene on the day in question and interacted with Defendant. Defendant also testified on his own behalf. At the conclusion of the hearing, the trial court denied the motion, ruling that Defendant lacked standing to contest the search of the vehicle, and that Lieutenant Mumford had reasonable suspicion to justify a pat down of Defendant based on the totality of the circumstances. The trial court did not enter a written order.

The matter then proceeded to trial. At the close of the State's evidence, Defendant renewed his motion to sever, which the trial court summarily denied.

On 20 December 2018, the jury returned verdicts finding Defendant guilty of attempted larceny of a firearm, three counts of larceny of a firearm, and two counts of possession of a firearm by a felon. Defendant gave oral notice of appeal in open court.

Discussion

On appeal, Defendant challenges the trial court's denial of his motion to suppress, the validity of the indictments, the trial court's denial of his motions to

sever, the trial court's instructions to the jury, the trial court's failure to hold a charge conference, and the trial court's admission of character evidence.

I. Motion to Suppress

Defendant contends that the trial court erred in denying his motion to suppress because (1) Lieutenant Mumford lacked reasonable suspicion to perform a pat down, (2) Defendant had standing to contest the search of the vehicle, and (3) the trial court did not enter a written order as required by statute.

A. Standard of Review

It is firmly established that

> the standard of review for a motion to suppress is whether the trial court's findings of fact are supported by the evidence and whether the findings of fact support the conclusions of law. The court's findings are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. The trial court's ruling on a motion to suppress is afforded great deference upon appellate review as it has the duty to hear testimony and weigh the evidence.

State v. Wiles, ___ N.C. App. ___, ___, 841 S.E.2d 321, 325 (2020) (citation omitted). We review conclusions of law de novo. *Id.*

B. Preservation for Appeal

Defendant first maintains that Lieutenant Mumford "abused the *Terry* frisk and decided to frisk to search for contraband," and therefore, the trial court erred in denying his motion to suppress. However, Defendant failed to preserve this issue for

appellate review. "A pre-trial motion to suppress evidence is insufficient to preserve for appeal the question of the admissibility of the challenged evidence, if [the d]efendant fails to object to the admission of that evidence at the time it is offered at trial." *State v. Fuller*, 257 N.C. App. 181, 183–84, 809 S.E.2d 157, 160 (2017) (citation omitted).

In the instant case, Defendant did not object at trial to the admission of evidence of the cut wire ties or guns that an officer found during the pat down, and which were then photographed; these photographs were received into evidence without objection. Nor did Defendant object as Lieutenant Mumford testified about performing the pat down, feeling "a hard object" shaped like a gun in Defendant's pocket, and discovering the gun. In addition, although Defendant twice raised objections during Lieutenant Mumford's testimony, he stated that his objections were *on the grounds of hearsay*, making it plain that he was not renewing his earlier objection for the reasons stated in his motion to suppress. Thus, Defendant did not preserve his right to appellate review of the denial of his motion to suppress.

Additionally, on appeal, Defendant failed to argue plain error. In that Defendant did not specifically and distinctly allege that the admission of the now-challenged evidence amounted to plain error, he is not entitled to appellate review under Rule 10(a)(4). *See State v. Hargett*, 241 N.C. App. 121, 127–28, 772 S.E.2d 115, 120–21, *disc. review and cert. denied*, 368 N.C. 290, 776 S.E.2d 191 (2015).

C. Standing

Defendant further contends that the trial court erred by denying his motion to suppress evidence obtained as a result of the search of the vehicle on the ground that Defendant lacked standing to contest the search. We disagree.

The Fourth Amendment safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. Const. amend. IV. Whether a defendant has standing to contest a search is a critical component to a court's Fourth Amendment analysis. *See State v. Swift*, 105 N.C. App. 550, 556, 414 S.E.2d 65, 68–69 (1992).

"A defendant has standing to contest a search if he or she has a reasonable expectation of privacy in the property to be searched." *State v. McKinney*, 361 N.C. 53, 56, 637 S.E.2d 868, 871 (2006). It follows that a defendant "must demonstrate that any rights alleged to have been violated were his rights, not someone else's." *State v. Mlo*, 335 N.C. 353, 377, 440 S.E.2d 98, 110, *cert. denied*, 512 U.S. 1224, 129 L. Ed. 2d 841 (1994). Thus, "[s]tanding to assert [Fourth Amendment] protection requires *both* an ownership or possessory interest *and* a reasonable expectation of privacy." *State v. Rodelo*, 231 N.C. App. 660, 662, 752 S.E.2d 766, 770 (emphases added) (citation omitted), *disc. review denied*, 367 N.C. 523, 762 S.E.2d 204 (2014).

Here, during the hearing on Defendant's motion to suppress, Defendant repeatedly denied that he owned, had an interest in, or had immediate control of the vehicle searched by law enforcement officers.

> THE COURT: Well, I thought you said it wasn't your vehicle and you didn't have an interest in the vehicle.
>
> [Defendant]: *Correct*, but I'm saying in assuming *arguendo* that everything the State is saying is true. This is all in speaking in terms of *arguendo*.
>
> THE COURT: You can't sort of *arguendo* argue that you have no interest in the vehicle. You either have an interest in the vehicle or you don't have an interest in the vehicle.
>
> [Defendant]: *Correct. And I don't have an interest in the vehicle . . . . Defendant does not own this vehicle, nor was I in immediate control of this* [*vehicle*] . . . .

(Emphases added).

Defendant further testified that he did not drive the vehicle to the Fairgrounds, did not open the door to the vehicle, did not recall how he got to the Fairgrounds, was nowhere near the vehicle, and was not in apparent control of the vehicle. On appeal, Defendant notes that he did "not own the vehicle nor was he inside the vehicle."

It is manifest from Defendant's evidence that he did not have standing to contest the search of the vehicle. *See Swift*, 105 N.C. App. at 556, 414 S.E.2d at 69 ("[The] defendant did not own, nor did he have the right to possession of the car from which he fled. [The d]efendant's evidence revealed that the alleged car owner left [the] defendant with the car in order to protect the car from others. This guardianship

is neither ownership nor the right to exclusive possession. Therefore, [the] defendant does not have standing to challenge the search of the car."). Thus, the trial court did not err in denying Defendant's motion to suppress on this ground.

D. Ruling Given from the Bench

Lastly, Defendant contends that the trial court erred by failing "to issue an order with extensive findings of facts and conclusions of law," and that the trial court "made a very garbled/incoherent ruling" from the bench denying his motion to suppress. Citing sections 15A-977 and 15A-979 of our General Statutes, as well as several civil cases, Defendant asserts that "the trial court's ruling has no legal effect" because the trial court did not enter a written order.

When ruling on a motion to suppress evidence, the trial court is tasked with making "findings of fact and conclusions of law which shall be included in the record." N.C. Gen. Stat. § 15A-974(b) (2019). "The judge must set forth in the record his findings of facts and conclusions of law." *Id.* § 15A-977(f). However, section 15A-977(f) "does not require that these findings and conclusions be in writing." *State v. Oates*, 366 N.C. 264, 268, 732 S.E.2d 571, 574 (2012).

Our Supreme Court has explained that "a material conflict in the evidence—one that potentially affects the outcome of the suppression motion—must be resolved by explicit factual findings that show the basis for the trial court's ruling." *State v. Bartlett*, 368 N.C. 309, 312, 776 S.E.2d 672, 674 (2015). "Thus, our cases require

findings of fact only when there is a material conflict in the evidence and allow the trial court to make these findings *either orally or in writing*." *Id.* (emphasis added) (concluding that where "two expert opinions . . . differed from one another on a fact" relevant to a determination of whether law enforcement officers obtained probable cause, "a finding of fact, whether written or oral, was required to resolve this conflict").

In the instant case, assuming, *arguendo*, that there was a material conflict in the evidence at the suppression hearing, the trial court properly rendered oral findings of fact resolving any such conflict. Defendant briefly testified on his own behalf and provided a narrative of the events in question. He asserted, in contradiction to the State's evidence, that he never consented to a search of the vehicle. However, in that Defendant lacked standing to challenge the search of the vehicle, the trial court was not required to resolve any conflict involving consent. Defendant also testified, contrary to Lieutenant Mumford's testimony, that he did not have a gun on his person when Lieutenant Mumford frisked him. The trial court orally found that Lieutenant Mumford's "patdown [sic] search of the defendant . . . caused him to feel something that was hard in his pocket and that when -- and further investigation, he retrieved from the pocket a gun, that this search on this particular occasion was a reasonable search of the defendant's person." The factual findings

were buttressed by Lieutenant Mumford's and Major Martin's testimony,[1] and resolved the conflict between Defendant's testimony and the State's evidence. Therefore, if there were a material conflict in the evidence, the trial court's oral ruling on Defendant's motion to suppress would nonetheless be without error, in that the oral ruling provided explicit factual findings resolving any material conflicts in the evidence, followed by conclusions of law applying the law to those factual findings.

In that the trial court properly rendered its order in accordance with our case law, Defendant's argument lacks merit.[2]

II. Indictments

Defendant next contends that the indictments charging him with possession of a firearm by a felon are defective because they do not accurately reflect Defendant's prior felony conviction. Specifically, Defendant asserts that (1) the indictments failed to allege the Class of his prior felony conviction; and (2) the indictments did not

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[1] Defendant does not specifically mention any material conflict in his principal brief, but merely cites section 15A-977 to further his argument that the trial court was required to enter a written order. However, the State addressed the issue, and Defendant, in turn, has offered in his reply brief—for the first time—what he characterizes as several conflicts in the evidence. "[A] reply brief should be 'limited to a concise rebuttal to arguments set out in the brief of the appellee which were not addressed in the appellant's principal brief,' N.C.R. App. P. 28(h)(3), and Defendant may not assert new grounds for appellate review in the reply brief." *Wiles*, ___ N.C. App. at ___ n.2, 841 S.E.2d at 328 n.2. Even still, based on Defendant's testimony at the suppression hearing, the transcript reveals no other conflicts in the evidence "that potentially affect[ ] the outcome of the suppression motion[.]" *Bartlett*, 368 N.C. at 312, 776 S.E.2d at 674. Defendant's argument must fail.

[2] Although Defendant cites section 15A-979(b) as part of his argument that the trial court erred by failing to enter a written order, this statute provides that "[a]n order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty." N.C. Gen. Stat. § 15A-979(b). Defendant's citation to this statute is misplaced.

correctly specify the sentence imposed. Defendant also asserts that he "was never convicted" of the prior felony described in the indictments.

A. Standard of Review

"The sufficiency of an indictment is a question of law reviewed de novo." *State v. White*, 372 N.C. 248, 250, 827 S.E.2d 80, 82 (2019). Accordingly, this Court "consider[s] the matter anew and freely substitut[es its] own judgment for that of the trial court." *State v. Edgerton*, 266 N.C. App. 521, 525, 832 S.E.2d 249, 253 (2019), *disc. review denied*, ___ N.C. ___, 847 S.E.2d 886 (2020).

B. Analysis

An indictment in North Carolina "must fulfill its constitutional purposes—to identify clearly the crime being charged, thereby putting the accused on reasonable notice to defend against it and prepare for trial, and to protect the accused from being jeopardized by the State more than once for the same crime." *White*, 372 N.C. at 250–51, 827 S.E.2d at 82 (citation and internal quotation marks omitted). "The indictment must charge all the essential elements of the alleged criminal offense, in a plain, intelligible, and explicit manner." *State v. Langley*, 371 N.C. 389, 394, 817 S.E.2d 191, 195 (2018) (citations omitted). The purpose of the indictment is "to identify clearly the crime being charged." *Id.* at 394, 817 S.E.2d at 196 (citation omitted).

"[F]acial validity should be judged based solely upon the language of the criminal pleading in question without giving any consideration to the evidence that

is ultimately offered in support of the accusation contained in that pleading." *White*, 372 N.C. at 254, 827 S.E.2d at 84 (citation and internal quotation marks omitted). "[O]ne determines the facial validity of an indictment by examining the four corners of the charging instrument in light of the applicable law without making any reference to additional factual information contained elsewhere in the record[.]" *Id.* at 255, 827 S.E.2d at 84.

The requisite content of a valid indictment alleging that a defendant is guilty of possession of a firearm by a felon is specified in section 14-415.1:

> The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

N.C. Gen. Stat. § 14-415.1(c).

Here, Defendant contends that the indictments did not contain the required information regarding any prior conviction, and that he was not previously convicted of possession of a stolen firearm as provided in the indictments. However, both of the indictments issued for possession of a firearm by a felon (17 CRS 215066 and 17 CRS 218038) provide, in pertinent part, that

> Defendant had previously been convicted of the felony of Possession of a Stolen Firearm, in violation of N.C.G.S. 14-71.1, which was punishable by a maximum sentence of 39 months imprisonment. That felony was committed on May 20, 2015 and the Defendant was convicted of that felony on March 3, 2016 in the Superior Court of Wake County and was sentenced to 17-30 months imprisonment.

The indictments at issue clearly contain all of the information required by section 14-415.1(c). Thus, this argument lacks merit.

With regard to Defendant's contention that he "was *not* [previously] convicted of Possession of Stolen Firearm," the record on appeal contains a copy of the judgment of Defendant's conviction for felonious possession of a stolen firearm, entered 3 March 2016 by the Honorable Reuben F. Young in Wake County Superior Court. The judgment provides that Defendant was sentenced to 17–30 months' imprisonment. Defendant's assertions to the contrary are meritless.

III. Motions to Sever

On 23 October 2018, Judge Shirley granted the State's motion for joinder for trial of the offenses leveled against Defendant. On 29 November 2018 and again on 17 December 2018, Defendant filed motions to sever for trial the offenses with which Defendant was charged. Prior to trial, Judge Fox twice denied Defendant's motions to sever as, in essence, Defendant's requests to rehear a motion upon which Judge Shirley had already ruled, citing judicial economy and a lack of authority to overrule

Judge Shirley's prior determination. Defendant renewed his motion to sever at the close of the State's evidence, which the trial court summarily denied.

On appeal, Defendant maintains that he "was denied the basic statutory right to be heard on a Motion for Severance, which is afforded to everybody," contending that "the trial court . . . ha[d] the authority to overrule another judge on a motion for severance."

Our Supreme Court has made plain that a superior court judge is ordinarily prohibited from reconsidering the judgment of another superior court judge. *State v. Woolridge*, 357 N.C. 544, 550, 592 S.E.2d 191, 194 (2003).

> The power of one judge of the superior court is equal to and coordinate with that of another. Accordingly, it is well established in our jurisprudence that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.

Id. at 549, 592 S.E.2d at 194 (internal citation and quotation marks omitted).

A superior court judge may reconsider the order of another superior court judge "only in the limited situation where the party seeking to alter that prior ruling makes a sufficient showing of a substantial change in circumstances during the interim which presently warrants a different or new disposition of the matter." *State v. Duvall*, 304 N.C. 557, 562, 284 S.E.2d 495, 499 (1981); *see also State v. Ross*, 216 N.C. App. 337, 343–44, 720 S.E.2d 403, 407–08 (2011) (concluding that the trial court

properly denied the defendant's motion for severance after another superior court judge granted the State's motion for joinder, where "[t]he record contain[ed] no indication that [the] defendant argued any change of circumstances warranting reconsideration of joinder, and [the] defendant point[ed] to none on appeal"), *disc. review denied*, 366 N.C. 400, 735 S.E.2d 174 (2012).

In the case at bar, Defendant makes no argument on appeal that there was a substantial change in circumstances in the period between Judge Shirley's ruling and the filing of Defendant's motion to sever. *See* N.C.R. App. P. 28(b)(6) (providing that an appellant's brief shall contain an argument "contain[ing] the contentions of the appellant with respect to each issue presented," and that "[i]ssues . . . in support of which no reason or argument is stated . . . will be taken as abandoned").

Defendant limits his argument on appeal to whether the trial court deprived him of "the basic statutory right to be heard on a Motion for Severance." However, Judge Fox heard his motion to sever three times, and Defendant twice argued in support of his motion. Defendant confuses Judge Fox's repeated denial of Defendant's motions to sever with a refusal to hear Defendant's motions.

In sum, the trial court allowed Defendant to argue his motion to sever, and on appeal, Defendant has failed to make a cogent argument that there was a substantial change of circumstances. Thus, the trial court did not err in denying Defendant's motions to sever. Defendant's argument is overruled.

IV. Jury Instructions

Defendant next argues that "[t]he trial court erred by revealing [his] past convictions while instructing the jury on [the offense of possession of a] firearm by felon." However, Defendant failed to lodge an objection to the trial court's jury instructions with regard to his prior conviction. N.C.R. App. P. 10(a)(2) ("A party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict . . . .").

Defendant does not "specifically and distinctly contend[ ]" that the trial court plainly erred in instructing the jury, N.C.R. App. P. 10(a)(4), but requests that the Court invoke Appellate Rule 2. The rule provides that "[t]o prevent manifest injustice to a party, or to expedite decision in the public interest, either court of the appellate division may, except as otherwise expressly provided by these rules, suspend or vary the requirements or provisions of any of these rules[.]" N.C.R. App. P. 2. It is well settled that Appellate Rule 2 should be "invoked cautiously" and in "exceptional circumstances." *State v. Harris*, 222 N.C. App. 585, 588, 730 S.E.2d 834, 837 (citation and internal quotation marks omitted), *disc. review denied*, 366 N.C. 413, 736 S.E.2d 175 (2012); *see also State v. Hart*, 361 N.C. 309, 316, 644 S.E.2d 201, 205 (2007) (explaining that the application of Rule 2 will necessarily be rare). Here, we discern

no manifest injustice to Defendant warranting suspension of our Appellate Rules. Defendant's argument is therefore dismissed.

V. Charge Conference

Defendant also maintains that the trial court failed "to hold an adequate charge conference since it failed to inform [him] of the offenses that it was going to charge the jury."

"A charge conference is a recorded conference between the judge and the parties outside the presence of the jury where the judge 'must inform the parties of the offenses, lesser included offenses, and affirmative defenses on which he will charge the jury.' " *State v. Dew*, ___ N.C. App. ___, ___, 840 S.E.2d 301, 307 (quoting N.C. Gen. Stat. § 15A-1231(b) (2019)), *disc. review allowed*, ___ N.C. ___, 845 S.E.2d 787 (2020). The trial court "must also inform the parties of what parts of the parties' tendered instructions will be given to the jury." *Id.* Although "a trial court's failure to [hold a charge conference] is reviewable on appeal even in the absence of an objection at trial," *State v. Houser*, 239 N.C. App. 410, 422, 768 S.E.2d 626, 634 (citation omitted), *disc. review denied*, 368 N.C. 281, 775 S.E.2d 869 (2015), "[t]he failure of the judge to comply fully with the provisions of this subsection does not constitute grounds for appeal unless his failure, not corrected prior to the end of the trial, materially prejudiced the case of the defendant," N.C. Gen. Stat. § 15A-1231(b).

After careful review of the record, we conclude that the trial court conducted the requisite charge conference in accordance with our General Statutes. At the end of the second day of trial, the trial court provided the parties with a copy of the proposed jury instructions, subject to amendment based on the evidence yet to be presented. Thereafter, at the close of all evidence, the trial court told the jurors that he was going to hold a charge conference, and had the jurors step into the jury room. Following the renewal and denial of Defendant's motion to dismiss, and some discussion of the jury instructions, the trial court asked the parties, outside the presence of the jury, whether they had any objections to the proposed instructions. After the trial court answered Defendant's question regarding the instruction on the charge of attempted larceny of a firearm, Defendant said, "Oh, okay. That's fine." He then inquired about an issue unrelated to the jury instructions, and, upon receiving his answer, stated, "Alrighty. Therefore, are we then about to start closing arguments?" Defendant did not object when the trial court instructed the jury. Moreover, Defendant indicated to the trial court that he had no "requests for additions or corrections" prior to deliberations or after the trial court showed the verdict sheets to the parties.

"Thus, it is apparent from the record that Defendant participated in a charge conference, and he had multiple opportunities to object. Because the trial court conducted a charge conference, the trial court did not err. Therefore, Defendant

cannot show material prejudice, and his argument is without merit." *Dew*, ___ N.C. App. at ___, 840 S.E.2d at 307–08.

VI. Character Evidence

Finally, Defendant asserts that the trial court erred by admitting the testimony of James Helms, a truck driver who also sells guns on weekends for Surf City Guns, concerning "alleged past events [that] had nothing to do with the charges [on for] trial."

Evidentiary Rule 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." N.C. Gen. Stat. § 8C-1, Rule 404(b). Nevertheless, character evidence may be admissible for purposes unrelated to a defendant's propensity to commit a crime, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." *Id.* Whether "evidence is, or is not, within the coverage of Rule 404(b)" is a conclusion of law reviewed de novo on appeal. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). If the evidence is offered for non-propensity purposes, the trial court must assess whether the probative value of the evidence is outweighed by its prejudicial nature. *See id.* at 130, 726 S.E.2d at 158–59. This determination, pursuant to Evidentiary Rule 403, is reviewed for abuse of discretion. *Id.* at 130, 726 S.E.2d at 159.

The erroneous admission of character evidence "does not necessitate a new trial unless the erroneous admission was prejudicial." *State v. Wade*, 213 N.C. App. 481, 490, 714 S.E.2d 451, 457 (2011), *disc. review denied*, 366 N.C. 228, 726 S.E.2d 181 (2012). A defendant must "show that [the testimony] affected the jury's verdict in light of the evidence properly admitted." *State v. Groves*, 324 N.C. 360, 372, 378 S.E.2d 763, 771 (1989).

Assuming, *arguendo*, that the trial court erred by admitting Helms' testimony, there was plenary competent evidence to support Defendant's convictions, and any error in admitting this evidence did not prejudice Defendant. *See id.* ("The defendant has failed to carry his burden of showing prejudice resulting from any possible violation of Rule 404(b)."). The jury heard evidence that (1) Lieutenant Mumford reviewed surveillance footage of Defendant appearing to remove a firearm from a display case at the gun show; (2) law enforcement officers located Defendant soon thereafter, wearing the same outfit as in the surveillance footage, except that he was not wearing a hat; (3) Lieutenant Mumford discovered a stolen gun and a pair of wire cutters on Defendant's person; and (4) there was a cut wire tie on the ground to the rear of the vehicle, more cut wire ties inside the trunk, and two stolen guns hidden under the spare tire cover. The jury also heard testimony from the vendors of the stolen guns, and viewed the surveillance footage from which Defendant was identified

by Lieutenant Mumford. It is evident that the jury's verdicts did not hinge on Helms' testimony.

In light of the other overwhelming evidence presented at trial, we conclude that there is no "reasonable possibility that, had the alleged error in question not been committed, a different result would have been reached at the trial." N.C. Gen. Stat. § 15A-1443(a). This argument is overruled.

Conclusion

For the reasons stated herein, we conclude that (1) Defendant waived appellate review of his motion to suppress with regard to the pat down search, (2) Defendant lacked standing to challenge the search of his vehicle, and (3) the trial court did not err by orally ruling on Defendant's motion to suppress. Defendant's argument regarding the trial court's instructions to the jury is dismissed for failure to properly preserve this issue.

We further conclude that (1) the indictments for possession of a firearm by a felon were not defective; (2) the trial court did not err by denying Defendant's motions to sever in light of Judge Shirley's prior determination; (3) the trial court properly held the requisite charge conference so that Defendant was not materially prejudiced pursuant to section 15A-1231(b); and (4) assuming, *arguendo*, that the trial court erred by admitting improper character evidence, Defendant failed to establish any resulting prejudice.

AFFIRMED IN PART; DISMISSED IN PART; NO ERROR IN PART.

Judges BERGER and BROOK concur.

Report per Rule 30(e).