

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-2

Filed 05 September 2023

Wake County, No. 14 CR 215561

STATE OF NORTH CAROLINA

v.

ERIC MICHAEL JORDAN

Appeal by defendant from order entered 6 April 2021 by Judge Ned W. Mangum in Wake County District Court. Heard in the Court of Appeals 9 August 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Caden W. Hayes, for the State.*

*N.C. Prisoner Legal Services, Inc., by Lee M. Pollack, for the defendant-appellant.*

TYSON, Judge.

This Court allowed Eric Michael Jordan's ("Defendant") Petition for Writ of Certiorari ("PWC") on 7 June 2022 to review the 6 April 2021 order of the Wake County District Court denying Defendant's motion for appropriate relief ("MAR"). We affirm.

**I. Background**

Defendant was arrested on 6 July 2014, pursuant to a warrant charging him with larceny from a merchant under N.C. Gen. Stat. § 14-72.11(2) (2021) (“By removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.”). The warrant alleged:

there is probable cause to believe that on or about the date of offense shown and in the county named above, the defendant named above unlawfully, willfully, and feloniously DID REMOVE, DESTROY OR DEACTIVATE A COMPONENT OF AN ANTISHOPLIFTING OR INVENTORY CONTROL DEVICE TO PREVENT THE ACTIVATION OF AN ANTISHOPLIFTING OR INVENTORY CONTROL DEVICE OF BELK MEN’S STORE 4325 GLENWOOD AVENUE RALEIGH NC 27612.

Defendant waived indictment of the offense and the State converted the warrant into a bill of information with Defendant’s and his counsel’s consent. On 16 September 2014, Defendant pled guilty. The court sentenced Defendant to a mitigated active sentence of 8 months’ minimum, 19 months’ maximum imprisonment as a prior record level III offender with 9 prior record points. Defendant completed the sentence imposed on 14 May 2015.

Over four years after his release from prison, on 26 October 2020, Defendant filed an MAR, alleging the information contained in the warrant was fatally defective for not further stating that “Belk Men’s Store” was an entity capable of owning

property. The district court disagreed and denied the MAR on 6 April 2021. Defendant failed to timely appeal from that order, but filed a petition for and obtained a writ of certiorari from this Court to challenge the denial of the MAR.

## **II. Jurisdiction**

This Court possesses jurisdiction over the PWC pursuant to N.C. Gen. Stat. §§ 15A-1422(c)(3), 7A-32(c) (2021) and N.C. R. App. P. 21(a).

## **III. Issues**

Defendant's brief raises two purported issues: whether the MAR court erred in denying relief because: (1) the indictment was fatally defective for not indicating that Belk Men's Store is an entity capable of owning property; and, (2) the State failed to allege that there was an actual taking of any property. Defendant's MAR only challenged the validity of the indictment to allege an entity capable of owning property. Defendant never raised the issue of whether the State had alleged an actual taking of any property before the court in his MAR.

Defendant's petition for writ of certiorari ("PWC") was allowed by this Court for the limited purpose of reviewing the denial of the MAR. The trial court was not presented with and did not rule on this "actual taking" assertion in the MAR. This "actual taking" assertion was not asserted in the PWC, and it lies outside of this Court's grant of Defendant's PWC to review the trial court's denial of the MAR. "The proper procedure through which [a] defendant may challenge the facial validity of the original indictment is by filing a motion for appropriate relief under N.C.G.S. § 15A-

1415(b) or petitioning for a writ of habeas corpus.” *State v. Pennell*, 367 N.C. 466, 472, 758 S.E.2d 383, 387 (2014).

This issue was not preserved for appellate review and is dismissed. The only issue properly before this Court is whether “Belk Men’s Store” is an entity capable of owning property for the purposes of satisfying the warrant requirement for an offense of larceny from a merchant under N.C. Gen. Stat. § 14-72.11(2).

#### **IV. Entity Capable of Owning Property**

##### **A. Standard of Review**

“When considering rulings on motions for appropriate relief, [this Court] review[s] the trial court’s order to determine whether the findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, and whether the conclusions of law support the order entered by the trial court.” *State v. Frogge*, 359 N.C. 228, 240, 607 S.E.2d 627, 634 (2005) (citation and internal quotation marks omitted).

##### **B. Analysis**

“[W]hile an indictment should give a defendant sufficient notice of the charges against him, it should not be subject to hyper technical scrutiny with respect to form.” *State v. Harris*, 219 N.C. App. 590, 592, 724 S.E.2d 633, 636 (2012) (citation omitted); *see State v. Newborn*, \_\_ N.C. \_\_, \_\_, 887 S.E.2d 868, 872-73 (2023) (“Applying the principle of substance over form, it is clear that the indictment here gave defendant

sufficient notice of the crimes with which he was being charged such that he was able to prepare his defense.”).

The Supreme Court of North Carolina has held: “[w]hen alleging ownership in an entity, an indictment must specify that the owner, ‘if not a natural person, is a corporation or otherwise a legal entity capable of owning property,’ unless the entity’s name itself ‘imports an association or a corporation capable of owning property.’” *State v. Campbell*, 368 N.C. 83, 86, 772 S.E. 2d 440, 443 (2015) (citation omitted).

Our Supreme Court held an indictment alleging property was stolen from “Manna Baptist Church” was sufficient to indicate the church was an entity capable of holding property, because the term “church... like identifying an entity as a ‘company’ or ‘incorporated,’ signifies an entity capable of owning property[.]” *Id.* at 87, 772 S.E.2d at 444.

Under the analysis in *Campbell*, the requirement of the charging instrument stating the victim-of-theft entity is an entity capable of owning property is satisfied “if the entity’s name itself imports an association or a corporation capable of owning property.” *Id.* The warrant and later consented-to information challenged on appeal specifically alleges Defendant did “remove, destroy, or deactivate a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device” from “Belk Men’s Store,” with a specific address of the store, but does not further allege “Belk Men’s Store” is an entity capable of owning property. We conclude, just as the term “church” was sufficient for

the Court in *Campbell* to import the entity was an entity capable of owning property, the allegation of “Belk Men’s Store” also “imports an association or a corporation [or company] capable of owning property.” *Id.* If further clarification or specificity is needed, a defendant can also file a motion for a bill of particulars under the statute. *See* N.C. Gen. Stat. § 15A-925(b) (2021).

### **V. Conclusion**

The court did not err in denying Defendant’s MAR. The term “Belk Men’s Store” itself imports an association, corporation, or a company that is capable of owning property. The purported issue of whether an actual taking was alleged or even necessary was not preserved and is dismissed. *See* N.C. Gen. Stat. § 14-72.11(2). The court’s order denying Defendant’s MAR is affirmed. *It is so ordered.*

**AFFIRMED.**

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).