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IN THE COURT OF APPEALS OF INDIANA

ROY L. GARRARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1103-CR-244
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
The Honorable Stanley E. Kroh, Commissioner
Cause No. 49G04-1011-FC-89185

October 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Roy L. Garrard appeals his status as an habitual offender. Garrard raises one issue, which we revise and restate as whether the evidence is sufficient to sustain the court's finding that Garrard is an habitual offender. We affirm.

The relevant facts follow. On November 30, 2010, the State charged Garrard with burglary as a class C felony and theft as a class D felony. On February 9, 2011, the State charged Garrard with being an habitual offender and alleged that Garrard had previous convictions for carrying a handgun without a license as a class D felony on or about November 2, 1988, and resisting law enforcement as a class D felony on or about October 8, 1998.

On February 10, 2011, a jury found Garrard guilty of theft and not guilty of burglary. Garrard waived jury trial for the habitual offender portion of the proceeding. At the beginning of the habitual offender portion, the State moved to incorporate the first phase of the trial, and the court granted the motion. Garrard's attorney stipulated that Garrard's fingerprints matched the fingerprints in the officer arrest reports that the State was planning to introduce.[1]

As to Garrard's alleged conviction in 1988, the State presented, and the court admitted, an officer's arrest report, a Commitment to Custody of the Department Of Correction signed by a judge, and a probable cause affidavit signed by a judge indicating

[1] Specifically, Garrard's attorney stated: "Judge, it's my understanding he's an evidence technician in particular. He would have offered evidence that he in fact took Mr. Garrard's fingerprints today and he matched those to each of the OAR's in the packet that the State intends to offer into evidence. I would stipulate to the authenticity of not only the packet, but also today's fingerprint and also stipulate to the fact that they are in fact matches." Transcript at 255-256.

that probable cause was found to order a warrant or summons. As to Garrard's alleged conviction in 1998, the State presented, and the court admitted, an officer's arrest report, the case chronology summary ("CCS"), the charging information, a judgment of conviction, an abstract of judgment, and a plea agreement signed by Garrard, his attorney, and the prosecutor.[2]

After hearing evidence, the court took the matter under advisement. On March 1, 2011, the court found Garrard to be an habitual offender. The court sentenced Garrard to three years for theft as a class D felony and enhanced the sentence by an additional three years due to Garrard's status as an habitual offender.

The issue is whether the evidence is sufficient to sustain the court's finding that Garrard is an habitual offender. "Upon a challenge to the sufficiency of the evidence for an habitual offender determination, the appellate court neither reweighs the evidence nor judges the credibility of the witnesses; rather, we examine only the evidence most favorable to the judgment, together with all of the reasonable and logical inferences to be drawn therefrom." Woods v. State, 939 N.E.2d 676, 677 (Ind. Ct. App. 2010) (citing Parks v. State, 921 N.E.2d 826, 832 (Ind. Ct. App. 2010), trans. denied), trans. denied. "The habitual offender determination will be sustained on appeal so long as there is substantial evidence of probative value supporting the judgment." Id.

"A person is a habitual offender if . . . the court . . . finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony

[2] Neither the judgment of conviction nor the abstract of judgment were signed by a judge.

convictions." Ind. Code § 35-50-2-8(g). "Certified copies of judgments or commitments containing a defendant's name or a similar name may be introduced to prove the commission of prior felonies." Hernandez v. State, 716 N.E.2d 948, 953 (Ind. 1999), reh'g denied. "If the evidence yields logical and reasonable inferences from which the finder of fact may determine beyond a reasonable doubt that it was a defendant who was convicted of the prior felony, then a sufficient connection has been shown." Id. (citing Pointer v. State, 499 N.E.2d 1087, 1089 (Ind. 1986)).

Garrard argues that "[t]he State never met its burden of proving the prior, unrelated, conviction of carrying a handgun without a license." Appellant's Brief at 5. As to his 1998 conviction for resisting law enforcement, Garrard argues that "[t]he unsigned judgment of conviction cannot be used as evidence . . . that the Defendant was convicted of the crime," and that the plea agreement does not prove the conviction because it was not signed by a judge or certified. Id. Garrard also argues that the CCS was not signed by a judge and that "[t]here is no rational basis for giving a case chronology more weight than a certified, unsigned, abstract of judgment." Id.

In Abdullah v. State, 847 N.E.2d 1031, 1032-1033 (Ind. Ct. App. 2006), the court addressed the issue of "whether a certified abstract of judgment lacking a judicial signature is sufficient to prove a defendant's prior conviction for purposes of proving that defendant's statuses as a serious violent felon and as a habitual offender." The court observed that the State had submitted "certified copies of an abstract of judgment, charging documents, probable cause affidavits, and arrest records to prove that Abdullah

had been convicted of robbery in 1993." 847 N.E.2d at 1033. The court stated that "Abdullah specifically challenges the trial court's reliance on the abstract of judgment from the case, which he correctly notes is the only document submitted that suggests *conviction*—as opposed to mere arrest and charging—for the crime." Id. The court held:

> Trial Rule 58[3] requires that an abstract of judgment include a judicial signature in order to be considered a final record of a trial court's ruling. Furthermore, we are mindful of the State's position that an abstract is not meant to nullify a conviction, but that is beside the point. Abdullah does not assert that this unsigned abstract nullifies his conviction, only that it fails to prove the conviction beyond a reasonable doubt. That is what is required of the State. As the State points out, "[there is no requirement] that a prior conviction can only be proven by an entry of judgment that complies with Trial Rule 58." Appellee's Br. p. 6. *Indeed, there are numerous other means by which the State may elect to prove a prior conviction. Prosecutors routinely admit a wide variety of readily-available evidence for this purpose, including but certainly not limited to copies of sentencing orders, case chronologies, plea agreements, testimony from prosecutors or others involved in or witness to the prior conviction, or transcripts from the convicting court's proceedings.* Unfortunately, in this case the State chose to prove Abdullah's prior conviction using only an abstract of judgment, and that abstract was not signed by the presiding judge as required by Trial Rule 58. We can only speculate as to why the prosecutor here chose to forego all the other avenues typically available and rest his case on a piece of evidence that was subject to challenge. The unfortunate fact is that he did make this choice, and standing alone, an unsigned abstract fails to represent the trial court's final judgment and, therefore, is insufficient to prove a prior conviction for purposes of proving Abdullah's statuses as a serious violent felon and a habitual offender.

Id. at 1034-1035 (emphasis added).

Here, unlike in Abdullah, the record contains additional evidence of Garrard's convictions. As to the State's allegation that Garrard was convicted of carrying a

[3] Ind. Trial Rule 58(A) provides that "upon a verdict of a jury, or upon a decision of the court, the court shall promptly prepare and sign the judgment . . . ." Ind. Trial Rule 58(B)(5) provides that "a judgment shall contain . . . [t]he date of the judgment and the signature of the judge."

handgun without a license as a class D felony in 1988, the record includes an officer's arrest report detailing Garrard's arrest on September 23, 1988 for "No Gun Lic" under "Booking (JIS) Case No.: 88017710." State's Exhibit 17. Garrard's counsel stipulated that the fingerprint on the officer's arrest report was Garrard's fingerprint. The record also includes a Commitment to the Custody of the Department of Correction, which stated:

> BE IT REMEMBERED, that heretofore, in the Marion Superior Court in the State of Indiana, at the Court House in the City of Indianapolis, on the 2d day of November 1988, before the Honorable Patricia J. Gifford, Judge of Criminal Division, Room Four, of said Court, Proceedings were had in the cause of:
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> | | | |
> |---|---|---|
> | STATE |) | CAUSE NUMBER, 49G048802CF17710 |
> | |) | |
> | -vs- |) | CRIME CHARGED: Battery C; |
> | |) | Possession of Handgun w/out License A |
> | Roy Lee Garrard |) | Misdemeanor / D Felony |
>
> * * * * *
>
> [T]he Court having entered a judgment of conviction and pronounced sentence against the Defendant for the crime of Possession of Handgun without License Class D Felony as charged count 2, part 2; State nolled [sic] count 1 as charged in or covered by the information or indictment in this cause.
>
> IT IS Therefore Ordered and Adjudged by the Court that the Defendant:
>
> * * * * *
>
> be imprisoned for a period of One (1) year . . . .

State's Exhibit 18. This document was dated November 2, 1988, and was signed by Judge Gifford.

With respect to the State's allegation that Garrard was convicted of resisting law enforcement as a class D felony on or about October 8, 1998, the record contains an officer's arrest report detailing Garrard's arrest on July 5, 1997, for "Res/Flee" as a class D felony under "Booking (JIS) Case No.: 98109454." State's Exhibit 19. Again, Garrard's counsel stipulated that the fingerprint on the officer's arrest report belonged to Garrard. The record also contains a certified copy of the CCS, which is "an official record of the trial court," Ind. Trial Rule 77(B), for cause number 49-F18-9807-DF-109454 indicating that Garrard pled guilty to resisting law enforcement as a class D felony, and that the court accepted the plea, entered judgment of conviction, and sentenced Garrard to one year in the Department of Correction on October 8, 1998.

We conclude that the State presented evidence of probative value from which the court could have found Garrard to be an habitual offender beyond a reasonable doubt. See Tyson v. State, 766 N.E.2d 715, 718 (Ind. 2002) (holding that there was sufficient evidence from which a fact-finder could find beyond a reasonable doubt that the defendant was convicted of two separate and unrelated felonies); Tate v. State, 835 N.E.2d 499, 512 (Ind. Ct. App. 2005) (holding that certified information and certified case chronology can be considered in reviewing a challenge to the sufficiency of an

habitual offender finding and holding that the evidence was sufficient to support the trial court's adjudication of the defendant as an habitual offender), trans. denied.[4]

For the foregoing reasons, we affirm the trial court's finding that Garrard is an habitual offender.

Affirmed.

BAKER, J., and KIRSCH, J., concur.

[4] Garrard argues that Tate "is directly contradicted and superseded by the later holding of Abdullah where an unsigned document was found to be insufficient and the court held that an information did not establish a conviction." Appellant's Brief at 4. Abdullah involved an unsigned abstract of judgment and not a CCS. Indeed, the court in Abdullah stated: "Prosecutors routinely admit a wide variety of readily-available evidence for this purpose, including but certainly not limited to copies of sentencing orders, *case chronologies*, plea agreements, testimony from prosecutors or others involved in or witness to the prior conviction, or transcripts from the convicting court's proceedings." 847 N.E.2d at 1034 (emphasis added). We cannot say that Abdullah conflicts with Tate.