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NO. COA01-367

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 2002

STATE OF NORTH CAROLINA

v.

Union County
No. 99 CRS 9760

JACK ROBINSON,
Defendant.

Appeal by defendant from judgment entered 9 June 2000 and order entered 11 September 2000 by Judge Sanford L. Steelman, Jr., in Union County Superior Court. Heard in the Court of Appeals 31 January 2002.

Attorney General Roy Cooper, by Assistant Attorney General Claud R. Whitener, III, for the State.

W. David McSheehan, for defendant-appellant.

BRYANT, Judge.

On 3 July 1999, three motorcyclists--Greg Covington, Rodney Wynn and Julian Lindsey--were riding through Monroe, North Carolina, to a bike show in Lancaster, South Carolina. A dog owned by the Strempe family ran into the road and was struck and killed by Wynn's bike. The three continued traveling about a mile down the road before they pulled into a service station to inspect the bike. Meanwhile, Mr. Strempe got into his truck and followed the three when they did not pull over to check on the dog. When he got

to the service station, he got out of his truck and called the police.

At some point, Strempeke returned home and the cyclists decided to turn around because of the damage to Wynn's bike. The cyclists pulled into the Strempekes' driveway on the return trip to talk to Strempeke about the damage to Wynn's bike and to see if the dog was hurt. When Strempeke heard the three returning, he told his wife to go inside and call defendant Jack Robinson, the neighbor who lived across the street. Strempeke then retrieved a pistol and called 9-1-1 again. When defendant arrived, he loaded a twelve gauge pistol-grip shotgun from his truck. As he approached the cyclists, he shouted, "Do you need me?" several times to see if Strempeke needed help. When Covington told defendant that there was no need for a gun, defendant swung the gun at Covington, telling him, "I'll point my [f---ing] gun wherever I want to."

A criminal summons was issued the same day, charging defendant with assault by pointing a gun at "Greg Robinson." Defendant was tried and convicted on 30 July 1999 in district court. Defendant gave notice of appeal to superior court for a trial de novo. Following a trial by jury he was convicted on 9 June 2000. Defendant filed a motion for appropriate relief on 16 June 2000, and gave notice of appeal to this Court the same day. The motion for appropriate relief was heard on 26 June 2000 in Union County Superior Court, where the State made an oral motion to amend the criminal summons to reflect the victim's proper last name. On 11 September 2000, the trial court filed an order allowing the State's

motion to amend and denying defendant's motion for appropriate relief. Defendant again gave notice of appeal to this Court on 21 September 2000.

The issues in this case are summarized as follows: 1) whether a motion to amend a criminal summons after final judgment pursuant to N.C.G.S. § 15A-922(f) may be made orally; and 2) if so, whether an amendment changing the last name of the victim from "Robinson" (defendant's last name) to "Covington" changes the nature of the offense such that the motion to amend must be denied.

Defendant first takes issue with the fact that the State did not *file a written* motion to amend the summons; rather, the State made an oral motion on 26 June 2000, ten days after defendant gave notice of appeal to this Court from judgment entered 9 June 2000. Defendant cites only to N.C.G.S. § 15A-922(f) in support of this argument. We therefore limit the scope of our review to § 15A-922(f). See N.C. R. App. P. 28(b)(5).

Section 15A-922(f) states, "A statement of charges, criminal summons, warrant for arrest, citation, or magistrate's order may be amended at any time prior to or after final judgment when the amendment does not change the nature of the offense charged." N.C.G.S. § 15A-922(f) (1999). Nowhere in this statute is there a requirement that the State file a written motion to amend a criminal summons. Accordingly, we find this argument has no merit.

Finding that the State's oral motion was proper, we next address whether the amendment changing the last name of the victim

from "Robinson" to "Covington" changed the nature of the offense. We hold that it did not.

Section § 15A-303(b) of the North Carolina General Statutes states, "The criminal summons must contain a statement of the crime or infraction of which the person summoned is accused. No criminal summons is invalid because of any technicality of pleading if the statement is sufficient to identify the crime or infraction." N.C.G.S. § 15A-303(b) (1999). "An indictment or criminal charge is constitutionally sufficient if it apprises the defendant of the charge against him with enough certainty to enable him to prepare his defense and to protect him from subsequent prosecution for the same offense." *State v. Coker*, 312 N.C. 432, 434, 323 S.E.2d 343, 346 (1984).

Defendant was charged with assault by pointing a gun pursuant to N.C.G.S. § 14-34, which states: "If any person shall point any gun or pistol at *any person*, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of a Class A1 misdemeanor." N.C.G.S. § 14-34 (1999) (emphasis added). The criminal summons charging defendant "Jack Robinson" with assault by pointing a gun at "Greg Robinson" was technically defective in that the correct name of the victim was "Greg Covington." The defendant was tried on this criminal summons and convicted in district court. He thereafter appealed his conviction to superior court where he was again tried and convicted on this criminal summons. The record does not indicate that defendant objected or excepted to the technical error in the criminal summons

at any point during the proceedings before the district and superior courts or at any time prior to his motion for appropriate relief. At the hearing on defendant's motion for appropriate relief the trial court allowed the State to amend the summons and denied defendant's motion, finding "[t]he name of Greg Robinson on the criminal summons is an obvious typographical error on the part of the magistrate, where the last name of the defendant was erroneously substituted for the last name of the victim."

In *State v. Reeves*, 62 N.C. App. 219, 302 S.E.2d 658 (1983), defendant was charged with misdemeanor larceny of a jacket. The arrest warrant listed the property owner as Southland Shirt Outlet. The State moved to amend the warrant to allege the owner as National Service Industries, Inc., d.b.a. Southland Shirt Outlet. The trial court granted the motion. On appeal, this Court found no error, holding that, although it is essential to allege the owner of the property taken, "[a]mending the arrest warrant at trial to change the owner of the property taken does not change the nature of the offense charged. After the amendment, defendant was tried for the same offense that is alleged in the warrant." *Id.* at 224, 302 S.E.2d at 661.

In the instant case, we hold that the trial court's amendment of the criminal summons based on N.C.G.S. § 15A-922(f) was proper in that it did not change the nature of the offense charged. Therefore, we find no error in the trial court's technical amendment to the criminal summons in this case.

NO ERROR.

Judges TIMMONS-GOODSON and SMITH concur.

Report per 30(e).