NO. COA01-639

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 2002

STATE OF NORTH CAROLINA

v. Wake County
Nos. 99 CRS 35276
99 CRS 35277

DEMONTE LEE RHODES,
Defendant

Appeal by defendant from judgments entered 17 August 1999 by Judge Wiley F. Bowen in Wake County Superior Court. Heard in the Court of Appeals 13 March 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Victoria L. Voight, for the State.

John T. Hall for defendant.

BRYANT, Judge.

On 7 June 1999, defendant Demonte Lee Rhodes was indicted for robbery with a dangerous weapon of Michael Jones (99 CRS 35276), attempted robbery with a dangerous weapon of Shaune Smith (99 CRS 35277), and robbery with a dangerous weapon of Dariek Vines (99 CRS 35278). Defendant entered pleas of not guilty on 1 July 1999.

These matters came for jury trial at the 16 August 1999 criminal session of Wake County Superior Court with the Honorable Wiley F. Bowen presiding. Defendant was found not guilty of robbery with a dangerous weapon of Dariek Vines (99 CRS 35278), and

guilty of the remaining charges for robbery with a dangerous weapon of Michael Jones (99 CRS 35276) and attempted robbery with a dangerous weapon of Shaune Smith (99 CRS 35277). Two consecutive sentences with terms of 77-102 months each were imposed. Defendant gave notice of appeal in open court on 17 August 1999.

Defendant presents three arguments on appeal all relating to his charge for the attempted robbery of Shaune Smith (99 CRS 35277). First, defendant argues that the trial court erred in dismissing the charge because there existed a fatal variance between the name on the indictment and the victim's true name. Second, defendant argues that the trial court erred in allowing the State to amend the indictment to reflect the victim's true name. Third, defendant argues that the trial court erred in failing to dismiss the charge because insufficient evidence existed as to the true identity of the victim. As to each argument, we disagree and find no error.

An indictment is a written accusation that charges a person with the commission of one or more offenses. N.C.G.S. § 15A-641(a) (1999). The purpose of the indictment is to inform the accused of the charge(s) against him, providing sufficient detail to allow the accused to prepare his defense. *State v. Russell*, 282 N.C. 240, 243-44, 192 S.E.2d 294, 296 (1972). N.C.G.S. § 15A-923(e) (1999) provides that a bill of indictment may not be amended. However, our courts have interpreted N.C.G.S. § 15A-923(e) only to prohibit amending an indictment such as would alter the nature of the

charge. *State v. Brinson*, 337 N.C. 764, 767, 448 S.E.2d 822, 824 (1994).

When a party fails to move to quash an indictment at trial, he effectively waives his ability to contest defects in the indictment at a later time. *State v. Frogge*, 351 N.C. 576, 584, 528 S.E.2d 893, 898, *cert. denied by Frogge v. North Carolina*, 531 U.S. 994, 148 L. Ed. 2d 459 (2000). Neither the transcript nor record reflects that defendant moved to quash the alleged defective indictment. Therefore, defendant has waived his ability to contest the alleged defect on appeal. Even if defendant had not waived this argument, we find there exists grounds to overrule this assignment of error.

The indictment listed the victim's name as *Shaune Smith*. The victim testified at trial that his true name is *VaShaune Smith*. Defendant argues that this variance deprived him of being tried and sentenced on the true bill of indictment, and that the variance deprived the trial court of jurisdiction to submit the question to the jury or to accept the guilty verdict and impose a sentence based on that guilty verdict. We disagree.

Our courts have previously held that amending a typographical error in a bill of indictment does not alter the nature of the charge in a manner that would be prohibited pursuant to N.C.G.S. § 15A-923(e). *State v. Rotenberry*, 54 N.C. App. 504, 284 S.E.2d 197 (1981). *See State v. Grigsby*, 134 N.C. App. 315, 517 S.E.2d 195 (1999), *rev'd on other grounds by* 351 N.C. 454, 526 S.E.2d 460 (2000) (stating that a change in defendant's name which added one

letter did not impermissibly alter the charge in the original indictment); *State v. Bailey*, 97 N.C. App. 472, 389 S.E.2d 131 (1990) (stating that altering an indictment to change the victim's name from Pettress Cebron to Cebron Pettress was not an amendment within the meaning of N.C.G.S. § 15A-923(e)).

In the case at bar, changing the victim's name on the indictment from Shaune Smith to VaShuane Smith is the type of typographical editing allowed by the *Grigsby*, *Bailey*, and *Rotenberry* Courts. Defendant has not alleged that he was confused as to whom the indictment was referencing. Nor has the defendant shown that the variance deprived him of the opportunity to prepare a defense against the charge. For all of the reasons stated above, we hold that the trial court did not err in failing to dismiss the charge because of a fatal error in the indictment, nor did the trial court err in allowing the State to amend the indictment.

As defendant's third argument is essentially the same as his first argument — the trial court erred in failing to dismiss the charge because the indictment referred to the victim as Shaune Smith versus VaShaune Smith — we overrule the corresponding assignment of error for the reasons stated above.

NO ERROR.

Judges WALKER and HUNTER concur.

Report per Rule 30(e).