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NO. COA06-1063

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v.

Forsyth County  
No. 05 CRS 054581

GREG ANTHONY PLATT

Appeal by defendant from judgments entered 1 March 2006 by Judge William Z. Wood, Jr., in Forsyth County Superior Court. Heard in the Court of Appeals 28 March 2007.

*Attorney General Roy Cooper, by Special Deputy Attorney General W. Richard Moore, for the State.*

*Russell J. Hollers, III, for defendant appellant.*

McCULLOUGH, Judge.

Greg Platt ("defendant") appeals from judgments entered consistent with the jury's verdict finding him guilty of 2 counts of assault with a deadly weapon with intent to kill inflicting serious injury.

The State presented evidence at defendant's trial tending to show the following: Defendant and Tameki Christian ("Mrs. Christian") began talking on the phone in the spring of 2005 after she and her husband, Terrian Christian ("Mr. Christian"), separated in November 2004. In April of 2005 defendant came to visit Mrs. Christian and spent several days at her house with his son. After

several days, Mrs. Christian asked defendant to leave. Before defendant left he told Mrs. Christian that he had ripped some of her clothes and furniture, poured water into her cell phone, cut the cord to her VCR and taken several small items from her home including CDS and videos.

Mrs. Christian testified that defendant agreed to meet her to return the items on a Friday, but before they were scheduled to meet he arrived at her house. That weekend, defendant again stayed with Mrs. Christian. On Monday, Mr. Christian arrived at Mrs. Christian's house where she and defendant were staying to discuss the Christians' son's medical condition. Mrs. Christian asked defendant to leave, but he refused and stated that he would leave after he had eaten. An altercation ensued and resulted in defendant stabbing Mrs. Christian approximately 6 or 7 times in the stomach, upper chest, left breast and both arms with a kitchen knife. Defendant also stabbed Mr. Christian several times in the neck, chest, arms and back and then fled from the house.

Defendant testified at trial that he stabbed Mr. and Mrs. Christian in self-defense after Mrs. Christian threw a skillet at him and Mr. Christian attempted to reach for a knife and gun. Defendant further testified, on direct examination, that he had a prior assault conviction from 1993 in Kansas which resulted from his stabbing a man with a kitchen knife in his ex-wife's house from whom he was separated at the time. The jury returned a verdict of guilty on 2 counts of assault with a deadly weapon with intent to kill inflicting serious injury.

At the sentencing phase of the trial, the following exchange took place between the court and the parties:

State: I say I'm ready, I don't have a worksheet with me, it should reflect the only conviction on his record, a conviction out of Kansas and because I cannot say it's anymore than a Class I felony, that would be his sole conviction.

Court: So Level II then?

State: Yes, sir.

Court: Okay, Mr. Jordan, do you agree that's the only record?

Jordan: Yes, sir.

Court: Level II?

Jordan: Yes, sir.

The trial court sentenced defendant to a term of 200 to 258 months' imprisonment. Defendant appeals.

Defendant contends on appeal the trial court committed plain error in admitting evidence of defendant's 13-year-old conviction from Kansas.

At trial the State informed the court that it intended to offer evidence on cross-examination under N.C. Gen. Stat. § 8C-1, Rule 404(b) (2005), regarding a conviction which occurred in Kansas more than 10 years ago. The court ruled that it would allow the evidence to be introduced under Rule 404(b). On direct examination defendant testified as to the 1993 conviction and the events underlying that conviction. On appeal defendant now attempts to cite as error the admission of evidence that he himself testified

to on direct examination. However, “[a] defendant may not complain of prejudice ‘resulting from [his] own conduct.’” *State v. Gay*, 334 N.C. 467, 485, 434 S.E.2d 840, 850 (1993) (citation omitted); N.C. Gen. Stat. § 15A-1443(c) (2005). “Such ‘invited error’ does not merit relief.” *Id.* (citation omitted). Therefore this assignment of error is overruled.

Defendant further contends that the trial court erred in sentencing Mr. Platt as a Level II offender where the State failed to meet its burden of proof under N.C. Gen. Stat. § 15A-1340.14 (2005).

N.C. Gen. Stat. § 15A-1340.14(f) (1) states that proof of prior convictions may be proven by stipulation of the parties. *Id.* However, when a defendant has a prior out-of-state conviction, the trial court must determine as a matter of law whether that conviction is “substantially similar” to an offense under North Carolina law for the purposes of sentencing. See N.C. Gen. Stat. § 15A-1340.14(e); *State v. Hanton*, 175 N.C. App. 250, 254, 623 S.E.2d 600, 604 (2006). This Court has held that even a clear stipulation to the classification and points assigned to an out-of-state conviction is not sufficient to prove the nature of the out-of-state conviction for sentencing purposes. *State v. Palmateer*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 634 S.E.2d 592, 593 (2006).

Clearly “‘the question of whether a conviction under an out-of-state statute is substantially similar to an offense under North Carolina statutes is a question of law to be resolved by the trial court.’” *Id.* (citation omitted). In addition, “[s]tipulations as

to questions of law are generally held invalid and ineffective, and not binding upon the courts, either trial or appellate."'" *Id.* (citations omitted).

In the instant case counsel for defendant stipulated to the existence of defendant's prior conviction in Kansas and further stipulated that defendant should be sentenced as a Level II offender. However, the trial court failed to determine whether the conviction prosecuted under Kansas law was substantially similar to a felony offense under North Carolina statutes for sentencing purposes and therefore we must remand for such determination.

Accordingly, we must remand defendant's case for resentencing.

Remanded for resentencing.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).