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NO. COA07-1465

NORTH CAROLINA COURT OF APPEALS

Filed: 1 July 2008

STATE OF NORTH CAROLINA

v.

Carteret County  
Nos. 06 CRS 6058  
06 CRS 51020

RON O'NEAL WILSON,

Defendant.

# Court of Appeals

Appeal by defendant from judgment entered 3 May 2007 by Judge Benjamin G. Alford in Carteret County Superior Court. Heard in the Court of Appeals 14 May 2008.

## Slip Opinion

*Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Mertz, for the State.*

*Michelle FormyDuval Lynch, for defendant.*

ELMORE, Judge.

In July 2005, defendant filled out a sworn affidavit of indigency for charges otherwise unrelated to the instant case. Defendant put a zero in all columns on the affidavit, including "assets" and "liabilities" in real estate. Defendant swore under oath that his statements on the form were true to the best of his knowledge, even after being informed that false or dishonest answers concerning his financial status could lead to prosecution for perjury. A subsequent title search revealed that defendant was the record owner of a parcel of real property and tax records

showed that defendant paid taxes on the property and entered into a payment plan for other taxes on it.

On 3 May 2007, a jury unanimously found defendant guilty of perjury. The trial court then sentenced defendant to 107 months' to 138 months' imprisonment. Defendant now appeals.

Defendant first argues that the indictment was not sufficiently clear to apprise him of the conduct for which he was charged. Specifically, he argues that the indictment did not specify what "property" he allegedly lied about owning. "The purpose of an indictment . . . is to inform a party so that he may learn with reasonable certainty the nature of the crime of which he is accused . . . ." *State v. Coker*, 312 N.C. 432, 437, 323 S.E.2d 343, 347 (1984). An indictment must give "[a] plain and concise factual statement in each count which, *without allegations of an evidentiary nature*, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant . . . of the conduct which is the subject of the accusation." N.C. Gen. Stat. § 15A-924(a) (5) (2007) (emphasis added).

The elements essential to constitute perjury are "a false statement under oath, knowingly, wilfully, and designedly made . . . concerning a matter wherein the affiant is required by law to be sworn, as to some matter material to the issue or point in question." *State v. Chaney*, 256 N.C. 255, 257, 123 S.E.2d 498, 500 (adopting the definition of perjury from *State v. Smith*, 230 N.C. 198, 200-01, 52 S.E.2d 348, 349 (1949)).

Defendant knew or should have known of all property he owned at the time of the indictment, so the word "property" gave sufficient notice to have any available defenses prepared concerning any property he owned at that time or when he signed the affidavit. This should have been an easy task if defendant truly had no property as he stated on the affidavit. "Knowledge of what evidence the State intends to offer to prove that defendant [is guilty of the offense charged] would no doubt make easier defendant's task of preparing his defense. Nonetheless, the State is not constitutionally required to allege that evidence in defendant's criminal summons." *Coker*, 312 N.C. at 438-39, 323 S.E.2d at 348.

Defendant alleges that failing to identify the specific property in the indictment constitutes a failure to allege the essential element of making a "false statement." The statement for which defendant was prosecuted did not concern his ownership of a specific property but rather his ownership of *any* property at all. This element was properly alleged where the indictment stated that defendant committed perjury by "falsely asserting on oath that he did not own any property . . . ." Therefore, the indictment was sufficient to charge the offense of perjury.

Defendant also alleges that the indictments vagueness opens him up to double jeopardy because if more property is discovered in the future, he could face additional prosecution for perjury that he would be unable to prove stemmed from the same facts. This concern is misplaced because defendant made only one sworn

statement, "that he did not own any property . . . ." Even if defendant were found to own several different parcels of land or to have personal property, any individual piece of property could be used to prove the charge of perjury. However, this could not amount to several charges of perjury because any such evidence merely proves the falsity of one statement made under oath (the affidavit), which is the only element of perjury to which "property" is relevant.

Next, defendant argues that the evidence presented at trial regarding the falsity of his statement was insufficient to establish the "false statement" element of perjury. This argument is without merit.

It is well established that evidence is sufficient to withstand a motion to dismiss if it passes the substantial evidence test. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Denny*, 361 N.C. 662, 664-65, 652 S.E.2d 212, 213 (2007).

In ruling on a defendant's motion to dismiss, the trial court should consider if the state has presented substantial evidence on each element of the crime and substantial evidence that the defendant is the perpetrator . . . . The evidence should be viewed in the light most favorable to the state, with all conflicts resolved in the state's favor. . . . If substantial evidence exists supporting defendant's guilt, the jury should be allowed to decide if the defendant is guilty beyond a reasonable doubt.

*State v. Replogle*, 181 N.C. App. 579, 580-81, 640 S.E.2d 757, 759 (2007) (quotations and citations omitted). Defendant does not deny

being the perpetrator, so only the first prong of the substantial evidence test must be examined.

Of the essential elements of perjury listed above, the only element that defendant alleges is not supported by sufficient evidence is the falsity of the statement. He advances three arguments in support of this claim. All of these arguments were considered and deemed unconvincing by our Supreme Court in another case involving a defendant convicted of perjury on an affidavit of indigency. *Denny*, 361 N.C. at 665-68, 652 S.E.2d at 214-15. Although defendant does not question the "knowingly, wilfully, and designedly made" element, his failure to disclose ownership by itself is substantial enough to give rise to the inference that he did so knowingly. We give the State every inference in our sufficiency of evidence analysis, allowing the jury to decide whether the evidence satisfied them of defendant's guilt beyond a reasonable doubt. *Id.* at 665, 667, 652 S.E.2d at 214, 215.

Defendant argues that because the State did not prove his ownership of the property by traditional methods or by reliance on the Real Property Marketable Title Act as required by *Heath v. Turner*, 309 N.C. 483, 308 S.E.2d 244 (1983) the State never proved that defendant had legal title to the property. The methods required to quiet disputed title are irrelevant to an analysis of the sufficiency of the evidence for the purposes of proving a false statement. The trial court received no evidence that defendant did not actually own this property. Accordingly, whether defendant had marketable title is irrelevant to the substantiality of the State's

evidence that he was the owner. In *Denny*, the Court held that "failure to disclose record ownership of real estate was adequate to support [a] perjury conviction." *Denny*, 361 N.C. at 663-64, 652 S.E.2d 213. In this case, the State produced the property deed with defendant's name on it as the sole grantee and tax documents showing that he paid taxes on the property and entered into a tax payment plan for the property. This is substantial evidence to support the inference that defendant owned the property and therefore did make a false statement in the affidavit.

Defendant also claims that there was insufficient evidence that he failed to disclose an "asset," and that the State therefore failed to prove the falsity of his answer of "\$0" assets in real estate. This argument was considered in *Denny* and held not to affect the sufficiency of evidence for motions to dismiss. In *Denny*, the State introduced property records, from which

[t]he jury could reasonably infer . . . that the property had some value above zero at the time defendant submitted the indigency affidavit, and therefore, that his sworn representation that he had no real property assets was false. Defendant's explanation that he did not have an equitable interest in the property created an issue for the jury to evaluate and did not negate the sufficiency of the State's evidence.

*Id.* at 667, 652 S.E.2d at 215 (citation omitted). In the instant case, even more evidence, including tax records showing an approximate tax value of \$75,195.00 was submitted showing the value of the property, strengthening an inference of a value greater than zero. This evidence is substantial because it is adequate to

support a conclusion that the property had some value over zero, thereby making defendant's answer on the affidavit false.

Additionally, defendant contends that the State failed to meet the heightened standard of evidence for showing a perjurious false statement. "[I]t is required that the falsity of the oath be established by the testimony of two witnesses, or by one witness and corroborating circumstances." *Id.* at 665, 652 S.E.2d at 214 (citation omitted). The State introduced a certified copy of the property deed from the Register of Deeds, a record of a tax payment on the property made by defendant, and evidence of a tax payment plan for the property entered into by defendant. The State also offered the testimony of two witnesses, the Assistant District Attorney who did the title search that resulted in the discovery of the property and the Listing and Billing Supervisor of the Tax Office for Carteret County, both of whom stated that defendant owned the property. The evidence in *Denny* was similar, consisting of property records combined with a subsequent purchaser's real estate attorney's testimony; our Supreme Court held that such evidence met this heightened standard. *Id.* at 666-67, 652 S.E.2d at 214-15. Thus, we hold that the State's evidence did satisfy the heightened standard for perjury.

In his final assignment of error, defendant claims that the trial court committed plain error in failing to instruct the jury *sua sponte* on the definition of marketable title. We note that defendant failed to request these instructions at trial, even when specifically asked by the trial judge at a charge conference if he

desired any further jury instructions. "In criminal cases, a question which was not preserved by objection noted at trial . . . may be made the basis of an assignment of error where the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C.R. App. P. 10(c)(4) (2007). "Plain error is error so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different verdict than it otherwise would have reached." *State v. Leyva*, 181 N.C. App. 491, 499, 640 S.E.2d 394, 399 (2007) (quotations and citation omitted).

Defendant has not shown how the absence of these instructions constitutes an error "so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different verdict than it otherwise would have reached." *Id.* He makes no argument, convincing or otherwise, that had the jury understood the concept of marketable title they would have determined that his statement was not false or that his statement was made without the required *mens rea*, thereby making it likely they would have found him not guilty. Furthermore, an instruction as to marketable title was not relevant to any essential element of the perjury offense. Indeed, the fact that ownership of the property was not disputed further undermines any contention that a marketable title instruction was appropriate.

Having conducted a thorough review of the briefs and the record on appeal, we find no error.

No error.



Judges MCGEE and JACKSON concur.

Report per Rule 30(e).