NO. COA10-1384
NORTH CAROLINA COURT OF APPEALS

Filed: 16 August 2011

STATE OF NORTH CAROLINA

v. Harnett County
Nos. 09 CRS 56006; 10 CRS 241

ROBERT EUGENE EASON

Appeal by Defendant from judgments entered 21 July 2010 by Judge Mark E. Klass in Superior Court, Harnett County. Heard in the Court of Appeals 10 May 2011.

Attorney General Roy Cooper, by Assistant Attorney General John G. Barnwell for the State.

Geoffrey W. Hosford for Defendant.

McGEE, Judge.

Robert Eugene Eason (Defendant) was indicted on 11 January 2010 on a charge of possession of a firearm by a convicted felon. The indictment listed the date of the offense as 5 December 2006. Defendant was also indicted for having attained habitual felon status for offenses occurring on or before 5 December 2006. The State moved to correct the indictments to show the date of Defendant's offenses as 5 December 2009. The

trial court allowed the State's motion. Defendant filed a motion to suppress evidence seized during a search, and an amended motion to suppress a statement by Defendant. At the beginning of the jury trial on 20 July 2010, the trial court denied Defendant's motions. The trial court entered written orders denying Defendant's motions on 14 October 2010.

At trial, officers from the Dunn Police Department testified that they responded to a 911 call that came into the Harnett County Sheriff's Department on 5 December 2009 regarding a disturbance. Officer Harold Collins (Officer Collins) testified he was the first officer to arrive on the scene, a house on East Granville Street in Dunn, North Carolina. Officer Collins testified he observed several people in front of the house, and saw the people loading items into a van. Officer Collins learned that one of those people was Angela Murphy (Ms. Murphy), and that she had been in a "domestic situation" with Defendant. Ms. Murphy appeared "extremely upset." Within minutes, other officers arrived at the scene to help secure the area. Officer Collins stayed with Defendant at the front of the house.

Sergeant John Parker (Sergeant Parker), also responded to the call and was informed that there had been a gun at the scene. Sergeant Parker walked around the house with another

officer to look for the gun. As Sergeant Parker walked around the left side of the house, he saw the barrel of a gun about five to ten feet away in a crawl space to the right of the back door. The barrel of the gun was in plain view through the opening in the crawl space. Sergeant Parker retrieved the gun, a single-barrel shotgun, and handed it to Lieutenant Angela Hinson (Lieutenant Hinson).

Lieutenant Hinson stated that she also saw the barrel of a weapon in the crawl space. Lieutenant Hinson also found three shotgun shells in the area near the gun. Lieutenant Hinson turned over the shotgun and the shells to Officer Collins.

Upon his arrest, Defendant began crying in the patrol vehicle and continued to cry after entering the Dunn Police Station and being seated in the squad room. Defendant was handcuffed while sitting in the squad room alone with Officer Collins. Officer Collins explained to Defendant that Defendant needed to stop crying so that he could be read his *Miranda* rights. Officer Collins testified that Defendant stopped crying long enough for Officer Collins to read Defendant his *Miranda* rights. Officer Collins said that when asked, Defendant answered that he understood his rights. Officer Collins read to Defendant from a printed *Miranda* rights and waiver form. Defendant never signed the waiver because Officer Collins did

not feel he should remove the handcuffs from Defendant because Defendant and Officer Collins were the only two people in the room. Instead of getting a written waiver from Defendant, Officer Collins checked a block on the waiver indicating that Defendant had given an oral waiver. Officer Collins testified that Defendant then said he did not have a gun and that he had nothing to say to Officer Collins.

Officer Collins testified that, after other officers entered the squad room so that he and Defendant were no longer alone, he asked Defendant to write a statement about what happened. Defendant handwrote and signed a statement stating that he had an "old 1930 12 gauge shotgun" and that he "put it back w[h]ere it was under the house."

Tammy Sue Bethea (Ms. Bethea) testified that her sister lived in the house next door to Defendant. On 5 December 2009, Ms. Bethea was in her sister's home when she heard a loud commotion and looked out the window to see Defendant, Ms. Murphy, and several other people arguing loudly. Ms. Bethea testified that she saw Defendant put something "[i]n the side of the house[,]" although she could not tell what it was. Ms. Bethea showed the officers where she had seen Defendant "put something inside the house." Defendant did not present any evidence at trial.

The jury found Defendant guilty of possession of a firearm by a felon on 21 July 2010. Following his conviction, Defendant entered an *Alford* plea to the charge of having attained habitual felon status. At sentencing, the trial court found no aggravating factors, two mitigating factors, and found that a mitigated sentence was justified. The trial court determined that Defendant had eighteen prior record points, making his prior record level VI. Defendant was sentenced to a minimum of 87 months and a maximum of 114 months in prison. Defendant appeals.

I. Motion to Suppress

Defendant argues that the trial court erred in denying his motion to suppress his statement because the statement was obtained after he had invoked his right to remain silent. Defendant also contends he is entitled to a new trial because the order denying his motion to suppress was entered out of term and out of session. However, for the following reasons, we find no prejudicial error.

Assuming, *arguendo*, that denial of Defendant's motion to suppress constituted error,

> [i]t is well settled that the burden is on the appellant not only to show error but to show that the error was prejudicial. An error is prejudicial if it is shown that there is a reasonable possibility that had the error not been committed a different

result would have been reached at trial.

State v. Murphy, 100 N.C. App. 33, 41, 394 S.E.2d 300, 305 (1990) (citations omitted). *See also* N.C. Gen. Stat. § 15A-1443(a) (2009).

In addition to Defendant's written statement, the State presented substantial evidence to support Defendant's conviction. At trial, the State presented Ms. Bethea's testimony indicating that she saw Defendant "put something inside the house." The State also presented testimony from Sergeant Parker and Lieutenant Hinson that they found the shotgun in plain view in a crawl space under Defendant's house, along with Lieutenant Hinson's testimony that she found shotgun shells along the side of the house. Even without Defendant's written statement, Defendant has not shown that there existed "a reasonable possibility that had the error not been committed a different result would have been reached at trial." *Murphy*, 100 N.C. App. at 41, 394 S.E.2d at 305 (citations omitted). Assuming, *arguendo*, it was error to deny Defendant's motion to suppress his written statement, Defendant fails in his burden of showing the denial was prejudicial to him.

Defendant also assigns error to the timeliness of the trial court's findings regarding Defendant's motion to suppress his statement where the trial court orally denied Defendant's motion

at trial, but a written order was not entered until almost three months later. We also find no prejudicial error.

In *State v. Ainsworth*, 109 N.C. App. 136, 426 S.E.2d 410, (1993), the defendant assigned error to, *inter alia*, the timeliness of the trial court's findings and conclusions where the trial court "delayed nearly four months before signing [the] order [denying defendant's motions to suppress and for change of venue] and placing it in the record." *Id.* at 151, 426 S.E.2d at 419. This Court stated that "[t]he determinative issue is whether defendant was prejudiced by the delay[,]" not the delay itself. *Id.* Our Court held that the defendant failed to show that there was any prejudice to defendant caused by the delay. *Id.* at 151-52, 426 S.E.2d at 419.

In the present case, as in *Ainsworth*, Defendant fails to show that any prejudice was caused by the delay. As stated above, the State presented evidence in addition to Defendant's statement that supported Defendant's conviction. Therefore, we find no prejudicial error.

II. Sentencing

Defendant next argues that the trial court erred in sentencing at a prior record level VI on the grounds that three different offenses were improperly included in his prior record level worksheet. Defendant argues that he should be resentenced

at a prior record level V. We disagree.

Our Court has stated that:

> The determination of an offender's prior record level is a conclusion of law that is subject to *de novo* review on appeal. It is not necessary that an objection be lodged at the sentencing hearing in order for a claim that the record evidence does not support the trial court's determination of a defendant's prior record level to be preserved for appellate review.

State v. Bohler, 198 N.C. App. 631, 633, 681 S.E.2d 801, 804 (2009) (citations omitted), *disc. review denied*, __ N.C. App. __, 691 S.E.2d 414 (2010). *See* N.C. Gen. Stat. § 15A-1446(d)(18) (2009). In *Bohler*, our Court reviewed the procedures for determination of a defendant's prior record level.

> According to N.C. Gen. Stat. § 15A-1340.14 (a), "[t]he prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court . . . finds to have been proved in accordance with this section." The number of prior record points for each class of felony and misdemeanor offense is specified in N.C. Gen. Stat. § 15A-1340.14(b). "The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction." A prior conviction may be proved by "stipulation of the parties;" "[a]n original or copy of the court record of the prior conviction;" "[a] copy of records maintained by the Division of Criminal Information, the

> Division of Motor Vehicles, or of the Administrative Office of the Courts;" or "[a]ny other method found by the court to be reliable." However, "a worksheet prepared and submitted by the State, purporting to list a defendant's prior convictions is, without more, insufficient to satisfy the State's burden in establishing proof of prior convictions."

Bohler, 198 N.C. App. at 633-34, 681 S.E.2d at 804 (citations omitted).

Defendant contends that the trial court erred in the addition of three points to his prior record level, raising his level from level V to level VI. Prior record level V requires "[a]t least 14, but not more than 17 points[,]" and prior record level VI requires "[a]t least 18 points." N.C. Gen. Stat. § 15A-1340.14(c)(5)-(6) (2009). Defendant argues that there was error in the points derived from two prior in-state convictions. He contends that the offenses listed as "mPSP" and "para" are unknown abbreviations for an offense or are unclear from the record. Both offenses included a file number and a date of conviction. Defendant incurred one point for each offense.

In *State v. Hussey*, 194 N.C. App. 516, 669 S.E.2d 864 (2008), the defendant contended there was error because there was no support for the trial court's prior record level finding. Our Court noted that "[p]rior convictions may be proved, by several methods, including a stipulation of the parties." *Id.*

at 523, 669 S.E.2d at 868 (citation omitted). Our Court noted that both the prosecutor and defense counsel had signed the section entitled "Stipulation" that stated:

> "The prosecutor and defense counsel, or the defendant if not represented by counsel, stipulate to the accuracy of the information set out in Sections I. and IV. of this form, including the classification and points assigned to any out-of-state convictions, and agree with the defendant's prior record level or prior conviction level as set out in Section II."

Id. The *Hussey* Court explained that in *State v. Jeffery*, 167 N.C. App. 575, 605 S.E.2d 672 (2004), our Court established that a prior record level worksheet would not suffice to satisfy the State's burden of proof for establishing the defendant's prior record level. *Hussey*, 194 N.C. App. at 523, 669 S.E.2d at 868. However, the *Hussey* Court further explained:

> [I]n *Jeffery*, and the cases on which *Jeffery* relies, the prior record level worksheet that was submitted to the trial court did not include the stipulation that is now found in Section III. The prior record level worksheet was modified in 2003 to include the stipulation section. A signed stipulation is adequate to establish a prior record level so long as "its terms . . . [are] definite and certain in order to afford a basis for judicial decision. . . ."

Id. The *Hussey* Court accordingly found that the stipulation, signed by both parties, was sufficient to satisfy N.C. Gen.

Stat. § 15A-1340.14(f)(1), permitting stipulation by the parties as proof of prior convictions. *Id.*

In the present case, as in *Hussey*, Defendant's counsel and the prosecutor both signed Section III entitled "Stipulation" on the prior record level worksheet, "stipulat[ing] to the information set out in Sections I and IV of [the] form, and agree[ing] with . . . [D]efendant's prior record level or prior conviction level as set out in Section II based on the information herein." For these two convictions, we find this stipulation to be sufficient to satisfy N.C.G.S. § 15A-1340.14(f)(1) because "'its terms . . . [are] definite and certain in order to afford a basis for judicial decision[.]'" *Hussey*, 194 N.C. App. at 523, 669 S.E.2d at 868 (citation omitted). A conviction date and case number for both offenses were also included in the worksheet that would assist in identification of the offenses.

Defendant also contends that the trial court erred by allowing one point to be included from an offense marked on the prior record level worksheet as "mlarceny" with the location listed as "Tampa FL." There is no corresponding file number or date of conviction. However, on the prior record level worksheet, the trial court assigned Defendant points for only two "Prior Class A1 or 1 Misdemeanor Conviction[s.]" As we have

determined above, there were sufficient grounds for the trial court to have included two prior Class 1 misdemeanor convictions from prior in state convictions. Thus, it appears that the trial court did not consider Defendant's out-of-state "mlarceny" conviction in calculating his prior record level. Even if the trial court did so, Defendant properly stipulated to a sufficient number of prior convictions to support his being found to have a prior record level VI. Therefore, we find no prejudicial error in the trial court's sentencing of Defendant.

No prejudicial error.

Judges STROUD and BEASLEY concur.

Report per Rule 30(e).