

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA10-360

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

STATE OF NORTH CAROLINA

v.

Camden County
Nos. 09CRS000014;
08CRS050222-23

RICKY BARTLETT

Appeal by Defendant from judgment entered 29 July 2009 by Judge J. Richard Parker in Camden County Superior Court. Heard in the Court of Appeals 28 September 2010.

Attorney General Roy Cooper, by Assistant Attorney General G. Mark Teague, for the State.

M. Alexander Charns, for Defendant.

BEASLEY, Judge.

On appeal Defendant argues that because the indictment for the offense of felony speeding to elude arrest was facially invalid, the trial court lacked subject matter jurisdiction over the felony offense. However, because the body of the indictment sufficiently notified Defendant of the charge against him, we conclude that there is no error.

On 30 July 2008, Defendant, Ricky Bartlett, was employed at a local farm in Camden County, North Carolina. While driving his employer's truck home for lunch, Defendant was stopped and arrested for operating a motor vehicle while his license was revoked. After being released on bond, Defendant retrieved the vehicle from the site of his initial arrest, and decided to return it to his employer by driving the short distance to his employer's farm. Shortly after Defendant began his return trip, Detective Robeson, witnessed Defendant driving his employer's truck. Detective Robeson confirmed that Defendant's license was indeed revoked and activated the blue lights to alert Defendant to pullover. Despite passing several locations where he could safely pull the vehicle off the road, Defendant simply signaled by waving his left arm outside the window of the truck and continued to drive. A chase ensued and Detective Robeson radioed for assistance and was joined in the pursuit by additional law enforcement officers.

Shortly after joining the pursuit, Deputy Forbes attempted to slow Defendant's progression by positioning his vehicle in front of Defendant's. In an apparent effort to elude capture, Defendant left the road and drove through a cemetery and the yard of a local residence before returning to the roadway. At trial, Deputy Forbes testified that during the chase, Defendant swerved his vehicle, suddenly causing Deputy Forbes to maneuver his vehicle to the

shoulder of the road to avoid a collision. Detective Robeson also testified that twice during the pursuit, Defendant jerked the truck to the left, once causing Detective Robeson to drive through a ditch. Monitoring the chase by radio transmission, Chief Deputy Major Worthington of the Camden County Sheriff's Department positioned himself in front of Defendant and attempted to deflate Defendant's tires with the use of "stop sticks" on two separate occasions. Each time Defendant maneuvered around the stop sticks and continued driving. Defendant arrived at his employer's farm, departed from the vehicle, and was promptly placed under arrest by pursuing officers.

Defendant was convicted of his initial driving with a revoked license charge on 31 October 2008. On the same day, Defendant gave notice of his intent to appeal the conviction to Superior Court. Once in Superior Court, Defendant's conviction for driving with a revoked license was joined with indictments for felony speeding to elude arrest, five counts of assault with a deadly weapon on a government official, and habitual felon status. Following the State's evidence at trial, the trial court granted motions to dismiss two of Defendant's assault charges. Later, the jury acquitted Defendant of the remaining assault charges. Defendant was convicted of felonious fleeing to elude arrest, driving with a revoked license, and habitual felon status. Defendant appeals from

his convictions arguing that: (I) the felonious speeding to elude arrest indictment was facially defective, divesting the trial court of jurisdiction; (II) the trial court erroneously failed to grant his motion to dismiss made at trial; and (III) the trial court's jury instructions for the offense of reckless driving were plainly erroneous.

I.

Defendant first argues that the speeding to elude arrest indictment was "defective in that it did not allege the manner in which the accused's driving was reckless and didn't cite the reckless driving statute." We disagree.

Without a valid bill of indictment, a trial court lacks jurisdiction to try an accused for a felony offense. *See State v. Snyder*, 343 N.C. 61, 65, 468 S.E.2d 221, 224 (1996). An indictment is sufficient "if it express[es] the charge against the defendant in a plain, intelligible, and explicit manner[.]" N.C. Gen. Stat. § 15-153 (2009). "Specifically, the indictment must allege all of the essential elements of the crime sought to be charged." *State v. Westbrook*, 345 N.C. 43, 57, 478 S.E.2d 483, 492 (1996). An indictment that tracks the language of the applicable statute is sufficient to charge the statutory offense. *State v. Blackmon*, 130 N.C. App. 692, 699, 507 S.E.2d 42, 46 (1998). "The purpose of an indictment is to inform the defendant of the charge against him

with sufficient certainty to enable him to prepare a defense." *State v. Bullock*, 154 N.C. App. 234, 244, 574 S.E.2d 17, 23 (2002). Accordingly, though the body of "an indictment may cite to the wrong statute, when the body of the indictment is sufficient to properly charge defendant with an offense, the indictment remains valid and the incorrect statutory reference does not constitute a fatal defect." *State v. Mueller*, 184 N.C. App. 553, 574, 647 S.E.2d 440, 445 (2007).

In North Carolina, it is a misdemeanor offense for "any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties." N.C. Gen. Stat. § 20-141.5(a) (2009). However, where at least two of the aggravating factors listed in the statute are present, the offense will be characterized as a class H felony. N.C. Gen. Stat. § 20-141.5(b) (2009). Reckless driving is listed as one of the aggravating factors in the statute. N.C. Gen. Stat. § 20-141.5(b)(3) (2009). To be convicted of reckless driving as defined by our General Assembly, the following conditions must be met:

(a) Any person who drives any vehicle upon a highway or any public vehicular area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

N.C. Gen. Stat. § 20-140(a)(b) (2009). An indictment alleging that the accused drove recklessly, must specifically identify the manner in which the accused's driving was reckless. See *Ingle v. Transfer Corp.*, 271 N.C. 276, 283, 156 S.E.2d 265, 271 (1967) (holding that "allegations as to reckless driving in the words of [N.C. Gen. Stat. §] 20-140 without specifying wherein the party was reckless amount to no more than an allegation that the party charged was negligent. They are but conclusions of law which are not admitted by demurrer.")

The indictment in this case sufficiently identifies the manner in which Defendant was driving recklessly on 30 July 2008. Preliminarily, the State argues that because Defendant failed to make a motion to quash the felony speeding to elude arrest indictment at trial, Defendant is barred from raising this issue on review. However, because Defendant argues that the indictment is facially invalid, Defendant's appeal is properly before this Court. See *State v. King*, 353 N.C. 457, 467, 546 S.E.2d 575, 585 (2001) (holding that "when an indictment is alleged to be facially invalid, thereby depriving the trial court of its jurisdiction, the

indictment may be challenged at any time, notwithstanding a defendant's failure to contest its validity in the trial court.") In the indictment for the Defendant's charge of felony speeding to elude arrest the grand jury found that Defendant

unlawfully, willfully and feloniously did operate a motor vehicle on a highway, Trotman Road, South Sandy Hook Road, and South 343, while attempting to elude law enforcement officer, Detective M. Robeson, in the lawful performance of the officer's duties, trying to stop the defendant for driving while licence revoked. At the time of the violation, the defendant was driving recklessly in violation of G.S. 20-141.5 and the defendant was driving while the defendant's driver's license was revoked.

Defendant's indictment tracks the relevant language of the felony speeding to elude arrest statute and lists the essential elements of the offense. The indictment also specifies that Defendant was operating a motor vehicle on a public highway for the purpose of eluding capture by law enforcement. Though the indictment misidentifies the reckless driving statute, the body of the indictment provided Defendant with enough information to prepare a defense for the offense of felony speeding to elude arrest with reckless driving as an aggravating factor. Accordingly, Defendant's first assignment of error is without merit.

II.

Defendant next argues that "the trial court erred by failing

to grant Defendant's motion to dismiss the felony [speeding to elude arrest] charge based on the insufficiency of the evidence for this 'slow speed chase.'" Specifically, Defendant contends that the evidence failed to show that Defendant was driving recklessly on 30 July 2008. We disagree.

When reviewing a motion to dismiss, a trial court must determine whether "there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). All "evidence admitted, whether competent or incompetent, must be considered by the trial judge in the light most favorable to the State, giving the State the benefit of every reasonable inference that might be drawn therefrom. Any contradictions or discrepancies in the evidence are for resolution by the jury." *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). As discussed above, a finding that a defendant was driving recklessly acts as an aggravating factor in a speeding to elude arrest offense. See N.C. Gen. Stat. § 20-141.5(b)(3). Relevant here, defendants that drive a vehicle "carelessly and heedlessly in willful or wanton disregard of the rights or safety

of others" violate the statute prohibiting reckless driving. See N.C. Gen. Stat. § 20-140(a). The statute does not require that physical harm or property damage actually occurs as a result of Defendant's reckless driving.

Here, when viewed in a light most favorable to the State, there is substantial evidence in the record that Defendant was driving recklessly on 30 July 2008. At trial, the State presented evidence that during the chase at least two other drivers were required to remove their vehicles from the roadway as Defendant approached followed by police; on several occasions Defendant almost collided with pursuing law enforcement vehicles; and that Defendant drove through the property of a local residence and a cemetery to elude police capture. Accordingly, there is substantial evidence in the record from which a reasonable juror could conclude that Defendant operated his vehicle "carelessly and heedlessly in willful or wanton disregard of the rights or safety of others." N.C. Gen. Stat. § 20-140(a). Defendant argues that the doctrines of collateral estoppel and res judicata prohibited jurors from considering his near collisions with law enforcement officials as evidence of reckless driving, because he was not convicted of the charges associated with those offenses. However, because the dismissal and acquittal of Defendant's assault with a deadly weapon charges occurred in a single action, the doctrines of

collateral estoppel and res judicata are inapplicable. See *State v. Dial*, 122 N.C. App. 298, 305-06, 470 S.E.2d 84, 89 (1996). Accordingly, Defendant's argument is without merit.

III.

Lastly, Defendant argues that "the trial court committed plain error by instructing the jury that 'refusing to stop for a blue light and siren' was reckless driving." We disagree.

Because Defendant failed to object at trial, we will review for plain error. See *State v. Cummings*, 346 N.C. 291, 330, 488 S.E.2d 550, 573 (1997) (holding that "[w]hen [a] defendant fails to object to a jury instruction at trial, the plain error standard is applied."). "'Plain error with respect to jury instructions requires the error be so fundamental that (i) absent the error, the jury probably would have reached a different verdict; or (ii) the error would constitute a miscarriage of justice if not corrected.'" *State v. Pate*, 187 N.C. App. 442, 445, 653 S.E.2d 212, 215 (2007) (quoting *State v. Wood*, 185 N.C. App. 227, 232, 647 S.E.2d 679, 684 (2007)). Our Court must review the entire record and determine whether the error was likely to have impacted the jury's finding of guilt. *Id.* However, "[t]he plain error rule is always to be applied cautiously and only to be used in the exceptional case." *State v. Streeter*, 191 N.C. App. 496, 503, 663 S.E.2d 879, 884 (2008).

In this case, under review for plain error, the instruction provided by the trial court was not so erroneous that absent the error the jury would have reached a different verdict at trial. At trial, jurors were informed that:

[r]eckless driving requires evidence that the Defendant drove a vehicle upon the highway refusing to stop for a blue light and siren and that in so doing he acted without due caution or circumspection and drove at a speed or in a manner so as to endanger or to be likely to endanger any person or property.

While the language in the trial court's instruction deviated from language in the statute, jurors were still required to find that Defendant's failure to stop for a blue-light constituted reckless driving. A plain reading of the contested instruction reveals that jurors were not, as the Defendant argues, instructed that a failure to stop for a blue light was conclusive as to the offense of reckless driving. As discussed above, there was an abundance of evidence presented at trial from which jurors could determine that Defendant drove in a reckless manner on 30 July 2008. With the amount of evidence presented at trial, it is doubtful that the trial court's erroneous instruction as to Defendant's failure to stop for a blue light would have had a probable affect on the jury's finding of guilt. Accordingly, Defendant's argument is without merit.

No Error.

Judges MCGEE and HUNTER, JR. concur.

Report per Rule 30(e).