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NO. COA12-191  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2012

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
Nos. 09 CRS 240310, 76471

COLELL BARION STEELE

Appeal by defendant from judgment entered 4 May 2011 by Judge H. William Constangy in Mecklenburg County Superior Court.

Heard in the Court of Appeals 22 October 2012.

*Attorney General Roy Cooper, by Assistant Attorney General Hilda Burnett-Baker, for the State.*

*James N. Freeman, Jr., for defendant appellant.*

McCULLOUGH, Judge.

Colell Steele ("defendant") appeals from judgment entered upon his conviction for felony fleeing to elude arrest and attaining habitual felon status and argues the trial court: (1) erred in denying his motion to dismiss the substantive offense for lack of sufficient evidence, and (2) committed plain error by admitting indictments into evidence during the habitual felon phase of the proceedings. We find no error.

The State's evidence tends to show that on 18 August 2009, Officer Sean Healy of the Charlotte-Mecklenburg Police Department received a radio call to be on the lookout for a suspect in an attempted rape and assault with a deadly weapon involving a box cutter. A description was given that the suspect was a black male wearing a hat or "do-rag" with a gold front tooth, and he was driving an older model, green, two-door Saturn, possibly with chrome rims.

About fifteen or twenty minutes after receiving the call, Officer Healy saw defendant, a black male wearing a cap, driving a green two-door Saturn and the officer initiated a traffic stop. After asking for defendant's driver's license, which defendant provided, the officer observed that defendant had a gold tooth. Officer Healy asked defendant to step out of the car, and defendant consented to a pat-down. The officer testified that he then advised defendant he was going to detain him, and tried to place defendant's hands behind his back. Defendant resisted, the two men struggled, and the officer pulled out a Taser. Defendant turned and ran away. Officer Healy followed on foot, but defendant circled back to his car and left the scene. The officer called for backup and pursued defendant in his patrol car. Defendant initially sped onto a highway at 80

to 85 miles per hour, then exited and drove through residential streets at speeds reaching 60 to 65 miles per hour while being chased by police. He failed to stop at stop signs and red lights, he refused to pull over, and he evaded a "stop stick," a device placed on the road by police to puncture tires in order to stop a car. Defendant returned to his home, where he was arrested.

The jury returned verdicts of guilty of felonious fleeing to elude arrest and habitual felon status. The trial court sentenced defendant to a term of 150 to 189 months' imprisonment. Defendant appeals.

By his first argument, defendant contends the trial court erred in denying his motion to dismiss the charge of fleeing to elude arrest because the State provided insufficient evidence that Officer Healy was engaged in the lawful performance of his duties. We disagree.

"Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.'" *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quoting

*State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

Of the essential elements for the offense of felonious fleeing to elude arrest, defendant challenges only whether Officer Healy was "in the lawful performance of his duties." N.C. Gen. Stat. § 20-141.5(a) (2011). Defendant acknowledges that the initial traffic stop was lawful, but notes that Officer Healy determined that there was nothing unusual about defendant's license and registration and that no weapons or contraband were found on defendant's person after defendant consented to a pat-down. Defendant contends that at this point, Officer Healy had no probable cause to arrest defendant after the initial stop, and his actions in attempting to do so did not constitute a lawful performance of his duties. We disagree.

Although it appears that defendant is attempting to couch his argument in terms of a suppression standard, the determinative question is whether substantial evidence was

presented of each element of the offense charged. The evidence, taken in the light most favorable to the State, shows that Officer Healy was on duty and on patrol when he received a radio call to be on the lookout for a suspect in an attempted rape and assault with a deadly weapon, two serious crimes. Officer Healy observed defendant driving a car which closely matched the detailed description given by the dispatcher, and pulled defendant over. Upon viewing defendant in person, the officer observed additional details which matched the description given of the suspect. Not knowing whether any weapons might be found in the car, Officer Healy attempted to detain defendant while waiting for backup. We conclude this evidence was sufficient to send to the jury the issue of whether Officer Healy was engaged in the lawful performance of his official duties when he attempted to detain defendant in connection with a suspected crime. Therefore defendant's contention that the trial court erred in denying his motion to dismiss is without merit.

Defendant's second argument is that the trial court committed error and plain error by allowing the State to introduce several indictments during the habitual felon phase of the trial and in publishing those indictments to the jury. He contends that the indictments contained extraneous facts which

were unnecessary, confusing for the jury, and prejudicial to defendant. We disagree.

At the habitual felon phase of the proceedings, the defendant denied his habitual felon status. The State then introduced the indictment in the underlying case for fleeing to elude arrest, indictments and judgments from the three prior felonies which the State asserted made defendant an habitual felon, as well as an indictment and judgment for habitual felon status for which defendant was convicted in April 2011, just weeks before the trial in the instant case. Defendant contends none of the indictments should have been allowed into evidence.

The State has the burden of proving that defendant has attained habitual felon status. To meet this burden, the State may introduce "the record or records of prior convictions of felony offenses . . . , but only for the purpose of proving that said person has been convicted of former felony offenses." N.C. Gen. Stat. § 14-7.4 (2011). This Court has previously stated that "[i]t [is] not error for the trial court to admit into evidence indictments from cases not currently before the jury." *State v. Massey*, 195 N.C. App. 423, 427, 672 S.E.2d 696, 698-99 (2009) (citing *State v. Flowers*, 347 N.C. 1, 36, 489 S.E.2d 391, 411 (1997)). Thus, the indictments for the three prior felonies

were properly admitted for purposes of proving that defendant had previously been convicted of at least three felonies.

Further, defendant has not shown error, much less plain error, in the admission of the indictment of the substantive offense in the underlying case where the jury had already determined his guilt of the offense listed therein. Nor can defendant assert that the admission of the indictment and judgment of a prior conviction for habitual felon status was in error, as those documents were sufficient by themselves to show that defendant had already attained the status of habitual felon. *See State v. Smith*, 112 N.C. App. 512, 517, 436 S.E.2d 160, 162 (1993) (noting that "being an habitual felon is a status, that once attained is never lost"). In short, defendant's arguments are wholly without merit.

No error.

Judges HUNTER (Robert C.) and CALABRIA concur.

Report per Rule 30(e).