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NO. COA13-129
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Gaston County
No. 12 CRS 51932

RONNEY JAMES ALLISON

Appeal by defendant from judgment entered 10 October 2012 by Judge Hugh B. Lewis in Gaston County Superior Court. Heard in the Court of Appeals 11 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General Neal T. McHenry, for the State.

Jon W. Myers for defendant.

ELMORE, Judge.

This case addresses the sufficiency of an indictment charging Ronney James Allison (defendant) with violating a domestic violence protective order with a deadly weapon under N.C. Gen. Stat. § 50B-4.1. After careful consideration, we affirm.

I. Background

On 21 October 2011, the Gaston County District Court issued a domestic violence protective order (the protective order) for Terri Smith (Smith) against defendant, her then boyfriend. The protective order, which was effective until 21 October 2012, ordered defendant to cease contact with Smith and to stay away from her workplace and residence located at 2167 Camelot Court, Gastonia.

On 10 February 2012, defendant was arrested for violating the protective order while in possession of a deadly weapon, a knife, and resisting a public officer. Defendant had attempted to enter Smith's residence by using a knife to cut through a screen. A Gaston County grand jury issued an indictment charging defendant with violating the domestic violence protective order with a deadly weapon under N.C. Gen. Stat. § 50B-4.1, and for resisting a public officer under N.C. Gen Stat. § 14-223. The indictment for the offense of violating the protective order with a deadly weapon provided:

The jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did WHILE IN POSSESSION OF A DEADLY WEAPON TO WIT: A KNIFE VIOLATE A VALID PROTECTIVE ORDER ENTERED PURSUANT TO CHAPTER 50B-4.1(G) OF THE NORTH CAROLINA GENERAL STATUTES TO WIT: DEFENDANT WAS STANDING ON THE VICTIM'S BACK

BORCH [sic] LOCATED AT 2167 CAMELOT COURT GASTONIA, NC 28052 WHILE IN POSSESSION OF A KNIFE. THE PROTECTIVE ORDER WAS ISSUED BY THE HONORABLE JUDGE JOHN K. GREENLEE ON 10/21/2011.

Pursuant to a plea agreement, defendant pled guilty to the lesser offense of attempted violation of the protective order with a deadly weapon. The trial court gave defendant credit for the 217 days he spent in confinement prior to the judgment and issued an active term of 11 to 23 months imprisonment.

II. Sufficiency of the Indictment

Defendant's sole argument on appeal is that the indictment charging him with violating the protective order was facially invalid. We disagree.

"[W]here an indictment is alleged to be invalid on its face, thereby depriving the trial court of its jurisdiction, a challenge to that indictment may be made at any time, even if it was not contested in the trial court." *State v. Wallace*, 351 N.C. 481, 503, 528 S.E.2d 326, 341, *cert. denied*, 531 U.S. 1018, 148 L. Ed. 2d 498 (2000). "On appeal, we review the sufficiency of an indictment *de novo*." *State v. McKoy*, 196 N.C. App. 650, 652, 675 S.E.2d 406, 409 (2009).

An indictment must contain "[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 or defendants of the conduct which is the subject of the accusation." N.C. Gen. Stat. § 15A-924 (2011). Our Courts have held that "[a]n indictment is not facially invalid as long as it notifies an accused of the charges against him sufficiently to allow him to prepare an adequate defense and to protect him from double jeopardy." *State v. Haddock*, 191 N.C. App. 474, 476-77, 664 S.E.2d 339, 342 (2008). "Further, [n]otification is sufficient if the illegal act or omission alleged in the indictment is clearly set forth so that a person of common understanding may know what is intended." *McKoy*, 196 N.C. App. at 656, 675 S.E.2d at 411. (citations and quotations omitted) (alteration in original).

N.C. Gen. Stat. § 50B-4.1(g) defines the offense of violating a domestic violence protective order while in possession of a deadly weapon as follows:

Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about his or her person or within close proximity to his or her person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a

place, or a person, as so directed under the terms of the order, shall be guilty of a Class H felony.

N.C. Gen. Stat. § 50B-4.1(g) (2011).

In the case *sub judice*, defendant contends that the indictment is facially defective because it (1) fails to identify the person or place that he was directed to stay away from, as directed by the protective order; and (2) because it alleges that defendant "violated a valid protective order entered pursuant to [C]hapter 50B-4.1(g) of the North Carolina General Statutes," which pertains to the violation of a protective order as opposed to its entry.

To determine whether defendant's indictment was sufficient to impart subject matter jurisdiction, we must discern (1) whether a person of common understanding would know that the intent of the indictment was to charge defendant with the offense, and (2) whether defendant's constitutional rights to notice and freedom from double jeopardy were adequately protected. *McKoy*, 196 N.C. App. at 657, 675 S.E.2d at 411-12.

Although the victim is not directly named in the indictment, it provides that defendant was standing on the victim's back porch located at 2167 Camelot Court, Gastonia, North Carolina in violation of a protective order issued by

Judge John K. Greenlee on 21 October 2011. Should defendant need further clarification of the victim's identity, the referenced protective order specifically prohibits defendant from contacting Terri Smith, the "victim" in the instant case. Therefore, any person of common understanding would have notice that Terri Smith is the victim. The indictment also states that the defendant was at 2167 Camelot Court, Gastonia, which is the address that the defendant was ordered to avoid in the protective order. A person of common understanding could surely understand that the Camelot Court address was the place defendant was directed to stay away from, according to the protective order.

The indictment references (1) a valid protective order issued on a specific date, (2) by a specific Gaston County trial judge, and (3) specifies the victim's address. The protective order named Terri Smith as the victim and includes the address defendant was ordered to avoid. Accordingly, we conclude that the indictment was not facially invalid. Should defendant have needed further clarification, he could have moved for a Bill of Particulars. See *State v. Whitfield*, 310 N.C. 608, 313 S.E.2d 790 (1984). Furthermore, as defendant does argue on appeal that the defective indictment placed him at risk of being subjected

to double jeopardy, we conclude that defendant is protected from double jeopardy. See *McKoy*, 196 N.C. App at 658, 675 S.E.2d at 412 (finding "[d]efendant was not confused regarding the identity of the victim" and that "the indictment provided defendant with sufficient notice.").

Finally, defendant correctly points out that N.C. Gen. Stat. § 50B-4.1(g) outlines the offense of violating a protective order while in possession of a deadly weapon, not its entry. However, this is the type of a hyper-technicality that is disfavored by our courts. See *State v. Bell*, 311 N.C. 131, 138, 316 S.E.2d 611, 615 (1984) (finding that the defendant's argument that his indictment was defective on the basis that it failed to allege the sex of the victims was hyper-technical). Defendant offers no indication of how he was misled or encountered difficulty in preparing his defense by inclusion of the statute in his indictment. This argument is without merit.

III. Conclusion

In sum, defendant's indictment was not facially invalid and therefore the trial court had jurisdiction to enter a judgment against the defendant. Accordingly, we affirm.

Affirmed.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).