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NO. COA14-422
NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2014

STATE OF NORTH CAROLINA

v.

Wake County
No. 13 CRS 212414

BRIAN MANUEL JOLLIFF

Appeal by defendant from judgment entered 31 October 2013 by Judge R. Allen Baddour in Wake County Superior Court. Heard in the Court of Appeals 25 August 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General Hal F. Askins, for the State.

Russell J. Hollers, III, for defendant-appellant.

CALABRIA, Judge.

Brian Manuel Jolliff ("defendant") appeals from a judgment entered upon defendant's plea of guilty to the offenses of habitual driving while impaired ("DWI") and driving while license revoked ("DWLR"). We find no error.

At approximately 2:00 a.m. on 26 May 2013, Officer James Boyd ("Officer Boyd") of the Raleigh Police Department ("RPD") initiated a traffic stop of a vehicle that was registered to a

woman whose driver's license was expired. As he approached the vehicle, Officer Boyd smelled a "moderate" odor of alcohol. Defendant was seated in the driver's seat, and Officer Boyd noted that defendant's eyes were bloodshot and glassy. As a result, he began an investigation for a possible DWI offense.

Officer Boyd asked defendant for identification. Defendant informed the officer that he did not have a driver's license with him, but that his name was "Brandon Banks[.]" Defendant's speech was slurred. Officer Boyd ordered defendant out of the car and frisked him. Defendant then consented to a search of the car. During the search, Officer Boyd discovered a bank card with defendant's name in the driver's side door pocket. Officer Boyd searched the name on the bank card in the Department of Motor Vehicle's database, which produced a photograph of defendant. Defendant failed to perform a series of field sobriety tests, and Officer Boyd formed the opinion defendant was appreciably impaired and placed him in custody.

Defendant was transported to the Wake County Public Safety Center ("WCPSC") where Officer Gregory Modetz ("Officer Modetz"), a licensed chemical analyst for RPD, asked him for a breath sample. Upon defendant's refusal, Officer Modetz obtained a search warrant permitting him to take a sample of

defendant's blood. Officer Modetz prepared the blood draw kit and observed a registered nurse from the WCPSC obtain two vials of defendant's blood. Officer Modetz labeled both vials, and placed an "integrity seal" and a white seal over the samples. He then put the sealed vials back into the blood draw kit, which was sealed in another plastic bag. Officer Modetz then transported the sealed package to the RPD's downtown office, where he placed the sealed package in a refrigerated evidence locker. The sealed package was subsequently moved by an unknown individual from the refrigerated evidence locker to a larger refrigerator located one floor down from the evidence locker.

On 5 June 2013, RPD Evidence Specialist Curtis King ("King") removed defendant's sealed evidence from the large refrigerator and transported it to the Raleigh/Wake City-County Bureau of Identification ("CCBI") for analysis. A CCBI evidence technician assigned a CCBI number to defendant's sealed blood tubes, which were then locked in an individual compartment of a CCBI refrigerator. CCBI forensic chemist Irvin Alcox ("Alcox") later removed defendant's blood vials from the locked refrigerator compartment and tested the blood for alcohol concentration. The test results reflected an alcohol

concentration of .21 grams of alcohol per 100 milliliters of blood.

Defendant was indicted for felony DWI, habitual DWI, and DWLR. Beginning 29 October 2013, defendant was tried by a jury in Wake County Superior Court. On 30 October 2013, defendant pled guilty to the offense of DWLR and admitted that he had three previous DWI convictions, an element of habitual DWI. Trial continued for the remaining DWI charge. Alcox testified at trial, over defendant's objection, regarding the results of defendant's blood test. Later that afternoon, the jury returned a verdict finding defendant guilty of DWI. The trial court arrested judgment on the DWI offense. The court then consolidated the remaining offenses and sentenced defendant to a minimum of fifteen months to a maximum of twenty-seven months in the North Carolina Division of Adult Correction. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by allowing the results of his blood test into evidence over defendant's objection. Specifically, defendant contends that there was a break in the chain of custody when the test tubes were moved from the refrigerated evidence locker to the

larger refrigerator which rendered the blood test results inadmissible. We disagree.

The admission of evidence "is at the trial court's discretion, and any weak links in a chain of custody relate only to the weight to be given the evidence and not to its admissibility." *State v. Stevenson*, 136 N.C. App. 235, 242, 523 S.E.2d 734, 738 (1999) (citation omitted). Thus, "[a]lthough a defendant may point to gaps or flaws in the chain of custody or procedure, a showing that the evidence was tampered with or altered is generally required for a reversal of the trial court's decision to admit the evidence." *State v. Hyman*, 153 N.C. App. 396, 400, 570 S.E.2d 745, 748 (2002). Accordingly, "[i]f all the evidence can reasonably support a conclusion that the blood sample analyzed is the same as that taken from the defendant then it is admissible into evidence." *State v. Bailey*, 76 N.C. App. 610, 614, 334 S.E.2d 266, 269 (1985), *overruled on other grounds, State v. Drdak*, 330 N.C. 587, 411 S.E.2d 604 (1992).

In the instant case, Officer Modetz testified that he received the vials of defendant's blood directly from the nurse, sealed the vials, placed the sealed vials in a sealed plastic bag, and then placed all of the evidence in a sealed box in

RPD's refrigerated evidence locker. King testified that defendant's evidence was moved from the evidence locker to the large refrigerator, as noted by an evidence card accompanying defendant's sample, although he was unable to identify who had moved it. However, he stated that the box containing defendant's sample was still sealed and initialed when he transported it to the CCBI. CCBI evidence technician Anita Smith ("Smith") testified that she received defendant's sealed blood tubes from King. Smith further testified that she then attached a CCBI number to the evidence and locked the sealed evidence in an individual compartment of a refrigerator in a restricted area. Finally, Alcox testified that he received defendant's blood in a sealed blood alcohol kit, opened the sealed kit containing two test tubes of blood, inspected the condition of the evidence, observed that defendant's name was written on each test tube, and analyzed defendant's blood.

The testimony from Officer Modetz, King, Smith and Alcox sufficiently established that the blood sample analyzed was the same as that taken from defendant. Moreover, defendant presented no evidence that defendant's blood sample had been tampered with or altered in any way. Consequently, the trial

court did not abuse its discretion in admitting the blood test results. This argument is overruled.

Defendant received a fair trial, free from error.

No error.

Judges GEER and McCULLOUGH concur.

Report per Rule 30(e).