IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1033

Filed: 7 April 2015

Cleveland County, No. 13-CRS-2272

STATE OF NORTH CAROLINA,

v.

CALVIN LEWIS MOORE, JR., Defendant.

Appeal by Defendant from judgment entered 18 March 2014 by Judge Hugh B. Lewis in Cleveland County Superior Court. Heard in the Court of Appeals 3 February 2015.

Attorney General Roy Cooper, by Assistant Attorney General J. Joy Strickland, for the State.

M. Alexander Charns, for defendant-appellant.

HUNTER, JR., Robert N., Judge.

Calvin L. Moore, Jr. ("Defendant") appeals from judgments and commitments sentencing him to 127 to 165 months' imprisonment for failure to register as a sex offender under N.C. Gen. Stat. § 14-208.11 and, as a result, for attaining habitual felon status. Defendant contends that the trial court erred by denying his motion to dismiss for insufficient evidence that he actually received the verification form underlying his conviction of failure to register as a sex offender due to his failure to return the verification form. We agree and vacate the judgments.

I. Factual & Procedural History

Defendant was indicted on 12 August 2013. The indictment reads as follows:

> 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
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> as a person required by Article 27A of Chapter 14 of the General Statutes of North Carolina to register as a sexual offender, knowingly and with the intent to violate the provisions of that article fail to register as a sexual offender in that the Defendant *failed to return his verification notice as required pursuant to N.C. Gen. Stat. § 14-208.9A*.

Defendant's trial began on 17 March 2014 in Cleveland County before the Honorable Hugh B. Lewis. The transcript and record reflect the following relevant facts.

On 7 March 2002, Defendant was convicted of indecent liberties with a child in Cleveland County. On 9 January 2003, Defendant first registered as a sex offender with the Cleveland County Sheriff's Office. Pursuant to the North Carolina Sex Offender Registration Act ("Act") at the time of the alleged offense, codified at N.C. Gen. Stat § 14-208.5 *et seq*. N.C. Gen. Stat. § 14-208.19A:

> (1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.
>
> (2) The person shall return the verification form in person to the sheriff within three business days after the receipt of the form.

> . . . .
>
> (4) If the person fails to return the verification form in person to the sheriff within three business days *after receipt of the form*, the person is subject to the penalties provided in [N.C. Gen. Stat.] § 14-208.11. If the person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address[.]

N.C. Gen. Stat. § 14-208.9A(a) (2013) (emphasis added).

At trial, the State called Mike Proctor of the Cleveland County Sheriff's Office ("Deputy Proctor"). Deputy Proctor testified that he has overseen the sex offender registry in Cleveland County since August 2008 and explained the process of registering sex offenders as follows:

> During the initial registration we go through their duties as a registrant as provided by the Department of Justice, and that includes annual verification of information and after the first annual verification there's a law that the verification is every six months after if you're a regular offender, which [Defendant] is. The state's sexual offender coordination unit mails those letters from Raleigh on their anniversary date and six months thereafter, via certified mail, and the letter instructs the individual to report to the sheriff's office within three business days after receiving the letter.

The address verification sex offender ("AVSO") letter contains the "verification form" referenced in N.C. Gen. Stat. § 14-208.9A and "is mailed to the registrant's current registered address[.]" The procedure for sending the AVSO letter follows:

"The SBI mails these out state-wide, in batch, on the Tuesday before the anniversary date or six months thereafter." That Tuesday, Deputy Proctor "receive[s] an electronic notification of whose letters have been mailed from Raleigh." Although the AVSO letter is "mailed by the state's sex offender coordination unit in Raleigh, the return address is to the local county sheriff's office because [they] maintain those records, and of course, the address to the registrant at their registered address." The sheriff's office receives what Deputy Proctor "call[s] the green receipt, which is the U.S. Post Office return receipt that the – whoever receives the letter signs, they date, and return to the sheriff's office." Deputy Proctor continued: "When the post office certifies that the letter has been delivered, that's the start of the three-day, the three business days[.]" Deputy Proctor confirmed that the AVSO letter was sent to Defendant's address in January 2012, July 2012, and January 2013 (this last address verification form contained Defendant's notice to the sheriff's office that he planned to enroll in Cleveland Community College as a full-time student), and that he had returned the verification form timely and properly.

Deputy Proctor further testified that on 9 July 2013, he received electronic notice that the SBI sent the AVSO letter to Defendant's last registered address. Shortly thereafter, Deputy Proctor received the AVSO letter's certified mailing receipt, which was signed by Carolyn Smith ("Smith") on 11 July 2013. On the mailing receipt, adjacent to Smith's signature, were two unchecked boxes: one for

"addressee" and one for "agent." Also on the mailing receipt was an option that provided: "Restricted Delivery? (Extra Fee)," with an unmarked box adjacent to it, indicating that restricted delivery was not chosen by the sender. Deputy Proctor admitted that he was not familiar with Smith nor did he inquire into whom she was. On 19 July 2013, Deputy Proctor wrote a report informing his supervising lieutenant that Defendant had not returned the verification form within three business days. Deputy Proctor further admitted that he took no action to verify whether Defendant still resided at the same address except to call the county jail and confirm that Defendant was not incarcerated.

The State then called Deputy Proctor's supervisor, Richard Acuff of the Cleveland County Sheriff's Office's Criminal Investigation Division ("Lieutenant Acuff"). Lieutenant Acuff stated that when he reviewed Deputy Proctor's report on Defendant, he noted that the return receipt was signed by Smith on 11 July 2013 and concluded that Defendant's three-business-day window had closed on 16 July 2013. Lieutenant Acuff admitted that he was unfamiliar with Smith and that he took no action to inquire into her identity or to verify that Defendant still lived at the same address. On 19 July 2013, Lieutenant Acuff initiated proceedings against Defendant and secured a warrant for Defendant's arrest for "failure to supply us with his address." Defendant was arrested on 24 July 2013 and remained in custody until 5 August 2013. Lieutenant Acuff testified that, to his knowledge, no subsequent AVSO

letter was mailed to Defendant. Three business days after being released from prison, on 8 August 2013, Defendant was charged again for failure to return the verification form. Lieutenant Acuff stated that the sheriff's office did not contact Defendant, nor did Defendant contact the sheriff's office, at any time after the alleged violation in July and before 23 October 2013, when Defendant presented to the sheriff's office and returned the verification form.

The State called David Bramlett of the Cleveland County Sherriff's Office ("Deputy Bramlett") last, who has worked in court security at the courthouse since 1996. Deputy Bramlett testified that, on 24 September 2013, he saw Defendant at the courthouse and arrested him upon discovering there was an outstanding order for his arrest that was issued on 8 August 2013 for Defendant's alleged violation of N.C. Gen. Stat. § 14-208.11.

At the close of the State's evidence, Defendant moved to dismiss the charges on grounds that the State presented insufficient evidence that he actually received the verification form. The trial court denied Defendant's motion, but dismissed the 8 August 2013 count for failure to return the verification form and its attached count of habitual felon status; the trial proceeded to Defendant's evidence.

Defendant called his sister, Smith, to testify. Smith and Defendant have lived at the same address for approximately six years. Smith testified that for approximately the last four years, she has been out of work, receiving disability

benefits, for health issues including: "[b]ipolar, schizophreni[a], COPD, . . . high blood pressure, high cholesterol, anxiety, you name it, just about, I got it." Smith testified that she takes prescription medication including, *inter alia*, "Prozac, . . . haloperidol, . . . Xanax, . . . three blood pressure pills, . . . [and] clonidine[.]" Around the time of the incident, Smith lived with Defendant, her husband, her daughter, and her son. Smith stated that she typically receives the mail for the house and "sort[s] it and put[s] it on the arm of the living room couch."

Smith testified that she did not remember receiving the AVSO letter or signing for it but readily admitted that it was her signature on the return receipt. Smith stated that she first learned about the AVSO letter when Defendant called her from jail. Once it came to her attention that the AVSO letter supposedly came to the house, Smith told Defendant "[she] didn't remember it and [she] was sorry for what was going on, but . . . that [she] would look for it." Smith searched the house unsuccessfully, and it wasn't until months later that she eventually found the AVSO letter

> when [she] was cleaning up the living room, because the room where [she] put[s] the mail, that's not a room that people sit it. [sic] It's just the very first room of the house with living room furniture, and no one sits there. There's not a TV there or anything. And it was like [the AVSO letter] had fell over the arm of the couch; it was like sticking off down in the cushion.

Smith testified that she found the AVSO letter "sometime in October, because that's when [she] usually do[es her] re-hanging of [her] curtains for the winter to make it warm." She explained that "[w]hen [she] stepped up in the chair that's when [she] could see that there was something in between there." She continued:

> When I stepped up in the chair . . . I saw that something was in there when my feet was in the chair, then I could see that there was something in between there. And when I looked down – I was hanging curtains, and when I looked down and I saw it, I just pulled it up and I was like, oh, my goodness. And I was like when did this come, and I just gave it to [Defendant] and he said, "That's the letter that I was telling you about."

At the close of all the evidence, Defendant again moved to dismiss the charge for insufficient evidence. The trial court denied the motion and instructed the jury on the charge of Willfully Failing to Comply with Sex Offender Registration Law, pursuant to N.C.P.I. 207.75, as follows: "If you find from the evidence beyond a reasonable doubt that . . . Defendant, after receiving an address verification form, failed to verify and return the form in person within three business days of receiving it to the sheriff's office listed on the address verification form, it would be your duty to return a verdict of guilty." The trial court then instructed: "It is to be noted that the statute has no requirement of knowledge or intent so as to require that the State prove either that the Defendant knew he was in violation of or intended to violate the

statute when he failed to return the form in person within three business days."[1] After deliberations, the jury returned a verdict of guilty on 18 March 2014. Defendant consequently pled guilty to attaining habitual felon status. The trial court sentenced Defendant to 127 to 165 months' imprisonment. Defendant appealed.

II. Analysis

Defendant contends that the trial court erred in denying his motion to dismiss, because the State failed to present sufficient evidence that Defendant actually received the verification form. We agree and, for the following reasons, vacate the lower court's judgment.

This Court reviews a trial court's denial of a motion to dismiss *de novo*, *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007), wherein this Court "considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotation mark and citation omitted). Upon the defendant's motion, this Court's

[1] As discussed hereinafter, the trial court may have been under an erroneous view of law existent at the time of trial. The trial judge cited to and quoted *State v. Young*, 140 N.C. App. 1, 8, 535 S.E.2d 380, 384 (2000), *disc. review improvidently allowed*, 354 N.C. 213, 552 S.E.2d 142 (2001), for the proposition that "the statute has no requirement of knowledge or intent, so as to require that the State prove either defendant knew he was in violation of or intended to violate the statute when he failed to register his change of address." *Id.* As will be discussed below, this conclusion was based on an older version of the statute which had removed a previously-included *mens rea* requirement and, therefore, our Supreme Court had interpreted the amendment to mean that a violation of the statue was a strict liability offense. *See State v. Bryant*, 359 N.C. 554, 562, 614 S.E.2d 479, 484 (2005), *on remand*, 178 N.C. App. 742, 632 S.E.2d 599 (2006) (unpublished). The statute was amended in 2006 to provide that registrants who "willfully" failed to comply with sex offender laws on or after 1 December 2006 would be guilty of a Class F Felony. 2006 Sess. Laws 1065, 1070, 1085-86, Ch. 247 §§ 8(a), 22.

inquiry 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." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). "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). In making this determination, "all evidence is considered in the light most favorable to the State, and the State receives the benefit of every reasonable inference supported by that evidence." *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009) (internal quotation marks omitted). "The defendant's evidence, unless favorable to the State, is not to be taken into consideration. However, if the defendant's evidence is consistent with the State's evidence, then the defendant's evidence may be used to explain or clarify that offered by the State." *State v. Nabors*, 365 N.C. 306, 312, 718 S.E.2d 623, 627 (2011) (internal citation and quotation marks omitted).

Defendant was convicted of violating N.C. Gen. Stat. § 14-208.11, which provides in pertinent part: "A person required by this Article to register who willfully does any of the following is guilty of a Class F Felony: . . . (3) Fails to return a verification notice as required under [N.C. Gen. Stat.] § 14-208.9A." N.C. Gen. Stat. § 14-208.11(a)(3). Because N.C. Gen. Stat. §§ 14-208.9 and 14-208.11 " 'deal with the same subject matter, they must be construed in *pari materia* to give effect to each.' "

State v. Fox, 216 N.C. App. 153, 156, 716 S.E.2d 261, 264 (2011) (quoting *State v. Holmes*, 149 N.C. App. 572, 576, 562 S.E.2d 26, 30 (2002)). N.C. Gen. Stat. § 14-208.9A(a), listed above, states in pertinent part:

> (1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division[2] shall mail a nonforwardable verification form to the last reported address of the person.
>
> (2) The person shall return the verification form in person to the sheriff within three business days after the receipt of the form.
>
> (3) The verification form shall be signed by the person and shall indicate the following:
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> a. Whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.
> b. Whether the person still uses or intends to use any online identifiers last reported to the sheriff. If the person has any new or different online identifiers, then the person shall provide those online identifiers to the sheriff.
> c. Whether the person still uses or intends to use the name under which the person registered and last reported to the sheriff. If the person has any new or different name, then the person shall provide that name to the sheriff.
>
> . . . .
>
> (4) If the person fails to return the verification form in person to the sheriff within three business days after receipt of the form, the person is subject to the penalties

[2] As of 1 July 2014, "Division" was changed to "Department of Public Safety." *See* 2014 N.C. Sess. Laws Ch. 100, S.B. 744.

> provided in [N.C. Gen. Stat.] § 14-208.11. If the person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in [N.C. Gen. Stat.] § 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

N.C. Gen. Stat. § 14-208.9A(a) (2013). In *State v. Braswell*, 203 N.C. App. 736, 692 S.E.2d 435 (2010), a jury found the defendant guilty of violating N.C. Gen. Stat. § 14-208.11 for failure to register as a sex offender by failing to verify his address, because the defendant failed to return a verification form pursuant to N.C. Gen. Stat. § 14-208.9A(a)(4).[3] *Id.* Accordingly, this Court interpreted what constitutes a violation of Section 14-208.9A(a)(4) and concluded that

> [i]n order to be convicted for failure to return the verification form after the receipt of the form pursuant to N.C. Gen. Stat. § 14-208.9A(a)(4), a defendant must have *actually* received the verification form. . . . The statute goes on to require that if the form is not timely returned, that the "sheriff shall make a reasonable attempt to verify that the person is residing at the registered address." N.C. Gen. Stat. § 14-208.9A(a)(4). . . .
>
> However, if a defendant is not found to be at the registered address, the crime to be charged is failure to report a change of address, subject to a defendant proving that he or she has "not changed his or her residential address." N.C. Gen. Stat. § 14-208.9A(a)(4).

[3] We recognize that this Court in *Braswell* was interpreting an older version of the statute. However, the relevant portions interpreted are identical. *See* 2006 N.C. Sess. Laws Ch. 247, H.B. 1896.

Id. at 738-39, 692 S.E.2d at 437 (emphasis added).

Therefore, to convict for the crime of failing to return a verification form as required under N.C. Gen. Stat. § 14-208.9A(a)(4), the State must prove five essential elements: (1) the defendant is a "person required . . . to register," N.C. Gen. Stat. § 14-208.11(a); (2) the SBI mailed a nonforwardable verification form to the defendant's last reported address, *id.* § 14-208.9A(a)(1); (3) the defendant actually received the verification form, *Braswell*, 203 N.C. App. at 738-39, 692 S.E.2d at 435; (4) "the sheriff [made] a reasonable attempt to verify that the [defendant] is residing at the registered address[,]" N.C. Gen. Stat. § 14-208.9A(4); *see also Braswell*, 203 N.C. App. at 738-39, 692 S.E.2d at 435; and (5) the defendant *willfully* failed to "return the verification form in person to the sheriff within three business days[,]" N.C. Gen. Stat. §§ 14-208.9A(a)(4), 14-208.11(a). "When reviewing a defendant's motion to dismiss for insufficiency of the evidence, this Court must determine whether there is substantial evidence of every essential element of the offense." *Holmes*, 149 N.C. App. at 577, 562 S.E.2d at 31 (citation omitted). Here, essential elements one and two are uncontested.

A. Element Three: Actual Receipt

Defendant argues that the State presented insufficient evidence of element three, that he actually received the verification form, and cites to *Braswell* for his assertion that: "The statute requires actual receipt of the verification form by the

defendant, not simply the verification form being mailed and received by someone." The State argues that it met its burden to show receipt and that *Braswell* is distinguishable because the mailing receipt in that case was returned unclaimed to the sheriff's office.

In *Braswell*, this Court held that the State failed to present sufficient evidence of receipt of the verification form in a similar situation and vacated the trial court's judgment sentencing the defendant for failure to register as a sex offender. *Braswell*, 203 N.C. App. at 738-39, 692 S.E.2d at 435. The defendant in *Braswell* was a registered sex offender who verified his registration information as required in May 2007, November 2007, and May 2008. *Id.* at 737, 692 S.E.2d at 436. When the SBI mailed a verification form in November 2008 via certified mail, return receipt requested, it was returned unclaimed to the Durham County Sheriff's Office on 2 December 2008. *Id.* On 23 January 2009, a deputy presented on two separate occasions to the defendant's last registered address in an attempt to verify his residence, but no one answered the door both times. *Id.* That same day, a warrant was issued for the defendant's arrest in violation of N.C. Gen. Stat. § 14-208.11. *Id.*

The defendant was indicted for failing to register as a sex offender by failing to verify his address for failure to return the verification form. *Id.* At trial, the defendant in *Braswell* testified that he never received the verification from; that he went to the sheriff's office to meet with the person in charge of the sex offender

registration program to inquire about it, but she was out sick; that he made several calls to the person in charge of the program, never spoke with her, but left several messages; and that when he went to the sheriff's office in February 2009, he was arrested for failure to return the verification form. *Id.* The jury returned a guilty verdict against the defendant for failing to register as a sex offender by failing to verify his address. *Id.*

The defendant appealed to this Court and argued that the trial court erred in denying his motion to dismiss for insufficient evidence that the defendant received the verification form. *Id.* The State conceded error and this Court vacated the trial court's judgment, holding that

> [i]n order to be convicted for failure to return the verification form after the receipt of the form pursuant to N.C. Gen. Stat. § 14-208.9A(a)(4), a defendant must have *actually* received the verification form. The evidence is uncontroverted that defendant never received the form; therefore, he cannot be convicted for failure to return the verification form.

Braswell, 203 N.C. App. at 739, 692 S.E.2d at 437 (emphasis added).

We recognize that in *Braswell*, the State conceded error, and it was uncontroverted that the defendant never received the verification form, as the certified mailing receipt was returned unclaimed. However, we are bound by our decision in *Braswell* that a registrant must *actually* receive the verification form before being convicted for the failure to return it. *See In re Civil Penalty*, 324 N.C.

373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). In *Braswell*, evidence was presented that a nonforwardable verification form was sent to the defendant's last registered address, but this was insufficient to sustain the conviction of failure to register as a sex offender for failure to verify his address. Therefore, in the instant case, we find unpersuasive the State's contention that "N.C.G.S. § 14-208.9A indicates that a nonforwardable verification form shall be sent to the last reported address of the offender[.] . . . The evidence presented at trial shows that this statute was complied with by the State." Furthermore, in *Braswell*, there was evidence that the defendant was familiar with the semi-annual verification requirement, as he had timely and properly verified his information in the past. Therefore, in the instant case, the State's assertion that Defendant "was on notice of the requirement that he verify his information on the first anniversary of his registration date and every six months afterward" is of no consequence and also unpersuasive.

The State contends that it satisfied its burden to show receipt of the verification form by presenting the following evidence: that Defendant initially registered with Cleveland County in 2003 and was made aware of his regular registration requirements; that "[o]n or about the anniversary date and subsequent

verification dates, the State's sexual offender coordination unit mails a certified letter/packet" to registrants' last reported addresses; that the AVSO letter informs the registrant that he or she must appear within three business days to verify or update his or her information at the sheriff's office; "that the State system mailed certified [AVSO] letters to [D]efendant in 2012, January 2013 and 2014 and he timely appeared in person at the Sheriff's office to verify his information[;]" and that in July 2013, AVSO letter was sent via certified mail, return receipt requested, to Defendant's last registered address, and the mailing receipt was signed by Smith and returned to the sheriff's office. We are not persuaded this constitutes actual receipt as considered in *Braswell* and note that actual receipt could have been easily shown by the State if it simply checked the box marked "Restricted Delivery?" and paid the extra fee to restrict delivery of the AVSO letter to the addressee, the sex offender.

In its brief, the State argues that "[t]he statute does not indicate nor require that the offender personally sign for the letter." It is true that the statute does not require the offender personally sign for the letter; however, it does require that the offender *actually* receives the form. *See* N.C. Gen. Stat. § 14-208.9A(a)(2) ("The *person* shall return the verification form . . . *after the receipt of the form*.") (emphasis added); *Braswell*, 203 N.C. App. at 737, 692 S.E.2d at 437 ("[A] defendant must have *actually* received the verification form.") (emphasis added).

Moreover, "[o]ur rules of statutory construction provide that '[s]tatutes imposing penalties are . . . strictly construed in favor of the one against whom the penalty is imposed and are never to be extended by construction.' " *Holmes*, 149 N.C. App. at 576, 562 S.E.2d at 30 (quoting *Winston-Salem Joint Venture v. City of Winston-Salem*, 54 N.C App. 202, 205, 282 S.E.2d 509, 511 (1981)). Strictly construing N.C. Gen. Stat. § 14-208.9A, and bound as we are by our holding in *Braswell*, we conclude that "receipt" contemplates actual, and not constructive, receipt of the verification form by the registrant. Additionally, interpreting the clause "after receipt of the form" as considered in N.C. Gen. Stat. § 14-208.9A to identify someone other than the registrant—the "person" who potentially faces a Class F Felony—is a construction that would result in an impermissible extension of the criminal statute.

B. Element Four: Reasonable Attempt by Sheriff's Office to Verify Address

This Court cannot agree with the State in its assertion that: "The evidence presented at trial shows that this statute was complied with by the State[,]" because the State failed to show substantial evidence that the sheriff's office attempted to verify Defendant's address. N.C. Gen. Stat. § 14-208.9A(4) provides: "If the person fails to report in person and provide written verification as provided by this section, the sheriff *shall* make a reasonable attempt to verify that the person is residing at

the registered address." *Id.* (emphasis added). This Court in *Braswell* noted that: "The statute goes on to require that if the form is not timely returned, that the 'sheriff shall make a reasonable attempt to verify that the person is residing at the registered address.' N.C. Gen. Stat. § 14-208.9A(a)(4). Deputy Baker performed this duty in the instant case." *Braswell*, 203 N.C. App. at 738-39, 692 S.E.2d at 437.

Furthermore, the legislative history of N.C. Gen. Stat. § 14-208.9A(a)(4) indicates that our General Assembly intended for the sheriff's office to make a reasonable attempt to verify that a registrant is still residing at the registered address before subjecting the person to the penalties provided in N.C. Gen. Stat. § 14-208.11. Prior to 2006, N.C. Gen. Stat. § 14-208.9A(a)(4) provided: "*If the verification form is returned to the sheriff as undeliverable*, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address." 2006 N.C. Sess. Laws 247, HB 1896, § 7(a) (emphasis added). The legislature amended the statute in 2006 to replace this language with: "*If the person fails to report in person and provide the written verification as provided by this section*, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address." *Id.* When the General Assembly amends a statute, " 'the presumption is that the legislature intended to change the law.' " *State v. White*, 162 N.C. App. 183, 189, 590 S.E.2d 448, 452 (2004) (quoting *State ex rel. Utilities Comm'n. v. Public Service Co.*, 307 N.C. 474, 480, 299 S.E.2d 425, 429 (1983)). Thus, by

replacing the condition "the verification form is returned . . . undeliverable" with the condition "the person fails to report in person and provide the written verification[,]" the General Assembly expressed its intent to impose the duty on the sheriff's office to make a reasonable attempt to verify the person is residing at his or her last registered address before initiating charges against the registrant under N.C. Gen. Stat. § 14-208.9A(a)(4). We conclude as a matter of statutory construction that N.C. Gen. Stat. § 14-208.9A requires a showing that the sheriff's office made a reasonable attempt to verify the person is still residing at his or her last reported address before initiating criminal proceedings against the person.

The State failed to show that the sheriff's department performed this duty in the instant case. The evidence indicates that the only attempt Deputy Proctor made to verify that Defendant still resided at his last registered address was to confirm with the local jail that Defendant was not incarcerated. The evidence also indicates that Lieutenant Acuff made no attempt at all; rather, he issued an arrest warrant for Defendant the same day he received Deputy Proctor's report. Had the deputies performed their statutory duty in the instant case, this alleged violation would likely have been resolved before entering the court system.

C. Element Five: *Willful* Failure to Return the Verification Form

The record contains insufficient evidence that a jury could find Defendant *willfully* failed to return the verification form under N.C. Gen. Stat. § 14-208.9A(a).

While our Supreme Court has held that violating N.C. Gen. Stat. § 14-208.11(a) is a "strict liability offense," *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009) (citing *Bryant*, 359 N.C. at 562, 614 S.E.2d at 484), this conclusion was based upon "a 1997 amendment . . . deleting the statutory *mens rea* requirement," *Bryant*, 359 N.C. at 562, 614 S.E.2d at 484, which had previously provided that "only those offenders 'who, knowingly and with the intent to violate the registration provisions' " would be guilty. *Id.*; 1997 N.C. Sess. Laws at 2281-82 (codified as amended at N.C. Gen. Stat. § 14-2011 (1997)). Our Supreme Court thus concluded that "no showing of knowledge or intent is necessary to establish a violation of N.C.G.S. § 14-208.11." *Bryant*, 359 N.C. at 563, 614 S.E.2d at 484.

However, our legislature reinserted a statutory *mens rea* requirement of "willfulness" effective 1 December 2006. 2006 N.C. Sess. Laws, Ch. 247. By virtue of this 2006 amendment, we believe, as previously reasoned by this Court, that the legislature intended to consider violations under these provisions not as strict liability offenses, but as offenses requiring a showing of the requisite intent of willfulness. *See, e.g.*, *Fox*, 216 N.C. App. at 156 n.1, 716 S.E.2d at 264 n.1 ("[W]ith its 2006 amendment, the General Assembly re-introduced intent-based language into the provision, effectively reviving the original *mens rea* requirement that had first been removed by the 1997 amendment and had rendered a violation of the statute a strict liability offense. Consequently, we believe that the elements of this offense

should reflect the General Assembly's reintroduction of intent-based language into the statute in 2006.").

" 'Willful' as used in criminal statutes means the wrongful doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of law." *State v. Crockett*, __ N.C. App. __, __, 767 S.E.2d 78, 85 (2014) (quoting *State v. Arnold*, 264 N.C. 348, 49, 141 S.E.2d 473, 474 (1965)).

> The word wilful, used in a statute creating a criminal offense, means something more than an intention to do a thing. It implies the doing the act purposely and deliberately, indicating a purpose to do it without authority—careless whether he has the right or not—in violation of law, and it is this which makes the criminal intent without which one cannot be brought within the meaning of a criminal statute.

State v. Barr, 218 N.C. App. 329, 335, 721 S.E.2d 395, 400 (2012) (quoting *In re Adoption of Hoose,* 243 N.C. 589, 594, 91 S.E.2d 555, 558 (1956) (quotation omitted)). Here, even when viewed in the light most favorable to it, the State failed to show any evidence of willfulness on behalf of Defendant. To the contrary, Smith's testimony that she never remembered signing for the July 2013 AVSO letter and that she discovered the misplaced AVSO letter months later, provides an excuse for Defendant's failure to return the verification form by 16 July 2013—that he never received it until October.

While the defendant's evidence is typically not to be taken into consideration, "the defendant's evidence may be used to explain or clarify that offered by the State."

Nabors, 365 N.C. at 312, 718 S.E.2d at 627 (internal citation and quotation marks omitted). Here, Defendant's evidence of Smith's testimony that she did not remember signing for the AVSO letter; that she first learned of its misplacement when Defendant called her from jail; that Smith located the misplaced AVSO letter in between the sofa cushions in an unfrequented room, because she gained a new vantage point by standing on a chair to change the curtains in October; and that she immediately gave the AVSO letter to Defendant, explains and clarifies the State's evidence that Defendant returned the July 2013 verification form to the sheriff's office on 23 October 2013. We conclude the State provided no evidence of criminal intent as required to bring Defendant within the meaning of the criminal statute.

In summary, the State did not present sufficient evidence that Defendant actually received the verification form on 11 July 2013, as required to trigger the provisions of N.C. Gen. Stat. § 14-208.11(a)(3) against him for a willful failure to return the verification form. Put another way, the State presented no evidence from which a reasonable inference could be drawn that: first, Defendant actually received the verification form as required for a conviction of failure to return the verification form under N.C. Gen. Stat. § 14-208.9A(a)(4), *see Braswell*, 203 N.C. App. at 738-39, 692 S.E.2d at 435; second, the sheriff's office made a reasonable attempt to verify Defendant still resided at his last reported address; and third, Defendant acted willfully in failing to return the verification form. Therefore, Defendant's conviction

for failure to return the verification form, which resulted in a judgment of approximately 10.5 to 13.75 years' imprisonment, should be vacated. *See State v. Richardson*, 202 N.C. App. 570, 574, 689 S.E.2d 188, 191-92 (2010) (vacating the defendant's convictions based upon the trial court erroneously denying the defendant's motions to dismiss).

III. Conclusion

For the foregoing reasons, we vacate the judgment of the below court.

VACATED.

Judges BRYANT and STROUD concur.