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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-498

Filed: 5 April 2016

Surry County, Nos. 13 CRS 52049-51, 52310

STATE OF NORTH CAROLINA

v.

ROGER LARNELL MOORE

Appeal by defendant from judgments entered by Judge R. Stuart Albright in Surry County Superior Court. Heard in the Court of Appeals 21 October 2015.

Roy Cooper, Attorney General, by Matthew L. Boyatt, Assistant Attorney General, for the State.

Meghan A. Jones for defendant-appellant.

DAVIS, Judge.

Roger Larnell Moore (“Defendant”) appeals from judgments entered upon his convictions for habitual impaired driving, driving while license revoked, and possessing an open container of alcohol in the passenger area of his vehicle. On appeal, Defendant argues that the trial court (1) erred in denying Defendant’s motion to suppress; and (2) lacked jurisdiction to enter judgment on the offense of habitual

impaired driving. After careful review, we affirm the denial of Defendant's suppression motion and conclude that the trial court had jurisdiction to enter judgment on Defendant's habitual impaired driving offense.

Factual Background

The State presented evidence at trial tending to establish the following facts: On 31 May 2013, Deputy Danny Perdue ("Deputy Perdue") of the Surry County Sheriff's Office was stationed at the intersection of Northeast Pine and East Pine Streets when he observed a 1990 model Jeep ("the Jeep") and another vehicle traveling on East Pine Street towards Mount Airy. He estimated that both vehicles were driving "at least 70 miles an hour," which was in excess of the posted speed limit of 55 miles per hour. He also noted that the Jeep, which was behind the lead vehicle, "was following too close, in a very unsafe manner."

Deputy Perdue began to follow the Jeep and after pacing the vehicle, estimated that the Jeep was traveling at 42 miles per hour in a 35 miles per hour zone. Deputy Perdue decided to initiate a traffic stop and activated the blue lights on his patrol car to indicate that the vehicle should pull over. The driver of the Jeep — identified at trial as Defendant — did not pull over for some time despite passing a number of "areas where it would have been safe to pull over." Defendant continued driving, turned right onto McBride Road, and then eventually pulled over approximately a half mile down McBride Road.

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Sergeant Jason White (“Sergeant White”) had also been patrolling the area during this time, observed the Jeep driving in the other direction while he was traveling eastbound, and concluded that the Jeep “was exceeding the posted speed limit.” When Sergeant White saw that Deputy Perdue was following the Jeep, he positioned his patrol car behind Deputy Perdue’s vehicle and then assisted with the stop.

When Defendant exited the Jeep, Deputy Perdue ordered him to get down on the ground, and Defendant eventually complied. He then approached Defendant and noticed a “pronounced odor of alcohol” on Defendant’s breath. Defendant’s uncooperative behavior prevented the law enforcement officers from conducting any field sobriety tests, but Deputy Perdue did notice that Defendant’s eyes were “glazed and bloodshot.”

Once Defendant was arrested and placed in the patrol car, Deputy Perdue and Sergeant White conducted a brief search of Defendant’s Jeep and discovered “an open container of a malt liquor in the passenger seat.” Defendant was transported to the Surry County Detention Center and given an Intoxilyzer test. The Intoxilyzer test results revealed that Defendant had an alcohol concentration of .22 grams of alcohol per 210 liters of breath. In addition to the breath test, Master Trooper Michael Stone (“Master Trooper Stone”), the trooper on duty at the detention center, asked

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Defendant to perform several field sobriety tests. Defendant struggled to maintain balance during these tests.

Defendant was charged with driving while impaired, driving while license revoked, resisting a public officer, operating a motor vehicle to elude arrest, and possession of an open container of alcohol in the passenger area of his vehicle. The State dismissed his driving while impaired charge in order to proceed on a charge of habitual impaired driving. On 28 July 2014, the grand jury returned a bill of indictment charging Defendant with habitual impaired driving.

Prior to trial, Defendant moved to suppress all the evidence obtained as a result of the traffic stop, arguing that the stop was unconstitutional. Defendant's motion to suppress came on for hearing before the Honorable R. Stuart Albright on 20 January 2015. Deputy Perdue and Sergeant White testified at the hearing, and the trial court denied Defendant's motion to suppress by order entered that same day. The matter proceeded to trial, and the State offered testimony from Deputy Perdue, Sergeant White, and Master Trooper Stone. At the close of the State's evidence, the trial court granted Defendant's motion to dismiss the charge of resisting a public officer.

The jury returned verdicts finding Defendant not guilty of operating a motor vehicle to elude arrest and guilty of impaired driving, driving while license revoked, and possession of an open container. The trial court entered judgment on the offense

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of habitual impaired driving based on the jury's guilty verdict on impaired driving and Defendant's stipulation that he had been convicted of three prior driving while impaired offenses within ten years of the most recent offense. With regard to the habitual impaired driving offense, the trial court sentenced Defendant to 19 to 32 months imprisonment. The trial court consolidated the driving while license revoked and open container offenses and sentenced Defendant to 20 days imprisonment to begin at the expiration of his sentence for habitual impaired driving. Defendant gave notice of appeal in open court.

Analysis

I. Motion to Suppress

Defendant first asserts that he is entitled to reversal of the denial of his motion to suppress because the trial court improperly questioned the State's witnesses during the suppression hearing. Specifically, Defendant argues that "[b]y eliciting crucial testimony from both of the State's witnesses, the trial court erroneously relieved the State of its burdens of production and persuasion." We are not persuaded.

It is well established that "the trial court has the authority to question a witness" and may ask questions in order to "clarify confusing or contradictory testimony." *State v. Carmon*, 169 N.C. App. 750, 757, 611 S.E.2d 211, 216 (2005). The trial court has broad discretion in its authority to question witnesses, and the

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court's exercise of that authority "will not be disturbed absent a manifest abuse of discretion." *State v. Rios*, 169 N.C. App. 270, 281, 610 S.E.2d 764, 772, *appeal dismissed and disc. review denied*, 360 N.C. 75, 623 S.E.2d 37 (2005). Moreover, in determining whether the trial court abused its discretion when questioning a witness, the primary consideration is "the probable effect or influence upon the jury." *State v. Lea*, 259 N.C. 398, 399, 130 S.E.2d 688, 689 (1963).

Here, the trial court's questioning of Deputy Perdue and Sergeant White occurred during Defendant's pretrial motion to suppress. Accordingly, there was no possibility that the trial court's questions would have any effect on the jury as such motions are only heard before the trial judge. *See* N.C. Gen. Stat. § 15A-977 (2013) (explaining that motions to suppress are decided by the trial judge and "must be out of the presence of the jury"). During the hearing, the trial court asked several questions to the deputies concerning their respective locations on East Pine Street at the time they saw Defendant's Jeep and how each had formed the opinion that Defendant was exceeding the posted speed limit. The trial court explained that it was making its inquiries in order to clarify the witnesses' testimony, noting areas of confusion such as the fact that "there were two different speeds the defendant was allegedly driving" and explaining that it "just wanted to clear that up."

Given that the questions were posed in order to clarify the witnesses' testimony and there was no possibility of any prejudicial effect on the jury since the questioning

occurred during a bench hearing, Defendant has failed to show that the trial court abused its discretion. *See Rios*, 169 N.C. App. at 282, 610 S.E.2d at 772-73 (“Where the court does not express an opinion as to the facts, it is not error for a court to question a witness when necessary to clarify even a critical element of the case.”); *see also State v. Watlington*, 30 N.C. App. 101, 102, 226 S.E.2d 186, 187 (rejecting defendant’s argument that trial court committed prejudicial error by questioning witness during motion to suppress hearing when trial court’s question merely clarified witness’ testimony), *appeal dismissed and disc. review denied*, 290 N.C. 666, 228 S.E.2d 457 (1976).

II. Habitual Impaired Driving

Defendant next argues that the trial court lacked jurisdiction to enter judgment on the offense of habitual impaired driving because “the jury returned a verdict only as to misdemeanor impaired driving and the trial court required [Defendant] to enter a guilty plea [as] to the existence of prior convictions.” We disagree.

Pursuant to N.C. Gen. Stat. § 20-138.5,

[a] person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within 10 years of the date of this offense.

N.C. Gen. Stat. § 20-138.5(a) (2015).

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When the existence of prior criminal convictions is an element of the current offense for which the defendant is being tried, the defendant may stipulate to those prior convictions. N.C. Gen. Stat. § 15A-928 (2015). If the defendant elects to admit to his previous convictions, “that element of the offense charged in the indictment or information is established, no evidence in support thereof may be adduced by the State” N.C. Gen. Stat. § 15A-928(c)(1). “The purpose of this procedure is to afford the defendant an opportunity to admit the prior convictions which are an element of the offense and prevent the State from presenting evidence of these convictions before the jury.” *State v. Highsmith*, 173 N.C. App. 600, 604, 619 S.E.2d 586, 590 (2005) (citation and quotation marks omitted).

Here, Defendant elected to admit to the existence of his three previous driving while impaired convictions within the past ten years rather than allowing the jury to hear evidence pertaining to these prior offenses. The trial court explained that it wanted to ensure that Defendant’s admission to these offenses was “a knowing and voluntary admission” and asked Defendant’s counsel to prepare a modified “plea transcript” of Defendant’s admission. The court stated as follows:

The plea transcript, Mr. Moore, is simply to memorialize what you and I have already discussed with regard to the three prior DWI convictions. There will be some -- it will have to be modified, because you’re not pleading guilty to those three, you’re simply admitting the existence of those three for the purposes of this trial, the habitual impaired driving while impaired charge. Those questions will help clarify that you’re entering a knowing and voluntary

admission, free from any coercion or duress.

The court instructed the parties that upon the formal stipulation to the prior offenses, “no one will refer to the offense as habitual impaired driving. It will be referred to as impaired driving” in accordance with the statutory directive set forth in N.C. Gen. Stat. § 15A-928(c)(1).

It is clear from our review of the transcript that the trial court did not “require [Defendant] to plead guilty . . . to the existence of prior convictions” — as Defendant contends — but rather took additional steps to ensure that Defendant understood the legal ramifications of his decision to admit to the existence of the prior driving while impaired convictions. The trial court likely concluded that these additional steps were warranted based on Defendant’s earlier disruptive conduct.

Prior to the commencement of the trial, Defendant indicated that he wished to fire his attorney and hire another attorney, and the trial court denied his motion based on its conclusion that this was merely a delaying tactic. Defendant made his request for a new attorney several more times and expressed his displeasure with the court’s ruling. When asked if he wanted to proceed with his motion to suppress, Defendant said, “It’s going to get denied, so I mean. We can.” The trial court warned Defendant that further disruptive behavior could result in him being held in contempt. Defendant’s repeated disputes with the trial court’s rulings were likely responsible for the court’s decision to more formally memorialize Defendant’s decision

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to admit to the convictions before accepting his stipulation.

The trial court's detailed explanation to Defendant of the consequences of his admission to prior driving while impaired offenses and its inquiries regarding Defendant's level of education, whether he was under the influence of any impairing substances, and his ability to understand the effect of the admission — inquiries not required for a stipulation — do not detract from or alter Defendant's valid admission to the existence of these three prior offenses. Therefore, because the jury returned a guilty verdict on driving while impaired and Defendant stipulated to having three prior driving while impaired convictions within 10 years of the date of the most recent offense, the trial court had jurisdiction to enter judgment on the offense of habitual impaired driving. *See* N.C. Gen. Stat. § 20-138.5(a) (“A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within 10 years of the date of this offense.”).

Because we hold that Defendant validly admitted to the existence of his prior driving while impaired convictions and reject his assertion that the trial court's memorializing of Defendant's admission transformed said admission into a guilty plea, Defendant's argument that the trial court's entry of judgment was based on a statutorily unauthorized “hybrid situation” of combining a guilty plea and a jury verdict is without merit. Accordingly, Defendant's argument is overruled.

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Conclusion

For the reasons stated above, we affirm the trial court's denial of Defendant's motion to suppress and conclude that Defendant received a fair trial free from error.

AFFIRMED; NO ERROR.

Judges STEPHENS and STROUD concur.

Report per Rule 30(e).