IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-355

Filed: 6 December 2016

Duplin County, No. 14 CRS 50827

STATE OF NORTH CAROLINA

v.

TERRIL COURTNEY BATTLE

Appeal by defendant from judgments entered 30 July 2015 by Judge Jack W. Jenkins in Duplin County Superior Court. Heard in the Court of Appeals 22 September 2016.

Attorney General Roy Cooper, by Assistant Attorney General Anne Goco Kirby, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant-appellant.

McCULLOUGH, Judge.

Terril Courtney Battle ("defendant") appeals from judgments entered upon his convictions for assault by strangulation, habitual misdemeanor assault, assault on a female, injury to personal property, and attaining habitual felon status. For the reasons stated herein, we vacate and remand in part and hold no error in part.

I. Background

On 1 December 2014, defendant was indicted for assault by strangulation in violation of N.C. Gen. Stat. § 14-32.4(b); habitual misdemeanor assault in violation of N.C. Gen. Stat. § 14-33.2; assault on a female in violation of N.C. Gen. Stat. § 14-33(c)(2); and injury to personal property in violation of N.C. Gen. Stat. § 14-160. He was also indicted by ancillary indictment for attaining habitual felon status.

Defendant's trial commenced at the 27 July 2015 criminal session of Duplin County Superior Court, the Honorable Jack W. Jenkins, presiding.

Sergeant Darryl Blanton ("Sergeant Blanton"), of the Wallace Police Department, testified that on 27 April 2014, at approximately 2:30 p.m., he responded to a domestic call directing him to Wells Mobile Home Park. A dispatcher informed Sergeant Blanton that the address was unknown but that there was to be a black Honda parked in the yard with two flat tires on the driver's side. After arriving at Wells Mobile Home Park, Sergeant Blanton was unable to locate the vehicle in question. Thereafter, he received a notification from dispatch that the vehicle in question was in the parking lot at a nearby gas station called "Fast Lane." Fast Lane was approximately a hundred yards from Wells Mobile Home Park. As Sergeant Blanton pulled up, he noticed a vehicle with two flat tires on the driver's side and a female inside that vehicle. Sergeant Blanton spoke with the female and "asked her if everything was fine and if she was the one that called police." The female told

Sergeant Blanton she was "okay" but he noticed that "she had several marks on her body and her eye was black. She also appeared to be out of breath."

Captain David Morgan ("Captain Morgan"), also with the Wallace Police Department, arrived on the scene and began talking with the female and Sergeant Blanton walked away. Captain Morgan then approached Sergeant Blanton and informed him that the female had provided the address where the incident occurred and that she was ready to talk. The female was identified as Tanisha Hunt ("Ms. Hunt"). Captain Morgan and Officer Johnny Sanderson ("Officer Sanderson") went to the address Ms. Hunt provided, 117 Wells Mobile Home Park, in search of defendant. Meanwhile, Sergeant Blanton obtained a written statement from Ms. Hunt. Sergeant Blanton testified that Ms. Hunt "appeared to be very scared" and observed that "[s]he had – her eye was black and there was several like marks and abrasions on her shoulders and around her neck area, bruising." While writing her statement, Ms. Hunt told Sergeant Blanton that while she was defending herself, defendant grabbed her around the neck and threw her around. Ms. Hunt picked up a knife and hit defendant in the head. Sergeant Blanton called emergency medical services to the scene based on Ms. Hunt's injuries. Captain Morgan and Sanderson were unable to locate anyone at the address provided by Ms. Hunt. Because officers were unable to find defendant, a warrant for his arrest was issued on 30 April 2014.

Ms. Hunt testified that in 2014, she and defendant, who was her boyfriend at the time, moved from Wilmington to Wallace. They lived together at 17 Wells Trailer Park. The day before 27 April 2014, Ms. Hunt went to Wilmington "to get away from [defendant.]" When she returned home, she and defendant "got into an argument like really bad, like name calling, cursing, fighting." Defendant grabbed Ms. Hunt's arms with both of his arms. Defendant spit on Ms. Hunt's face and Ms. Hunt thereafter spit on defendant. They started hitting and punching each other. Defendant wrestled Ms. Hunt to the ground and pinned her down with both of his knees in her arms. After twenty minutes of struggling, Ms. Hunt was able to get loose and grabbed defendant by his hair. They were both on their knees when he put Ms. Hunt back on the ground. Defendant began choking Ms. Hunt with both of his hands and said "I'm going to kill you, b****, and nobody's going to find you because you in the woods now, and your momma ain't going to come get you. And by the time they find you, you just going to be bones." Ms. Hunt testified that defendant choked her "multiple times because we kept fighting and kept fighting."

At some point, defendant and Ms. Hunt were in their kitchen when he punched her in the face. Defendant then grabbed Ms. Hunt's neck with one hand. Ms. Hunt reached for a knife and cut defendant "like a little cut on his forehead." Defendant stopped to check his head, saw blood, and stated, "B*****, you cut me. I'm going to kill you." Ms. Hunt then ran outside to her car. Defendant came out of the mobile

home and stabbed Ms. Hunt's car tires with a knife. Ms. Hunt was able to drive to the nearby gas station. Ms. Hunt called her mother and friend. As she was waiting on her friend to arrive, police approached her to ask if she was the girl from the trailer park. Ms. Hunt admitted to lying and initially telling officers "no" because she did not want to get defendant in trouble.

At the conclusion of the State's evidence, defendant made a motion to dismiss all four counts. The trial court denied defendant's motion to dismiss and determined that there was sufficient evidence to allow the charge of injury to personal property to stand as a lesser-included offense since there was no evidence that defendant caused damage in excess of $200.00. At the close of all the evidence, defendant renewed his motion to dismiss and the trial court denied his motion.

Defendant stipulated to the existence of two predicate assault convictions alleged in the habitual misdemeanor assault charge. Accordingly, the trial court instructed the jury on simple assault as required pursuant to N.C. Gen. Stat. § 15A-928(c)(1) without reference to any prior convictions.

On 30 July 2015, a jury found defendant guilty of assault by strangulation, simple assault, assault on a female, and injury to personal property.

The trial court then proceeded to the habitual felon phase of trial. The State introduced into evidence, through the testimony of Assistant Clerk of Superior Court Cassandra Lanier ("Ms. Lanier"), certified copies of defendant's three prior judgments

referenced in the habitual felon indictment. Defendant did not object to the admission of these certified copies. The first judgment, Exhibit 52, listed the following information: file number 95 CRS 14109 from New Hanover County; offense of sell or deliver cocaine in violation of N.C. Gen. Stat. § 90-95; offense date of 25 April 1995; conviction date of 3 July 1995; defendant's name listed as "Courtney T. Battle"; date of birth as 19 August 1976; and defendant described as a black male. Ms. Lanier testified that she used the Automated Criminal Information System ("ACIS") to ascertain the offense and conviction date of this judgment.

The second judgment, Exhibit 53, provided the following information: file number 00 CR 10639 from New Hanover County; offense of possession with intent to sell or deliver marijuana in violation of N.C. Gen. Stat. § 90-95(a); offense date of 13 October 1974; conviction date of 6 October 2000; defendant's name listed as "Terrill Battle"; date of birth as 13 October 1974; and defendant described as a black male. In regards to this judgment, Ms. Lanier testified that because "our case numbers are assigned in the same year that the offense happened and the case number is 00 CR, so to me, right off the bat, I know that that's an incorrect offense date." Utilizing ACIS, Ms. Lanier was able to determine that the offense date and conviction date were 4 May 2000 and 6 October 2000, respectively.

The last judgment, Exhibit 54, provided as follows: file number 12 CRS 050503 from Pender County; offense of manufacturing marijuana in violation of N.C. Gen.

Stat. § 90-95(a)(1); offense date of 22 February 2012; conviction date of 30 October 2012; defendant's name listed as Terril Courtney Battle; date of birth as 13 October 1974; and defendant described as a black male.

Amy Hedgpeth ("Ms. Hedgpeth") testified that she was the office manager for the Duplin County District Attorney's office. As part of her duties, Ms. Hedgpeth ran criminal record checks for defendants through the "DCI program." The DCI program ran national record checks and the information it contained was input by law enforcement or a magistrate judge. Ms. Hedgpeth described a two-step process by which you would pull up a record check on a defendant. First, they input the name, date of birth, race, and sex of the defendant to get a "QH" hit, which gives them an FBI number or state ID number that they then enter to bring up the criminal record. Next, they input the FBI number which brings back the criminal history containing "any other variation of the spelling of the [defendant's] name, any aliases, and it also gives any date of births that are used, [and] any type of different social security numbers that are used."

Ms. Hedgpeth testified that when she ran a criminal record check for defendant, she input the following information into the DCI program: last name "Battle"; first name "Terril"; black male; date of birth 14 October 1974. She got a "QH hit" that provided her with an FBI number for defendant and the following: two dates of birth, 13 October 1974 and 19 August 1976; two social security numbers; various

aliases including Courtney T. Battle, Terill Battle, and Terril Courtney Battle. During Ms. Hedgpeth's testimony regarding the dates of births associated with defendant's name, defense counsel made an objection, followed by a question into whether the criminal record check was going to be offered as an exhibit. The trial court stated that Ms. Hedgpeth was testifying from her knowledge and observations of the records and overruled defendant's objection. Ms. Hedgpeth testified that it was "not unusual" to get multiple dates of birth and aliases "because sometimes there is different identifying information given to law enforcement which is usually put in whatever's on the warrant, so they would enter that in and then it's tied together with fingerprints." Over defendant's objection, the trial court admitted a copy of Ms. Hedgpeth's DCI criminal record check on defendant into evidence. This exhibit was not published to the jury.

Ms. Hedgpeth testified regarding the criminal records check conducted for defendant in the same three judgments which appeared in Exhibits 52, 53, and 54. Ms. Hedgpeth confirmed that the criminal record check was pulled from the fingerprints of defendant. The information contained in the criminal records check, including offense, conviction date, offense date, location, was identical to the information contained in the certified record of convictions which the State introduced into evidence as Exhibit 52, 53, and 54 with the exception that Exhibit 53 had an offense date of 4 May 2000 instead of 13 October 1974. The State moved to

amend the habitual felon indictment to change the date of that offense from 15 September 2000 to 4 May 2000. The trial court allowed this amendment over defendant's objection.

Defendant moved to dismiss the habitual felony indictment, which the trial court denied. On 30 July 2015, the jury found defendant guilty of attaining habitual felon status.

The trial court consolidated the four substantive offenses into two judgments, both enhanced by habitual felon status, which each imposed a concurrent sentence of 111 to 146 months imprisonment. Defendant appeals.

II. Discussion

Defendant presents two issues on appeal. In the first issue, defendant argues that the trial court lacked subject matter jurisdiction to impose judgment for habitual misdemeanor assault. In the second issue, defendant argues that the trial court erred by allowing the district attorney's manager to supplement irregularities in the certified court records through hearsay testimony about information she obtained from the "DCI" program. We address each argument in turn.

A. Habitual Misdemeanor Assault

Defendant argues that the trial court lacked subject matter jurisdiction to enter a judgment for habitual misdemeanor assault because the indictment was

fatally defective in that it failed to comply with the mandates of N.C. Gen. Stat. § 15A-928. We agree.

"[W]hen an indictment is alleged to be facially invalid, thereby depriving the trial court of jurisdiction, the indictment may be challenged at any time." *State v. McGee*, 175 N.C. App. 586, 587-88, 623 S.E.2d 782,784 (2006). "This Court reviews challenges to the sufficiency of an indictment using a *de novo* standard of review." *State v. Pendergraft*, 238 N.C. App. 516, 521, 767 S.E.2d 674, 679 (2014).

As the State concedes, this Court is bound by our recent holding in *State v. Brice*, __ N.C. App. __, 786 S.E.2d 812 (2016). *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). In *Brice*, our Court held that "[i]n trials in superior court where a defendant's prior convictions are alleged as part of a charged offense, the pleading must comply with the provisions of section 15A-928." *Id.* at __, 768 S.E.2d at 814.

N.C. Gen. Stat. § 15A-928 provides as follows, in pertinent part:

> (a) When the fact that the defendant has been previously convicted of an offense raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter, an indictment or information for the higher offense may not allege the previous conviction. . . .
>
> (b) An indictment or information for the offense must be accompanied by a special indictment or information, filed with the principal pleading, charging that the defendant was previously convicted of a specified offense. At the prosecutor's option, the special indictment or information may be incorporated in the

> principal indictment as a separate count. . . .
>
> . . . .
>
> (d) When a misdemeanor is tried de novo in superior court in which the fact of a previous conviction is an element of the offense affecting punishment, the State must replace the pleading in the case with superseding statements of charges separately alleging the substantive offense and the fact of any prior conviction, in accordance with the provisions of this section relating to indictments and informations.

N.C. Gen. Stat. § 15A-928(a), (b), and (d) (2015).

The *Brice* Court acknowledged that although N.C. Gen. Stat. § 15A-928(b) allows the State to incorporate "the special indictment or information" into the principal indictment, the defendant's prior convictions were not alleged in a separate count. "Rather, the sole indictment issued in this case lists a single count of 'habitual misdemeanor larceny,' alleging defendant's prior convictions thereafter." *Brice*, __ N.C. App. at __, 786 S.E.2d at 815. Accordingly, the *Brice* Court held that the trial court was without jurisdiction to enter judgment against the defendant for habitual misdemeanor larceny because the face of the defendant's indictment failed to comply with N.C. Gen. Stat. § 15A-928. *Id.* The *Brice* Court vacated the defendant's conviction for habitual misdemeanor larceny and remanded for entry of judgment and sentence on misdemeanor larceny. *Id.*

We hold that the circumstances of defendant's case are identical to those found in *Brice*. Here, count II of the 1 December 2014 indictment charged "habitual

misdemeanor assault." Count II also included allegations describing the underlying conduct, along with defendant's three prior convictions. As such, we vacate defendant's conviction of habitual misdemeanor assault and remand to the trial court for entry of judgment and sentence on simple assault.

B. Attaining Habitual Felon Status

Next, defendant argues that the trial court erred by allowing Ms. Hedgpeth, the Duplin County District Attorney's office manager, to supplement irregularities in the certified court records through hearsay testimony about information she obtained from the "DCI" program.

At trial, the State introduced into evidence, through the testimony of Assistant Clerk of Superior Court Cassandra Lanier, certified copies of defendant's three prior judgments referenced in the habitual felon indictment. Defendant did not object to the admission of these copies. All three judgments listed defendant's name differently: "Courtney T. Battle"; "Terrill Battle"; and "Terril Courtney Battle." In addition, one judgment contained a different birth date for defendant than what was listed on the other two judgments. The State then offered the testimony of Ms. Hedgpeth who described how she utilized the DCI program to run a criminal record check for defendant. Ms. Hedgpeth testified that when she ran a check for defendant, she was provided with two dates of birth, two social security numbers, and various

aliases. During the portion of Ms. Hedgpeth's testimony regarding multiple dates of birth associated with defendant, the following exchange occurred:

> [DEFENSE COUNSEL:] Your Honor, I object. Is this going to be offered as an exhibit?
>
> THE COURT: I'm listening.
>
> [DEFENSE COUNSEL:] Is this going to be offered as an exhibit or is she just testifying from it?
>
> THE COURT: She's testifying from her knowledge of and her observations of the official records, I think; isn't she?
>
> [THE STATE:] (Shakes head up and down).
>
> THE COURT: Overruled.

We hold that because defendant only made a general objection to the challenged testimony, we review for plain error. *See State v. Hammett*, 361 N.C. 92, 98, 637 S.E.2d 518, 522 (2006) (holding that because the defendant's general objection was insufficient to preserve an issue for appellate review, we apply plain error review). To establish plain error, defendant must show "that a different result probably would have been reached but for the error or [] that the error was so fundamental as to result in a miscarriage of justice or denial of a fair trial." *State v. Bishop*, 346 N.C. 365, 385, 488 S.E.2d 769, 779 (1997).

Defendant argues that Ms. Hedgpeth's testimony constituted inadmissible hearsay because her testimony concerning the results of her DCI search on defendant was offered to prove the truth of the matter asserted and because her testimony

"relied entirely on written assertions from the DCI program." Defendant contends that the admission of Ms. Hedgpeth's testimony amounted to plain error because her testimony provided the only explanation for the discrepancies between the different names and dates of birth listed for defendant on the three judgments.

"The use of documentary evidence in habitual felon proceedings is set out in [N.C. Gen. Stat.] § 14-7.4[.]" *State v. Petty*, 100 N.C. App. 465, 469, 397 S.E.2d 337, 340 (1990). N.C. Gen. Stat. § 14-7.4 provides as follows:

> In all cases where a person is charged under the provisions of this Article with being an habitual felon, the record or records of prior convictions of felony offenses shall be admissible in evidence, but only for the purpose of proving that said person has been convicted of former felony offenses. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. *The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein.*

N.C. Gen. Stat. § 14-7.4 (2015) (emphasis added). "[A]bsolute identity of name is not required under this statute." *Petty*, 100 N.C. App. at 470, 397 S.E.2d at 341. Furthermore, "any discrepancy between the actual age of the defendant at the time of conviction and his age as reflected on the record of conviction, goes to the weight of the evidence and not its admissibility." *Id.*

When the State introduced the certified copies of three judgments through the testimony of Ms. Lanier, defendant did not object to their admission nor did he present any evidence to contradict their contents. We hold that the names "Courtney T. Battle," "Terrill Battle," and "Terril Courtney Battle" are the "same name" for purposes of N.C. Gen. Stat. § 14-7.4. *See Petty*, 100 N.C. App. at 469-70, 397 S.E.2d at 340-41. In addition, the fact that one judgment contained a different date of birth for defendant went to the weight of the evidence and not its admissibility. Based on the foregoing, we reject defendant's argument that the trial court committed plain error by admitting the testimony of Ms. Hedgpeth.

III. Conclusion

As to defendant's first argument on appeal, we vacate defendant's conviction for habitual misdemeanor assault and remand for entry of judgment and sentence for simple assault. As to defendant's second argument on appeal, we hold no error.

VACATE AND REMAND IN PART; NO ERROR IN PART.

Judges HUNTER, JR. and DIETZ concur.

Report per Rule 30(e).