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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-187

Filed: 19 December 2017

Cherokee County, Nos. 15CRS000470, 16CRS000010

STATE OF NORTH CAROLINA

v.

RICKY LEROY LEISTRA, JR.

Appeal by Defendant from judgment entered 28 March 2016 by Judge Jeffrey P. Hunt in Cherokee County Superior Court. Heard in the Court of Appeals 7 December 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Charlene Richardson, for the State.

Gilda C. Rodriguez for the Defendant.

DILLON, Judge.

Ricky Leroy Leistra, Jr., (“Defendant”) appeals from a judgment entered upon a jury verdict finding him guilty of failure to register as a sex offender under N.C. Gen. Stat. § 14-208.11 based on his failure to return the semiannual verification notice. Defendant contends that the trial court erred in denying his motion to dismiss for insufficient evidence based on the State’s failure to present evidence that he

actually received the form. The State concedes the error. We agree and hereby vacate the judgment.

I. Background

Defendant was indicted for failing to return a verification notice. The matter was brought on for trial. The State's evidence at trial tended to show the following facts: In May 1999, Defendant was convicted of taking indecent liberties with a child and was required to register as a sex offender. In June 2009, Defendant completed a Sex Offender Registration Form, registering a new address in Andrews, North Carolina.

Almost five years later, in February 2014, Defendant added a post office box as his secondary address requesting any official mail pertaining to his registration be sent there. Later that year, in September 2014, Defendant updated his physical address to Marble, North Carolina, but did not change his secondary address.

In February 2015, the State Bureau of Investigation mailed a verification form to Defendant's post office box. A month later, the verification form was returned to sender unclaimed and unable to forward. In April 2015, a detective encountered Defendant at a traffic stop. Defendant was arrested for failing to return the verification notice.

Defendant properly moved to dismiss for insufficient evidence, which was denied by the trial court. The jury found Defendant guilty of failing to return the

verification form. The trial court sentenced Defendant to a term of 28 to 43 months of imprisonment. Defendant appealed.

II. Analysis

Defendant makes three arguments on appeal concerning his conviction for failing to return the verification form. In his first argument, Defendant contends that the trial court erred in denying his motion to dismiss for insufficient evidence at the close of all of the evidence. The State concedes error, and we agree.

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 . . . (3) [f]ails to return a verification notice as required under [N.C. Gen. Stat.] § 14-208.9A” is guilty of a Class F Felony. N.C. Gen. Stat. § 14-208.11(a)(3) (2015).

In *State v. Braswell*, 203 N.C. App. 736, 692 S.E.2d 435 (2010), this Court held that the trial court erred in denying the defendant’s motion to dismiss because the evidence was uncontroverted that the defendant never received the verification notice. *Id.* at 739, 692 S.E.2d at 437. The verification form was mailed to the defendant’s last known address, but was returned unclaimed one month later. *Id.* at 737, 692 S.E.2d at 436. After the form was returned, sheriff deputies twice visited the defendant’s last known address in an attempt to verify his residence, but no one answered the door. *Id.* On appeal, the defendant argued that the trial court erred in

STATE V. LEISTRA

Opinion of the Court

denying his motion to dismiss for insufficient evidence that he actually received the verification form. The State conceded error. Our Court vacated the trial court's judgment, holding that "[i]n order to be convicted of 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." *Id.* at 738-39, 692 S.E.2d at 437.

Here, as in *Braswell*, the State did not present any evidence that Defendant actually received the verification form. Therefore, he cannot be convicted for failure to return the form. *See id.* at 739, 692 S.E.2d at 437.

Additionally, the State failed to present any evidence that the sheriff's office made a reasonable attempt to verify Defendant's address as required under N.C. Gen. Stat. § 14-208.9A. Pursuant to N.C. Gen. Stat. § 14-208.9A(4) "[i]f 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); *see also Braswell*, 203 N.C. App. at 738-39, 692 S.E.2d at 437 (noting that "[t]he 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'").

Because the State did not present sufficient evidence that Defendant actually received the verification form or that the sheriff's office performed its duty by

STATE V. LEISTRA

Opinion of the Court

verifying that Defendant resided at his last registered address after Defendant failed to return the form, we hold the trial court erred in failing to dismiss the charge of failure to verify his address at the close of all the evidence. *See State v. Moore*, 240 N.C. App. 465, 770 S.E.2d 131 (2015). Therefore, we vacate the trial court's judgment. *See State v. Richardson*, 202 N.C. App. 570, 574-75, 689 S.E.2d 188, 191-92 (2010). Because we vacate the judgment, we need not address Defendant's remaining arguments on appeal.

VACATED.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).