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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-296

Filed: 17 October 2017

Mecklenburg County, Nos. 12 CRS 239307-08

STATE OF NORTH CAROLINA

v.

THOBOUR SING

Appeal by defendant from judgment entered 17 November 2016 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 5 September 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Charles G. Whitehead, for the State.

Julie C. Boyer for defendant-appellant.

DAVIS, Judge.

Thobour Sing (“Defendant”) appeals from his convictions for possession of a firearm by a felon and carrying a concealed weapon. On appeal, he contends that the trial court erred in denying his motion to dismiss the charge of possession of a firearm by a felon because the State failed to prove Defendant’s status as a convicted felon. After careful review, we conclude that Defendant received a fair trial free from error.

Factual and Procedural Background

The State presented evidence at trial tending to establish the following facts: On 8 September 2012, Officers Sabrina Stinson and Richard Conn of the Charlotte-Mecklenburg Police Department were dispatched to a Kangaroo Express gas station on Park Road in Charlotte, North Carolina. The officers were informed by dispatch that the call involved an intoxicated male in a Honda with a firearm present on the front seat. Officer Stinson arrived first, and the manager of the gas station directed her to a parked light blue Honda in which Defendant was sitting in the driver's seat. Officer Stinson directed Defendant to put his hands in the air and exit the vehicle. By that time, Officer Conn had arrived and was standing by the passenger side of the car.

Defendant opened the car door and stumbled as he tried to get out of the car, and Officer Stinson helped him exit the vehicle. After Defendant left the car, Officer Stinson saw a firearm on the driver's seat. She asked Defendant if the gun belonged to him, and Defendant responded, "I got it off the streets." Defendant was then placed in the back of Officer Stinson's patrol car. Officer Conn ran Defendant's name through the National Crime Information Center computer system to determine whether the gun was stolen or Defendant had any outstanding arrest warrants. The computer search indicated that Defendant had a prior felony conviction in South Carolina.

STATE V. SING

Opinion of the Court

On 8 April 2013, Defendant was indicted by a grand jury for carrying a concealed weapon and possession of a firearm by a felon. The predicate felony listed on the indictment was a conviction in South Carolina on 22 July 2002 for receiving or possessing stolen property greater than \$5,000, a felony punishable by up to 10 years imprisonment. Defendant pled guilty and was sentenced to a period not to exceed six years under South Carolina's Youthful Offender Act.

A jury trial was held beginning on 16 November 2016 before the Honorable Eric L. Levinson in Mecklenburg County Superior Court. At the close of the State's evidence, Defendant moved to dismiss both charges. He renewed his motion to dismiss at the close of all the evidence. The trial court denied Defendant's motions to dismiss, and on 17 November 2016 the jury found him guilty of carrying a concealed weapon and possession of a firearm by a felon. The trial court sentenced Defendant to a term of 15 to 27 months imprisonment. Defendant gave oral notice of appeal in open court.

Analysis

Defendant's sole argument on appeal is that the trial court erred in denying his motion to dismiss the charge of possession of a firearm by a felon. "A trial court's denial of a defendant's motion to dismiss is reviewed *de novo*." *State v. Watkins*, ___ N.C. App. ___, ___, 785 S.E.2d 175, 177 (citation omitted), *disc. review denied*, 369 N.C. 40, 792 S.E.2d 508 (2016). On appeal, this Court must determine "whether there is

STATE V. SING

Opinion of the Court

substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant[] being the perpetrator” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citation omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000).

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) (citation omitted). Evidence must be viewed in the light most favorable to the State with every reasonable inference drawn in the State’s favor. *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). “Contradictions and discrepancies are for the jury to resolve and do not warrant dismissal.” *Smith*, 300 N.C. at 78, 265 S.E.2d at 169 (citation omitted).

The offense of possession of a firearm by a felon has two elements: (1) the defendant was previously convicted of a felony; and (2) he subsequently possessed a firearm. *See* N.C. Gen. Stat. § 14-415.1(a) (2015); *State v. Dawkins*, 196 N.C. App. 719, 725, 675 S.E.2d 402, 406, *disc. review denied*, 363 N.C. 585, 682 S.E.2d 707 (2009). In this appeal, Defendant does not challenge his possession of a firearm. Therefore, the only element of the offense at issue concerns his status as a convicted felon. Specifically, Defendant contends the State failed to prove that his 22 July 2002

STATE V. SING

Opinion of the Court

South Carolina conviction constituted a qualifying predicate felony under N.C. Gen. Stat. § 14-415.1.

N.C. Gen. Stat. § 14-415.1 provides in pertinent part as follows:

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm

(b) Prior convictions which cause disenfranchisement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

. . . .

(3) *Violations of criminal laws of other states . . . that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.*

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state . . . shall be admissible in evidence for the purpose of proving a violation of this section. The term 'conviction' is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is authorized, without regard to the plea entered or to the sentence imposed

STATE V. SING

Opinion of the Court

N.C. Gen. Stat. § 14-415.1 (emphasis added). Thus, a qualifying felony conviction must be “substantially similar” to a North Carolina felony and “punishable where committed by imprisonment for a term exceeding one year.” *Id.*

Whether an out-of-state conviction is “substantially similar” to a North Carolina offense for purposes of N.C. Gen. Stat. § 14-415.1 is “a question of law which [is] properly determined by the trial court” *State v. Bishop*, 119 N.C. App. 695, 700, 459 S.E.2d 830, 833, *appeal dismissed and disc. review denied*, 341 N.C. 653, 462 S.E.2d 518 (1995). This determination “involv[es] comparison of the elements of the out-of-state offense to those of the North Carolina offense.” *State v. Fortney*, 201 N.C. App. 662, 671, 687 S.E.2d 518, 525 (2010) (citation omitted). This Court has previously held that “substantially” means “essentially; without material qualification.” *State v. Parisi*, 135 N.C. App. 222, 225, 519 S.E.2d 531, 533 (1999) (citation, quotation marks, and brackets omitted). Thus, there is no requirement that the statutory language of the offenses match precisely so long as the elements are essentially the same. *State v. Sapp*, 190 N.C. App. 698, 713, 661 S.E.2d 304, 312 (2008), *appeal dismissed and disc. review denied*, 363 N.C. 661, 685 S.E.2d 799 (2009) (“[T]he requirement is . . . not that the statutory wording precisely match, but rather that the offense be ‘substantially similar.’”).

STATE V. SING

Opinion of the Court

At the time of Defendant's South Carolina conviction on 22 July 2002 for receiving or possessing stolen property, S.C. Code Ann. § 16-13-180 provided as follows:

It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. . . . A person who violates the provisions of this section is guilty of a:

- (1) misdemeanor triable in magistrate's court if the value of the property is one thousand dollars or less. Upon conviction, the person must be fined or imprisoned not more than is permitted by law without presentment or indictment by the grand jury;
- (2) felony and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than five years if the value of the property is more than one thousand dollars but less than five thousand dollars;
- (3) felony and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years if the value of the property is five thousand dollars or more.

S.C. Code Ann. § 16-13-180 (2002) (amended 2013).¹

Similarly, N.C. Gen. Stat. § 14-72(a) states that “[t]he receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony.”

¹ Defendant's 22 July 2002 conviction was based on subsection (3) of the statute.

STATE V. SING

Opinion of the Court

N.C. Gen. Stat. § 14-72(a) (2015). Under both statutes, the receipt or possession of stolen goods with knowledge or reason to know that the goods are stolen is a crime. As a result, we are satisfied that S.C. Code Ann. § 16-13-180 is substantially similar to N.C. Gen. Stat. § 14-72.

Furthermore, Defendant's South Carolina conviction exposed him to a potential term of imprisonment of up to ten years. *See* S.C. Code Ann. § 16-13-180(3) ("A person who violates the provisions of this section is guilty of a . . . felony and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years if the value of the property is five thousand dollars or more."). Thus, it is clear that Defendant's South Carolina conviction is a qualifying predicate felony under North Carolina's statute barring the possession of a firearm by a felon.

Defendant argues that S.C. Code Ann. § 16-13-180 was amended following his conviction to raise the threshold for a felony conviction for receiving or possessing stolen property from \$5,000 to \$10,000. The current version of the statute states that "[a] person who violates this section is guilty of a . . . misdemeanor and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than three years, if the value of the property is more than two thousand dollars but less than ten thousand dollars." S.C. Code Ann. § 16-13-180(C)(2) (2016).

However, this classification change has no bearing on whether Defendant's South Carolina conviction may serve as a qualifying predicate felony under N.C. Gen.

STATE V. SING

Opinion of the Court

Stat. § 14-415.1. This Court has held that where an out-of-state statute has been amended following a defendant's conviction, the relevant version of the statute for determining "substantial similarity" is the version under which the defendant was convicted. *See, e.g., State v. Burgess*, 216 N.C. App. 54, 57-58, 715 S.E.2d 867, 870 (2011) (substantial similarity not established where "the State presented 2008 copies of the out-of-state statutes purportedly serving as the basis for [the defendant's] convictions and presented no evidence that the statutes were unchanged from the 1993 and 1994 versions under which defendant had been convicted"); *State v. Morgan*, 164 N.C. App. 298, 309, 595 S.E.2d 804, 812 (2004) (holding that the State failed to establish that a New Jersey offense was substantially similar to a North Carolina offense where "[t]he State presented no evidence . . . that the 2002 New Jersey homicide statute was unchanged from the 1987 version under which Defendant was convicted").

As noted above, the version of S.C. Code Ann. § 16-13-180 under which Defendant was convicted is substantially similar to N.C. Gen. Stat. § 14-72. Thus, we hold that the trial court did not err in treating Defendant's 22 July 2002 South Carolina conviction as a qualifying predicate felony for purposes of North Carolina's offense of possession of a firearm by a felon.²

² Defendant also argues that because he was sentenced under South Carolina's Youthful Offender Act ("YOA"), it is uncertain whether his conviction should be treated as an adult or juvenile conviction and that, as a result, the State did not meet its burden of proof. The YOA provides judges

Conclusion

For the reasons stated above, we conclude that Defendant received a fair trial free from error. Accordingly, the trial court did not err by denying Defendant’s motion to dismiss.

NO ERROR.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).

with discretion to sentence certain types of “youthful” offenders between the ages of 17 and 25 to lesser sentences than they would ordinarily receive. *See* S.C. Code Ann. § 24-19-10, *et seq.* (2016). However, the South Carolina Supreme Court has held that a defendant tried in the Court of General Sessions — even if sentenced as a youthful offender — has been adjudicated as an adult. *See State v. Standard*, 351 S.C. 199, 201, 203, 569 S.E.2d 325, 326, 328 (2002), *cert. denied*, 537 U.S. 1195, L. Ed. 2d. 1032 (2003) (holding that a 17-year-old “waived up” from family court and sentenced as a youthful offender in the Court of General Sessions “was tried and adjudicated as an adult”). In the present case, it is clear that Defendant pled guilty in the Court of General Sessions. Moreover, at the time of his sentencing Defendant was 20 years old. Thus, Defendant’s argument lacks merit.