IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1091

Filed: 6 August 2019

Rutherford County, Nos. 16CRS53635, 17CRS607

STATE OF NORTH CAROLINA

v.

LAMONT EDGERTON, Defendant.

Appeal by Defendant from judgment dated 26 April 2018 by Judge Mark E. Powell in Rutherford County Superior Court. Heard in the Court of Appeals 25 April 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Erika N. Jones, for the State.

W. Michael Spivey for Defendant-Appellant.

INMAN, Judge.

Felony habitual larceny, which elevates the crime of misdemeanor larceny if the defendant has been convicted of four or more prior larcenies, does not include as an essential element the requirement that the defendant was represented by counsel or waived counsel in obtaining those prior larceny convictions.

Lamont Edgerton ("Defendant") appeals following a jury verdict finding him guilty of habitual larceny and attaining the status of an habitual felon. Defendant argues that (1) the indictment was facially invalid and insufficient to charge him with

habitual larceny; (2) he was not properly arraigned for the charge of habitual larceny; (3) his attorney was not authorized to stipulate to his prior larceny convictions; (4) the State did not provide sufficient evidence to prove the charge of habitual larceny; and (5) the use of an Automated Criminal/Infraction System printout to prove a prior felony conviction violated the best evidence rule. After careful review of the record and applicable law, we hold that Defendant has failed to demonstrate error.

I. Factual and Procedural History

The record and evidence introduced at trial reveal the following:

On 14 September 2016, employees at Ingles Markets, Incorporated ("Ingles") witnessed Defendant "sticking . . . meats inside of a bag he brought in the store for himself." Defendant then left the store without paying for the items. One employee followed Defendant outside and planned to identify the license plate of Defendant's vehicle, but Defendant made eye contact with him and the employee returned inside the store.

Defendant reentered the store and confronted the employees at the Ingles deli counter. Defendant became "pretty rowdy," asked the employees if there was a problem, and said if there was he would "be back and take care of that problem." Both employees felt threatened by Defendant's behavior and told Defendant to take the meat. Once Defendant had left the store, they notified their management and called the police.

Sergeant Andy Greenway ("Sgt. Greenway") of the Lake Lure Police Department was dispatched to Ingles to investigate the call. He viewed surveillance footage of the incident and recognized Defendant. Sgt. Greenway and another officer found Defendant in front of his house with his father and sister and noticed two empty Ingles bags in the driveway. He then arrested Defendant, who asked, "Can I not just have my dad go back and pay for the pork chops?" Sgt. Greenway told Defendant that it was too late for that. Defendant told Sgt. Greenway that he took the pork chops because he had no money and wanted something nice to eat on his birthday.

Defendant was indicted for habitual larceny and as an habitual felon. The habitual larceny charge came on for jury trial during the 23 April 2018 session of Rutherford County Superior Court. At the close of the State's evidence, after conferring with Defendant, Defendant's counsel informed the court "for the record, we would stipulate to the sufficient prior larcenies to arrive at the level of habitual larceny." On 25 April 2018 the jury returned a verdict finding Defendant guilty of larceny.

After the jury returned its verdict, Defendant became agitated, made comments to the jury, and was removed from the courtroom when he got "more and more out of control." The court found that Defendant "was a physical threat to everyone in the courtroom" and ruled that he had waived his right to be present.

The habitual felon phase of the trial proceeded in Defendant's absence.[1] Defendant's counsel declined to stipulate to Defendant's felony record. Karla Tower, an assistant clerk of the Rutherford County Superior Court, testified about Defendant's prior felony convictions and the jury found Defendant guilty of being an habitual felon.

The next day, the court reconvened for sentencing with Defendant present. The court found Defendant to have a level VI prior felony record level, and sentenced Defendant to 103 to 136 months' imprisonment. Defendant appeals.

II. Analysis

A. Indictment

Defendant argues the indictment charging him with habitual larceny was facially invalid because it did not allege all the essential elements of the offense. We disagree.

Our General Statues provide that larceny of property valued $1,000 or less is a misdemeanor, and larceny of property valued more than $1,000 is a felony. N.C. Gen. Stat. § 14-72(a) (2017). But our statutes also provide that a charge of larceny ordinarily classified as a misdemeanor can be elevated to a felony charge when the defendant has committed four or more prior larcenies. The larceny must have been:

> [c]ommitted after the defendant has been convicted in this State or in another jurisdiction for any offense of larceny

[1] Defendant does not argue on appeal that the trial court erred in proceeding in his absence.

> under this section, or any offense deemed or punishable as larceny under this section, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies, or a combination thereof, at least four times. *A conviction shall not be included in the four prior convictions required under this subdivision unless the defendant was represented by counsel or waived counsel at first appearance or otherwise prior to trial or plea.*

N.C. Gen. Stat. § 14-72(b)(6) (2017) (emphasis added). Defendant argues that the felony indictment in this case is invalid because it did not specifically allege that he was represented by counsel or had waived counsel in the proceedings underlying each of his prior larceny convictions. For the reasons explained below, we hold that the counsel requirement is not an essential element of the crime of habitual larceny and that the indictment was therefore valid.

A constitutionally sufficient indictment "must allege lucidly and accurately all the essential elements of the offense endeavored to be charged." *State v. Brice*, 370 NC 244, 249, 806 S.E.2d 32, 36 (2017) (citations omitted). An indictment that fails to allege an essential element of the offense is facially invalid, thereby depriving the trial court of jurisdiction. *Id.* We review a challenge to the facial validity of an indictment *de novo*, *State v. Williams*, 368 N.C. 620, 622, 781 S.E.2d 268, 270 (2016), considering the matter anew and freely substituting our own judgment for that of the trial court. *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011).

The indictment in this case alleges that Defendant did "steal, take, and carry away 2 packs of pork products, the personal property of Ingles Markets, Inc." and, in a separate count, alleges that Defendant previously had been convicted of four larceny offenses. The indictment lists the date of conviction, court, and file number for each larceny offense. The indictment does not allege that Defendant obtained those convictions while he was represented by counsel or had waived counsel.

We consider whether Section 14-72(b)(6)'s counsel requirement is an essential element of the offense, and is therefore required to be alleged in an indictment for habitual larceny, or whether the requirement provides for an exception to criminal liability that is not an essential element of the offense. Each provision in a statute defining criminal behavior is not necessarily an essential element. Such provisions may instead constitute, for example, affirmative defenses or evidentiary issues to be proven at trial. *See, e.g., State v. Sturdivant*, 304 N.C. 293, 309-10, 283 S.E.2d 719, 730-31 (1981) (holding that consent is an absolute defense to kidnapping, rather than an essential element); *State v. Leaks*, 240 N.C. App. 573, 578, 771 S.E.2d 795, 799 (2015) (holding the manner used by a sex offender to notify the sheriff of a change in address is an evidentiary issue to be proven at trial, rather than an essential element of the crime). In some instances, we have held that exceptions to criminal statutes are "hybrid" factors, which the State is not required to allege in an indictment and for which it bears no initial burden of proof but must rebut evidence that a defendant's

conduct falls within the exception. *See State v. Trimble*, 44 N.C. App. 659, 666, 262 S.E.2d 299, 303-04 (1980).

Allegations beyond the essential elements of a crime need not be included in an indictment. *State v. Rankin*, ___ NC ___, ___, 821 S.E.2d 787, 792 (2018).

The language of Section 14-72(b)(6) provides for an exception to the crime of habitual larceny, removing from consideration prior convictions obtained when a defendant was not represented by counsel and had not waived counsel. "Whether an exception to a statutorily defined crime is an essential element of that crime or an affirmative defense to it depends on whether the statement of the offense is complete and definite without inclusion of the language at issue." *Id.* When the statute's statement of the offense is complete and a subsequent clause provides an exception to criminal liability, the exception need not be negated by the language of the indictment. *State v. Mather*, 221 N.C. App. 593, 598, 728 S.E.2d 430, 434 (2012) (citing *State v. Connor*, 142 N.C. 700, 701, 55 S.E. 787, 788 (1906)). There are no "magic words" that indicate an exception to a statutory offense is a defense: "[t]he determinative factor is the nature of the language in question." *State v. Brown*, 56 N.C. App. 228, 230, 287 S.E.2d 421, 423 (1982). The question is whether the language is part of the definition of the crime or if it withdraws a class from an already complete definition of the crime. *Id.*

This Court has employed this analysis with respect to several criminal statutes, but we have not always focused on the same factors in making this determination. Prior decisions have identified as relevant the manner in which the statute and exception are drafted, *Brown,* 56 N.C. App. at 228, 287 S.E.2d at 421, prior decisions that enumerate the elements of the crime, *Brice,* 370 N.C. at 244, 806 S.E.2d at 32, and the essential fairness of assigning an exception as a defense or as an element, *Trimble,* 44 N.C. App. at 659, 262 S.E.2d at 299.

In *Brown*, we examined Section 14-74 of our General Statutes, which defines the crime of larceny by an employee. 56 N.C. App. at 230, 287 S.E.2d at 423. This statute criminalizes the act of an employee who takes certain possessions of his employer with the intent to steal or defraud "[p]rovided, that nothing in this section shall extend to apprentices or servants within the age of 16 years." N.C. Gen. Stat. § 14-74 (2017). We held that the exception withdrew a class of defendants—those under sixteen years of age—from the crime of larceny by an employee, and that the language of the statute preceding the clause completely defined the offense. *Brown*, 56 N.C. App. at 230-31, 287 S.E.2d at 423. Therefore, an indictment for the crime was not required to allege the defendant's age. *Id.* This Court further reasoned that a defendant's age "is a fact particularly within [the] defendant's knowledge," such that placing the burden on the defendant to raise that exception is not an unfair allocation of proof. *Id.*

Similarly, Section 14-72(b)(6) provides a complete statement of the crime of habitual larceny without incorporating the exception at issue. We reach this conclusion by determining the type of criminal conduct the legislature intended to prohibit. *See Rankin*, ___ N.C. at ___, 821 S.E.2d at 792. In so defining a crime, we look to decisions by our Supreme Court enumerating its elements. *See, e.g.*, *Leaks,* 240 N.C. App. at 577, 771 S.E.2d at 799.

In *Leaks*, we addressed whether an indictment charging a sex offender with failure to notify the sheriff of a change of address must allege failure to provide notice in writing. *Id.* at 577-78, 771 S.E.2d at 798-99. We held that the writing requirement is an evidentiary issue, rather than an essential element, based on a Supreme Court decision enumerating the elements of that crime as part of its review of the sufficiency of the evidence presented against a defendant. *Id.* (citing *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449, (2009)).

With respect to Section 14-72(b)(6), we take guidance from our Supreme Court's recent decision in *Brice*, which enumerated the elements of habitual larceny:

> [A] criminal defendant is guilty of the felony of habitual misdemeanor larceny in the event that he or she "took the property of another" and "carried it away" "without the owner's consent" and "with the intent to deprive the owner of his property permanently" after having been previously convicted of an eligible count of larceny on four prior occasions.

370 N.C. at 248-49, 806 S.E.2d at 35-36 (internal citations omitted).[2] Our Supreme Court omitted the counsel requirement in its list of the essential elements of the offense. *Id.* We view this as an accurate description of the behavior our legislature intended to criminalize: larceny by a defendant who has been previously convicted of larceny at least four times. The counsel exception is therefore not an essential element of habitual larceny.

We follow the guiding principal that the elements of an offense cannot be so defined as to place an unfair burden of proof upon the defendant. *See Brown*, 56 N.C. App. at 231, 287 S.E.2d at 423. It is "substantively reasonable to ask what would be a 'fair' allocation of the burden of proof, in light of due process and practical considerations, and then assign as 'elements' and 'defenses' accordingly." *Trimble*, 44 N.C. App. at 666, 262 S.E.2d at 303.

It is not unfair to require the defendant to bear the initial burden of producing evidence regarding representation by counsel with respect to one or more prior larceny convictions. Eligible prior larcenies for the purposes of Section 14-72(b)(6) include those committed at any time prior to the larceny being elevated to habitual status, in *any* jurisdiction. Even when a prior larceny was committed within the same jurisdiction as the habitual larceny case, as the assistant superior court clerk

[2] An "eligible count" refers to convictions of larceny as defined in the statute: "any offense of larceny under this section, or any offense deemed or punishable as larceny under this section, or of any substantially similar offense in any other jurisdiction." N.C. Gen. Stat. § 14-72(b)(6).

testified, court records are purged after a period of time. Defendants are likely the best source of information as to whether or not they were represented in proceedings resulting in a particular prior conviction.

Our Supreme Court's analysis of an analogous provision in our Fair Sentencing Act is instructive. In *State v. Thompson*, the Court examined the use of prior convictions as aggravating factors during sentencing. 309 N.C. 421, 307 S.E.2d 156 (1983). Although the burden of proving the prior convictions rests on the State, the Court held that "the initial burden of raising the issue of . . . lack of assistance of counsel on a prior conviction is on the defendant." *Id.* at 427, 307 S.E.2d at 161. The Court allocated to the defendant the burden to object to, or move to suppress, the admission of evidence of a prior conviction based on lack of representation because "cases in which a defendant was convicted while indigent and unrepresented should be the exception rather than the rule. A defendant generally will know, without research, whether this occurred." *Id.* at 426, 307 S.E.2d at 160 (quoting *State v. Green*, 62 N.C. App. 1, 6 n.1, 301 S.E.2d 920, 923 n.1 (1983)). As it is not unfair to require a defendant to raise the issue of lack of counsel when prior convictions are being used for sentencing purposes, it is likewise not unfair to place that initial burden on the defendant in the case of habitual larceny.

The legislature has also spoken on this question. Our Criminal Procedure Act provides that a defendant moving to suppress the use of a prior conviction "has the

burden of proving by the preponderance of the evidence that the conviction was obtained in violation of his right to counsel." N.C. Gen. Stat. § 15A-980(c) (2017). This statute demonstrates a decision by our legislature that requiring a defendant to raise the representation issue is not an unfair allocation of the burden of proof.

Because Defendant's appeal challenges only the validity of the indictment, and Defendant presented no evidence regarding whether he was represented by or waived counsel in his prior larceny cases, our analysis concludes with determining that the counsel requirement is not an essential element of habitual larceny. We do not address whether the defendant bears any burden on this issue beyond that of production.[3]

Based on the structure of Section 14-72(b)(6), our Supreme Court's definition of its elements in *Brice*, and the availability to defendants of information regarding whether they had or waived counsel when they obtained prior convictions, we hold that representation by or waiver of counsel in connection with prior larceny

[3] While some defenses place the burdens of both production and proof upon the defendant, some only require an initial showing that shifts the burden of proof to the State. In *Trimble*, for example, we examined Section 14-401 of our General Statutes, which criminalizes putting poisonous foodstuffs in certain public places and provides that it "shall not apply" to poisons used for protecting crops and for rat extermination. 44 N.C. App. at 664, 262 S.E.2d at 302. We held that the exception was neither an element of the crime nor an affirmative defense, but a hybrid factor for which "the State has no initial burden of producing evidence to show that defendant's actions do not fall within the exception; however, once the defendant, in a non-frivolous manner, puts forth evidence to show that his conduct is within the exception" the burden shifts to the State. *Id.* at 666, 262 S.E.2d at 303-04. Similarly, in *Thompson*, our Supreme Court held that a *prima facie* showing by a defendant that prior convictions being used as aggravating factors were obtained in violation of the right to counsel shifts the burden to the State to show that they were not. 309 N.C. at 428, 307 S.E.2d at 161.

convictions is not an essential element of felony habitual larceny as defined by N.C. Gen. Stat. § 14-72(b)(6). The indictment in this case was not required to allege facts regarding representation by or waiver of counsel and was sufficient to charge Defendant with the crime of felony larceny and grant the trial court subject matter jurisdiction.

B. Authority to Stipulate

Defendant additionally argues that his attorney was without authority to stipulate to the prior convictions used to elevate his charge to habitual larceny. Defendant analogizes this stipulation to counsel's entry of a guilty plea or admission of a defendant's guilt to a jury, decisions which "must be made exclusively by the defendant." *State v. Harbison*, 315 N.C. 175, 180, 337 S.E.2d 504, 507 (1985). "[A] decision to plead guilty must be made knowingly and voluntarily by the defendant after full appraisal of the consequences." *Id.* (citing *Boykin v. Alabama*, 395 U.S. 238, 23 L.Ed. 274 (1969)).

We have expressly rejected this analogy in prior decisions. In *State v. Jernigan*, the defendant, charged with habitual impaired driving, argued that the same procedural protections that apply to guilty pleas applied when his counsel stipulated to his previous convictions. 118 N.C. App. 240, 243-45, 455 S.E.2d 163, 165-66 (1995). We held in that case that a defendant's attorney may stipulate to an element of a charged crime, including previous convictions, and there is no

requirement that the record show the defendant personally stipulated to the element or knowingly and voluntarily consented to the stipulation. *Id.* (citing *State v. Morrison,* 85 N.C. App. 511, 514-15, 355 S.E.2d 182, 185 (1987)). An attorney is presumed to have the authority to act on behalf of his client during trial, including while stipulating to elements of a crime, and "the burden is upon the client to prove the lack of authority to the satisfaction of the court." *Id.* at 245, 455 S.E.2d at 167 (citing *State v. Watson*, 303 N.C. 533, 538, 279 S.E.2d 580, 583 (1981)).

Defendant cites our Supreme Court's decision in *State v. Mason* for the proposition that "an attorney has no right, in the absence of express authority, to waive or surrender by agreement or otherwise the substantial rights of his client." 268 N.C. 423, 426, 150 S.E.2d 753, 755 (1966) (citation omitted). However, that same decision makes clear that its holding is based on the fact that the waiver made by defendant's counsel was *not* a "stipulation of guilt to an essential element of the crime charged." *Id.* at 425, 150 S.E.2d at 755.

In this case, the record does not show that Defendant's attorney acted without authority. The trial transcript does not support Defendant's assertion on appeal that he "immediately, clearly, and vigorously rejected any stipulation." Once the State's evidence had concluded and the jury was allowed to leave, Defendant's attorney informed the trial court "for the record, we would stipulate to the sufficient prior larcenies to arrive at the level of habitual larceny." Defendant then interjected, "It

ain't nothing but a misdemeanor larceny charge." He explained, "It's not no felony larceny. Habitual larceny came out December 1, 2012. I did my time on all them other charges."

Defendant's statements immediately following his counsel's stipulation do not reflect a denial of the existence of those convictions or of his attorney's authority to stipulate to them. Instead, they reflect his legal disagreement with the use of convictions obtained prior to the enactment of our habitual larceny statute as prior convictions for the statute's purposes. Defendant has not satisfied the burden of showing his trial counsel did not have authority to stipulate to his prior larceny convictions.

C. Habitual Larceny Arraignment

Defendant also argues that the trial court's failure to arraign him as mandated by Section 15A-928(c) of our General Statutes constitutes prejudicial error. We disagree.

When a defendant's prior convictions are used to raise an offense from a lower grade to a higher grade, thereby becoming an element of the offense, the State must obtain a special indictment alleging the previous convictions. N.C. Gen. Stat. § 15A-928(b) (2017). After the trial commences, and before the close of the State's case, the trial judge must arraign the defendant upon the special indictment and advise him

that he may admit the alleged convictions, deny them, or remain silent. N.C. Gen. Stat. § 15A-928(c) (2017).

Defendant did not object at trial to the court's failure to arraign him. Although this would generally preclude Defendant from raising this issue on appeal, "when a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court's action is preserved, notwithstanding defendant's failure to object at trial." *State v. Davis*, 364 N.C. 297, 301, 698 S.E.2d 65, 67 (2010) (citations and quotations omitted). A statutory mandate automatically preserves an issue for appellate review when it (1) requires a specific act by the trial judge or (2) requires specific proceedings the trial judge has authority to direct. *In re E.D.,* ___ N.C. ___, ___, 827 S.E.2d 450, 457 (2019) (citations omitted). Because the arraignment proceeding in question is mandated by Section 15A-928(c) of our General Statutes, the trial court's error is preserved for appeal if it prejudiced Defendant.

The State does not contest that the trial court failed to formally arraign Defendant upon the charge of habitual larceny. A trial court's failure to arraign defendant under Section 15A-928(c) is not *per se* reversible error but is analyzed for prejudice. "If there is no doubt that defendant was fully aware of the charges against him and was in no way prejudiced by the omission of the arraignment required by Section 15A-928(c), the trial court's failure to arraign defendant is not reversible error." *Jernigan*, 118 N.C. App. at 244, 455 S.E.2d at 166. The question before us,

both in determining if this issue was preserved for appeal and if the error is reversible, is whether Defendant was prejudiced by the failure of the trial court to arraign him.

In *Jernigan*, the trial court failed to arraign a defendant who was charged with habitual impaired driving. 118 N.C. App. at 243, 455 S.E.2d at 165. Because the defendant's attorney informed the court that he had discussed the case with the defendant and the defendant was willing to stipulate to the charges, and the defendant made no argument on appeal that he was not aware of the charges against him or did not understand his rights or the effect of the stipulation, we held that he was not prejudiced by the lack of arraignment. *Id.* at 245, 455 S.E.2d at 167.

In this case, as in *Jernigan*, Defendant stipulated through counsel to the prior convictions. Unlike in *Jernigan*, Defendant argues on appeal that he did not understand the charges of the special indictment and was confused about the impact of the stipulation. The record does not support this argument.

The two purposes of the statute, informing Defendant of the prior convictions that would be used against him and allowing him an opportunity to admit or deny those convictions, were fulfilled in this case. As in *Jernigan,* the prior convictions being used to elevate Defendant's charge were identified with specificity in a valid indictment, providing him with notice. 118 N.C. App. at 243, 455 S.E.2d at 166. When the trial court addressed the question of whether Defendant wished to stipulate

to the prior convictions, Defendant was allowed the opportunity to admit or deny the convictions. Defendant's attorney requested a moment to speak with his client, they conferred and then, through counsel, Defendant stipulated to the prior larcenies. While Defendant protested at that time, as discussed *supra,* his disagreement concerned the eligibility of convictions he had obtained prior to the enactment of the habitual larceny statute. Defendant did not before the trial court and does not on appeal deny the convictions. Accordingly, we find that the purposes of Section 15A-928(c) were satisfied and Defendant was not prejudiced by the trial court's failure to arraign him on his prior convictions.

D. Sufficiency of Evidence

Defendant additionally argues that the trial court erred in denying his motion to dismiss because the State failed to present sufficient evidence that Defendant was represented by or had waived counsel for his previous larceny convictions.

We review a trial court's denial of a motion to dismiss *de novo*, considering the matter anew and freely substituting our own judgment for that of the trial court. *State v. Moore*, 240 N.C. App. 465, 470, 770 S.E.2d 131, 136 (2015). In reviewing a motion to dismiss based on insufficiency of the evidence, our inquiry is "whether there is substantial evidence (1) of each essential element of the offense charged, . . . and (2) of defendant's being the perpetrator of such offense." *Id.* at 470-71, 770 S.E.2d at 136.

In this case, the only essential element that Defendant contends the State failed to prove was that Defendant was represented by or had waived counsel in his prior larceny convictions. However, as discussed *supra*, because we hold that the counsel requirement is not an essential element under Section 14-72(b)(6), the State was not required to provide evidence of Defendant's representation. Furthermore, Defendant's counsel stipulated to Defendant's convictions for "sufficient prior larcenies to arrive at the level of habitual larceny." We therefore hold that the trial court did not err in denying Defendant's motion to dismiss.

E. Best Evidence Rule

Finally, Defendant challenges the use of an Automated Criminal/Infraction System ("ACIS") printout to prove one of Defendant's prior convictions during the habitual felon phase of Defendant's trial. Defendant argues that the use of the printout violates the best evidence rule, which excludes secondary evidence used to prove the contents of a recording when the original recording is available. *See* N.C. Gen. Stat. § 8C-1, Rules 1002-1004 (2017).

When a defendant is charged with attaining the status of habitual felon, the trial proceeds in two phases. N.C. Gen. Stat. § 14-7.5 (2017). First the defendant is tried for the underlying felony and then, if the defendant is found guilty, the indictment charging the defendant as an habitual felon is revealed to the jury and the trial proceeds to the second phase. *Id.* The State must then prove that the

defendant "has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States." N.C. Gen. Stat. § 14-7.1 (2017). The prior convictions "may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction." N.C. Gen. Stat. § 14-7.4(a) (2017).

Defendant argues that Section 14-7.4 requires that a copy of judgment record be used to prove prior convictions, and that an ACIS printout is therefore secondary evidence that must comply with the foundational requirements of the best evidence rule—meaning the State must establish that a copy of the judgment record could not be "obtained by the exercise of reasonable diligence." N.C. Gen. Stat. § 8C-1, Rule 1005 (2017). We disagree.

This Court has previously held that a certified copy of an ACIS printout is sufficient evidentiary proof of prior convictions under our habitual felon statute. *State v. Waycaster,* ___ N.C. App. ___, ___, 818 S.E.2d 189, 195 (2018). We concluded in *Waycaster* that Section 14-7.4 is permissive and allows, rather than requires, that the proof tendered be a certified copy of the court record of the prior conviction. *Id.* Accordingly, an ACIS printout, certified by the Clerk of McDowell County Superior Court as containing information accurately reflecting the judgment, was sufficient proof of the defendant's prior conviction. *Id.* Because the evidence tendered was not proof of the contents of another document, the best evidence rule did not bar the admission of the printout. *Id.*

In this case, the State similarly provided an ACIS printout evidencing Defendant's prior conviction. An assistant clerk testified as to its accuracy, and the printout was a certified copy. Following *Waycaster*, this is competent evidence of Defendant's prior conviction, and was properly admitted by the trial court.

NO ERROR.

Judges ARROWOOD and BROOK concur.