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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-972

Filed: 2 July 2019

Pitt County, No. 17 CRS 1092

STATE OF NORTH CAROLINA

v.

AMANDA REAVES-SPELLER

Appeal by State from order entered 15 December 2017 by Judge Jeffrey B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 6 June 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Daniel Shatz, for defendant-appellee.

ARROWOOD, Judge.

The State appeals from the superior court's order dismissing its prosecution of Amanda Reaves-Speller ("defendant") for lack of subject matter jurisdiction. We affirm the superior court's ruling that the State improperly circumvented district court jurisdiction by simultaneously obtaining a presentment and indictment from a

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grand jury, but we hold that the charges are not subject to dismissal. Therefore we affirm in part, reverse in part, and remand.

I. Background

Resolution of this appeal is controlled by this Court's decision in *State v. Baker*, __ N.C. App. __, 822 S.E.2d 902 (2018). The State's appeal arises from an impaired driving prosecution involving the same prosecutor and the same procedural posture as in *Baker*. Because this appeal involves different facts underlying the impaired driving prosecution, we briefly recite the factual and procedural history below.

Defendant was cited and charged with impaired driving, expired registration, expired inspection, reckless driving to endanger, and failure to maintain lane control by uniform citation on 18 December 2015 in Pitt County, North Carolina. A grand jury returned a presentment and indictment on those charges in superior court on 12 June 2017. The parties stipulate that the submission and return of the presentment and indictment against defendant "proceeded in an identical fashion" as the procedure performed in *Baker*. On 5 December 2017, defendant filed a motion to dismiss, mirroring the argument in *Baker* that the presentment and indictment were invalid and did not convey subject matter jurisdiction over the action to the superior court. Following a hearing held 11 December 2017, the superior court entered an order granting the motion and dismissing the action.

The State appeals.

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II. Discussion

As noted *supra*, the legal issue before us pertaining to the issuance of the presentment and indictment in this case is identical to that resolved by our decision in *Baker*. Consistent with that opinion, we affirm the superior court's determinations that it lacked subject matter jurisdiction and that the prosecution violated Sections 7A-271 and 15A-641 of our General Statutes and Article I, Section 22 of the North Carolina Constitution, without addressing the prejudice of that constitutional violation. Also for the reasons set forth in *Baker*, we reverse the court's determination that defendant's constitutional rights under Article I, Sections 19 and 23 of the North Carolina Constitution were violated.

As in *Baker*, the State contends that the proper remedy in this case is not dismissal but a remand to the district court for proceedings commenced by defendant's initial misdemeanor citations. Defendant contends dismissal is appropriate in this case because the citations were expressly dismissed by the State in district court before the State obtained the invalid presentment and indictment. Thus, defendant argues that, unlike in *Baker*, there is no pending pleading upon which the district court might exercise jurisdiction following a transfer from superior court. Defendant acknowledges the record on appeal does not contain a written dismissal from district court but argues that the "Organization of Trial Tribunal" section in the record explains that on 23 March 2017, the charges "were dismissed by

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the State after the District Court denied the State's motion to continue defendant's aforementioned charges." Defendant contends that this statement in the record on appeal, prepared by the State as the appellant, imports verity. However, "the 'Organization of Trial Tribunal' is merely a statement in the record for informational purposes and is not binding on the parties." *State v. Brown*, 142 N.C. App. 491, 493, 543 S.E.2d 192, 194 (2001).

Because the record evidence and the transcript of the hearing do not indicate that the State had dismissed or discontinued the district court action and the superior court never obtained subject matter jurisdiction, we reverse the dismissal of the case and remand for entry of an order transferring the case back to district court. *Baker*, __ N.C. App. at __, 822 S.E.2d at 907-908.

AFFIRMED IN PART; REVERSED IN PART; REMANDED FOR FURTHER PROCEEDINGS.

Judges INMAN and COLLINS concur.

Report per Rule 30(e).