IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-945-2

Filed: 4 August 2020

Gaston County, No. 16 CRS 54022

STATE OF NORTH CAROLINA

v.

RICKY FRANKLIN CHARLES, Defendant.

Appeal by Defendant from judgment entered 26 April 2018 by Judge Todd Pomeroy in Gaston County Superior Court. Heard in the Court of Appeals 14 March 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General William H. Harkins, Jr., for the State.

The Epstein Law Firm PLLC, by Drew Nelson, for defendant-appellant.

PER CURIAM.

Ricky Franklin Charles ("Defendant") was found significantly impaired in his car on Wayne Lane, a gravel lane leading to a trailer park in rural Gaston County, on 9 April 2016. Defendant was charged with driving while impaired. At trial in the Superior Court of Gaston County, Defendant moved to dismiss based on sufficiency of the evidence, which was denied. A jury found Defendant guilty of driving while

impaired. Defendant appeals, arguing his motion to dismiss should have been granted based on insufficiency of the evidence. We disagree and hold the trial court did not err in denying Defendant's motion to dismiss.

Factual and Procedural Background

The Record in this case shows that Detective Jasmine Moore ("Moore") was on patrol in Gaston County on 9 April 2016 when she responded to a call and found Defendant in his car, which was parked with the engine running, on Wayne Lane near the intersection of Wayne Layne and Pinhook Loop Road. Defendant was nonresponsive and was slumped over in the driver's seat with his head down and his eyes closed. Defendant was taken to the jail and, after being advised of his *Miranda* rights, consented to a blood draw. The toxicology report analyzing Defendant's blood showed positive findings for Alprazolam, Oxycodone Free, and Oxymorphone Free. Moore testified that, prior to the blood draw, Defendant admitted to taking Oxycodone, Hydrocodone, Flexeril, and Xanax "regularly." Moore also testified Defendant was extremely impaired and, in her opinion, Defendant's impairment stemmed from his prescription medication.

Moore agreed with the prosecutor that Wayne Lane, where Defendant was found, was a "street or public highway located within Gaston County" and, based on an aerial satellite photograph ("the image") that was admitted into evidence, that

there were several residences along Wayne Lane. The image showed two mobile homes on Wayne Lane and approximately six mobile homes along Hyatt Drive, which forks off Wayne Lane. Officer J.L. Kaylor ("Kaylor"), who also responded to the scene, described Wayne Lane as a "gravel road" and Pinhook Loop Road, with which Wayne Lane intersected, as "a paved road." Kimberly Smith ("Smith"), a local resident who had discovered Defendant in the car, testified Defendant's vehicle was on a "little road, gravel drive road" that led to a "trailer park[.]" Defendant testified he lived at 602 Wayne Lane, in one of the two mobile homes on that road.

Analysis

On appeal, Defendant contends the trial court erred by denying his motion to dismiss the driving while impaired charge because "the State failed to offer substantial evidence that his car was located in a public vehicular area." We disagree.

Upon a defendant's motion to dismiss for insufficient evidence, "the trial court [determines] whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator." *State v. Chekanow*, 370 N.C. 488, 492, 809 S.E2d 546, 549 (2018) (citation omitted). "Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *Id.*

> [T]he trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal.

State v. Combs, 182 N.C. App. 365, 368, 642 S.E.2d 491, 495, *aff'd*, 361 N.C. 585, 650 S.E.2d 594 (2007). "This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

N.C.G.S. § 20-138.1(a) prohibits driving while impaired "upon any highway, any street, or any public vehicular area within this State[.]" N.C.G.S. § 20-138.1(a) (2019). The General Assembly defines a public vehicular area as, *inter alia*, the following:

> Any area within the State of North Carolina that meets one or more of the following requirements:
>
> > a. *The area is used by the public for vehicular traffic at any time*, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:
> >
> > > 1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
> > >
> > > 2. Any service station, drive-in theater, supermarket, store, restaurant, or office

> building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.
>
> 3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. . . .

. . .

> c. *The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public*.

N.C.G.S. § 20-4.01(32) (2019) (emphasis added).

In the present case, Defendant contends only that the State failed to provide substantial evidence to support a finding that Wayne Lane, where Defendant was found parked, is a public vehicular area ("PVA") under N.C.G.S. § 20-4.01(32). The State argues Wayne Lane satisfies the requirements of subsections (a) and (c) of the statute defining PVA. We consider each subsection in turn.

First, subsection (a) includes an "area [] used by the public for vehicular traffic at any time" in the definition of PVA, listing several examples to illustrate. N.C.G.S. § 20-4.01(32)(a) (2019). In *State v. Ricks*, this Court construed the provision as follows:

> It is evident from the examples listed that the definition [of a PVA] set out in N.C.[G.S.] § 20-4.01(32)(a) contemplates

> areas generally open to and used by the public for vehicular traffic as a matter of right or areas used for vehicular traffic that are associated with places generally open to and used by the public, such as driveways and parking lots to institutions and businesses open to the public. Furthermore, N.C[G.S.] § 20-4.01(32)(d) provides that 'private property used by vehicular traffic and designated by the private property owner as a [PVA]' is a [PVA]. If the State's assertion that any area used by the public for vehicular traffic at any time is a [PVA] is correct, the remainder of the definition of [PVA] in N.C.[G.S.] § 20-4.01 (32), including subsection (d), is superfluous.

State v. Ricks, 237 N.C. App. 359, 365-66, 764 S.E.2d 692, 696 (2014). In *Ricks*, this Court held that the trial court erred in denying the defendant's motion to dismiss where the area was a dirt path on a vacant lot used as a shortcut for cyclists and pedestrians because "there must be some evidence demonstrating the property is similar in nature to those examples provided by the General Assembly in the statute[,]" and the lot at issue was dissimilar to those examples. *Id*. at 366, 764 S.E.2d at 696.

In the present case, in response to Defendant's argument that where his car was parked was not a PVA, the State contends "Wayne Lane qualifies as 'a road used by the public for vehicular traffic' pursuant to N.C.G.S. § 20-4[.]01(32)(a)" because it "provides public vehicular access" to several mobile homes, including Defendant's. However, providing vehicular access to private homes for the residents and their guests is insufficient to demonstrate the property is similar to the examples provided

in N.C.G.S. § 20-4.01(32)(a), which all contemplate "areas used for vehicular traffic that are associated with places generally open to and used by the public, such as driveways and parking lots to institutions and businesses open to the public." *Ricks*, 237 N.C. App. at 365-66, 764 S.E.2d at 696. Therefore, Wayne Lane does not qualify as a PVA under subsection (a).

Next, the State contends Wayne Lane is a PVA under N.C.G.S. § 20-4.01(32)(c). Subsection (c) provides that an area is a PVA where "[it] is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public." N.C.G.S. § 20-4.01(32)(c) (2019). There is no dispute that Wayne Lane is available for use by residents, guests, and members of the public. Rather, Defendant contends that Wayne Lane is not within or leading to a subdivision, citing this Court's decisions in *State v. Turner* and *State v. Cornett* to support his position.

In *Turner*, the defendant argued the trial court erred in denying his motion to dismiss because the street in the mobile home park on which he operated a vehicle was private property and the street had never been dedicated to public use. *State v. Turner*, 117 N.C. App. 457, 458, 451 S.E.2d 19, 20 (1994). We relied on Black's Law Dictionary to define "subdivision" as "Division into smaller parts of the same thing

or subject matter. The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development." *Id.* at 459, 451 S.E.2d at 20 (citation omitted). We then held the mobile home park was a subdivision under that definition because it was "owned by one individual, who ha[d] divided the property into lots for lease." *Id.* We also noted the roads were "not marked by signs indicating the roads [we]re private or by signs prohibiting trespassing," and the roads were "available for use by residents and their guests or other visitors." *Id.*

In *Cornett*, this Court applied the definition of subdivision adopted in *Turner* to hold that the road at issue was within or leading to a subdivision where there were six mobile homes along the road "with five or six different owners, each with a driveway leading off of [the road]." *State v. Cornett*, 177 N.C. App. 452, 455, 629 S.E.2d 857, 858 (2006). While noting "that a PVA must only be opened to vehicular traffic, but not necessarily 'offered for dedication to the public[,]'" we also held the road at issue "was opened to vehicular traffic within the meaning of the statute[.]" *Id.*

In the present case, Defendant argues Wayne Lane is not within or leading to a "subdivision" because only two mobile homes are located there, whereas there were more mobile homes in *Turner* and *Cornett*. According to Defendant, the mobile homes in *Turner* and *Cornett* were "organized in a manner that demonstrated a

thoughtful division of the property," and in *Cornett* each mobile home was connected to the main road. The State argues Wayne Lane is within or leading to a subdivision because it provides vehicular access to the two mobile homes directly off of it and to approximately six additional plots with mobile homes off of Hyatt Drive.

Taking the facts in the light most favorable to the State, as we are required to, *Combs*, 182 N.C. App. at 368, 642 S.E.2d at 495, there is substantial evidence that Wayne Lane is within or leading to a subdivision within the meaning of N.C.G.S. § 20-4.01(32)(c) as interpreted in *Turner* and *Cornett*. The image introduced into evidence shows there are two mobile homes on Wayne Lane and approximately six mobile homes on Hyatt Drive, which forks off of Wayne Lane. At trial, Smith, the local resident who discovered Defendant in the car, testified that Defendant's vehicle was stopped on a "gravel drive road" leading into a "trailer park." Furthermore, the Record shows Defendant lived in one of the mobile homes on Wayne Lane, but not the other. Thus, the factfinder could infer these properties had been divided, and that either the two mobile homes on Wayne Lane or the group of mobile homes on Hyatt Drive were a subdivision.

Defendant's attempts to impose additional requirements for a group of properties to be considered a subdivision are unavailing. Defendant's argument that a subdivision should be composed of more than two properties is not supported by

caselaw, because the definition of subdivision adopted by this Court in *Turner* specifically includes "[t]he division of a lot . . . into *two* or more lots[.]" *Turner*, 117 N.C. App. at 459, 451 S.E.2d at 20 (citation omitted) (emphasis added). Viewing the evidence in the light most favorable to the State, there is sufficient evidence to permit an inference that, based on their proximity and the different residents, the two properties with mobile homes on Wayne Lane were divided, and were therefore a subdivision under the definition applied in *Turner* and *Cornett*. Moreover, neither *Turner* nor *Cornett* requires that an area have a "thoughtful" division of the property, such as a name or paved roads, to be considered a subdivision. For example, although the mobile home park in *Turner* had a name, there is no mention of a name for the group of mobile homes in *Cornett*. Nor are any such requirements present in the definition of subdivision applied in both cases by this Court.

Even assuming, *arguendo*, the two mobile homes on Wayne Lane do not comprise a subdivision by themselves, the Record shows that Wayne Lane provides vehicular access to another group of mobile homes on Hyatt Drive, which forks off of Wayne Lane. The Record shows there are approximately six separate plots with mobile homes along this road, which is directly analogous to the six mobile homes on Timber Lane in *Cornett*. *See Cornett*, 177 N.C. App. at 455, 629 S.E.2d at 858. While Wayne Lane is arguably "within" this subdivision, N.C.G.S. § 20-4.01(32)(c) also

provides that a road "leading to" a subdivision is a PVA, and Wayne Lane clearly leads to the mobile homes along Hyatt Drive. We hold, in the light most favorable to the State, there is substantial evidence that Wayne Lane is a road within or leading to a subdivision under the statute as interpreted by this Court's caselaw, and thus is a PVA. Therefore, there is substantial evidence of every element of the charged offense and Defendant's motion to dismiss was properly denied.

Conclusion

We hold there is substantial evidence in the Record for every element of the charge of driving while impaired. Since the Record shows there are two mobile homes on Wayne Lane and a group of approximately six on Hyatt Drive, in the light most favorable to the State there is substantial evidence the area surrounding Wayne Lane was a subdivision and, therefore, Wayne Lane was a PVA under our caselaw. For the reasons stated above, we hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Panel consisting of Chief Judge McGEE, BERGER, and MURPHY, JJ.

Report per Rule 30(e).