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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-116

Filed: 3 November 2020

Forsyth County, Nos. 16 CRS 2150-51, 50570-71

STATE OF NORTH CAROLINA

v.

JULIAN GIAVANNI JOHNSON

Appeal by defendant from judgments entered 12 September 2019 by Judge Forrest D. Bridges in Forsyth County Superior Court. Heard in the Court of Appeals 6 October 2020.

*Joshua H. Stein Attorney General, by Assistant Attorney General Brent D. Kiziah, for the State.*

*Vitrano Law Offices, PLLC, by Sean Paul Vitrano, for defendant.*

ARROWOOD, Judge.

Julian Giavanni Johnson (“defendant”) appeals from the trial court’s assessment of costs stemming from two criminal judgments entered 12 September 2019. For the following reasons, we vacate the imposition of costs

assessed in one of the two judgments and remand for entry of a new judgment that does not include duplicative costs or fees imposed in the other judgment.

I. Background

On 12 September 2019, the jury found defendant guilty of the charges of possession of a firearm by a felon, possession with intent to sell or deliver marijuana, felony possession of marijuana, and possession of marijuana paraphernalia. Defendant pleaded guilty to habitual felon status.

Thereafter, the trial court entered two judgments as there were two active case files collectively charging defendant with the aforesaid offenses. The trial court consolidated the convictions into two judgments, each of which reflects a separate assessment of costs against defendant. The judgment entered in Case No. 16 CRS 2150 imposed total costs and fees of \$5,795.00, and the judgment entered in Case No. 16 CRS 50570 assessed costs in the amount of \$1,082.50. Many of the itemized costs in the latter judgment are duplicative of the costs assessed in the former judgment.

II. Discussion

The issue on appeal is whether the trial court erred by assessing duplicative costs in each of the two judgments entered against defendant on 12 September 2019.<sup>1</sup> This is an issue of statutory interpretation that we review *de novo*. *State v. Rieger*,

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<sup>1</sup> The State concedes that defendant's appeal is properly before this Court.

\_\_ N.C. App. \_\_, \_\_, 833 S.E.2d 699, 700 (2019) (citing *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721 (2011)).

Section 7A-304 of the North Carolina General Statutes enumerates costs that shall be assessed and collected in “every criminal case.” N.C. Gen. Stat. § 7A-304(a)(1)-(13) (2019). In *Rieger*, this Court held that when multiple charges against a defendant are disposed of in a single proceeding, as they were here, N.C. Gen. Stat. § 7A-304 allows only a single assessment of costs and fees. *Rieger*, \_\_ N.C. App. at \_\_, 833 S.E.2d at 703 (“When multiple criminal charges arise from the same underlying event or transaction and are adjudicated together in the same hearing or trial, they are part of a single ‘criminal case’ for purposes of N.C. Gen. Stat. § 7A-304. In this situation, the trial court may assess costs only once, even if the case involves multiple charges that result in multiple, separate judgments.”).<sup>2</sup>

In this case, the parties do not dispute that all of the charges against defendant arose from the same underlying events and transactions and were adjudicated together, and disposed of, in the same trial. As such, the two criminal judgments against defendant were part of a single “criminal case” for the purposes of N.C. Gen. Stat. § 7A-304, and the trial court was limited to assessing statutory criminal case costs only once across the two judgments. *Rieger*, \_\_ N.C. App. at \_\_, 833 S.E.2d at

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<sup>2</sup> While *Rieger* was filed 1 October 2019, after the entry of the judgments in this case, the State acknowledges that this decision is applicable to this appeal.

703. As the State concedes, the trial court “erred when it charged Defendant twice” for certain costs assessed against him in both judgments.

III. Conclusion

For the foregoing reasons, we vacate the imposition of costs in the judgment entered in Case No. 16 CRS 50570 and remand for entry of a new judgment that does not include costs or fees that are duplicative of any costs or fees imposed in the judgment entered in Case No. 16 CRS 2150. We defer to the trial court to review the itemized bill of costs associated with each judgment and identify (and exclude) any duplicative charges.

VACATED AND REMANDED IN PART.

Chief Judge MCGEE and Judge STROUD concur.

Report per Rule 30(e).