IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-204

Filed 19 December 2023

Iredell County, Nos. 19 CRS 51918, 22 R 306

STATE OF NORTH CAROLINA

v.

C.K.D., Defendant.

Appeal by the State from order entered 14 July 2022 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 14 November 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorneys General Kathryne E. Hathcock and Christopher W. Brooks, for the State.

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

ARROWOOD, Judge.

The State of North Carolina appeals from an order granting a *Knoll* motion to dismiss by C.K.D. ("defendant"). On appeal, the State argues the trial court erred in dismissing the case, and accordingly, the records should not be expunged from defendant's record. For the following reasons, we affirm.

I. Background

On 11 April 2019, an officer of the Mooresville Police Department arrested defendant for Driving While Impaired ("DWI"). Defendant registered a .17 breath alcohol concentration ("BAC"). Defendant was transported to the Iredell County Magistrate's Office where Magistrate J.C. Hollar set a $2,500.00 unsecured bond and detained defendant until either (1) his "physical and mental faculties are no longer impaired to the extent that" he presented a danger, or (2) "a sober, responsible adult [was] willing and able to assume responsibility" for him. In the detention form, the magistrate found "by clear and convincing evidence" that defendant's condition of "BAC .17, Red Glassy Eyes, Slurred Speech, Odor of Alcohol" presented a danger "of physical injury to the defendant or others or damage to property" if he were released.

When defendant was arrested, he was provided the opportunity to use a phone but declined because he did not want to wake up his wife and his young children. Defendant also signed a document titled "Implied Consent Offense Notice" which gave defendant the opportunity to list contact information for individuals he wished to contact, but he checked the box indicating "I do not wish to contact anyone for the purposes of observing me at the jail or administering an additional chemical analysis." Defendant remained in the Iredell County Jail for approximately 11 hours before he was released.

Defendant filed a *Knoll* motion to dismiss the charge on 3 February 2020 in Iredell County District Court. On 22 January 2021, District Court Judge Edward L.

Hedrick, IV denied defendant's motion, and defendant pled guilty and was sentenced to sixty days imprisonment suspended for 24 months of probation and 12 hours of community service. Defendant appealed to Iredell County Superior Court and refiled his *Knoll* motion to dismiss.

Argument on the motion was heard at the 16 August 2021 session in Superior Court, Iredell County, Judge Joseph N. Crosswhite presiding. Defendant testified that he asked the officers and magistrate if he could call a cab or Uber to take him home. Defendant had sufficient funds to pay for a cab or Uber, and he testified that if he had been able to take a cab home, he would arrive in approximately 25 minutes and be in the presence of his wife. Defendant told the court that the magistrate said a cab driver would have to sign paperwork for him to be released, and because the magistrate and officer told him that would be unlikely to occur, he did not call an Uber or taxi. During the 11 hours he was detained after his appearance before the magistrate, he was not offered the opportunity to use a phone. Defendant further testified that he was checked on only twice during the time he was held—once after eight hours, and again only 30 minutes before he was released. He was told he would not be released until his BAC reached .00.

The trial court entered an order on 14 July 2022 that included the following findings of fact in relevant part:

> 7. Defendant was at all times polite and cooperative with the charging officer, chemical analyst and magistrate during the investigation, arrest, chemical testing,

processing, and appearance before the magistrate. . . . There was no evidence offered to the court that the defendant created a disturbance, or would do so if released; just the contrary.

8. The magistrate also set a "DWI hold" for the defendant . . . . The magistrate's written findings on form AOC-CR-270 were "BAC .17, Red Glassy Eyes, Slurred Speech, Odor of Alcohol."

9. No other evidence was offered to support the conclusion by clear and convincing evidence that defendant's level of impairment was as such that his release on unsecured bond would present a danger of physical injury to him or damage to property.

10. The defendant did not list the name or telephone number of anyone on form AOC-CR-271. Rather, he checked the block indicating that he did not wish to contact anyone. The defendant testified that his wife was at home with his children approximately 25 minutes away and that he did not wish to wake her up. The defendant was hoping to get a ride home from a taxi or Uber. . . .

11. Defendant intended to comply with the unsecured bond provisions and then obtain a taxi or Uber to travel home to have his wife observe his condition at their home. . . .

12. Defendant [had] sufficient funds on his persons to pay for either a taxi or Uber to travel to his home.

. . . .

14. The defendant was finally released from the Iredell County Jail at 11:10 AM, almost 11 hours after being jailed.

. . . .

16. During this 11 hour period, the defendant had contact with jail staff only twice and each time was told that he would be held until he blew a 0.00.

17. The defendant was not offered the opportunity to use a telephone after he was admitted into jail custody and that

had he known that he was going to be held so long that he would have called his wife. The defendant testified that had he been allowed to use a telephone at the jail that he would have called for his wife to come to the jail.

18. The defendant had funds on his person to pay for a taxi or an Uber ride back home and that had he been released from the jail, he would have been able to be back home in the presence of his wife within 25 to 30 minutes.

19. The defendant asked the arresting officer and the magistrate if he could call a taxi or an Uber to pick him up and drive him home. Both the officer and the magistrate told him that any such driver would be required to come inside and actually sign to take responsibility for him as a "sober, responsible adult" which they did not think a driver would be willing to do.

20. Defendant's confinement for approximately 11 hours was at a time crucial to his ability to gather evidence and have witnesses to his condition at that time.

The trial court also made the following relevant conclusions of law:

3. There was no clear and convincing evidence that, if the defendant was released, he would create a threat of physical injury to himself or others or of damage to property; and therefore the defendant should have been released.

4. As originally stated in the Knoll decision, to assume that the defendant's [sic] lost the opportunity to gather evidence on his behalf was not prejudicial, is to assume that which is incapable of proof. The Court cannot assume the infallibility and credibility of the State's witnesses or the certitude of their tests.

5. The defendant has been deprived of his rights as claimed in his motion and such deprivation has prejudiced him in the preparation of his defense and has resulted in an unwarranted loss of liberty for a significant period of time.

> 5.[1] As a result of the above referenced violations of the provisions of Chapter 15A of the North Carolina General Statutes, the North Carolina Constitution and the United States Constitution, the defendant has been deprived of his opportunity to be with friends and to obtain additional evidence including a separate and independent chemical analysis at a crucial time, which deprivation caused the defendant to suffer actual and substantial prejudice.
> . . . .
> 7. In cases involving N.C.G.S. § 20-138.1(a)(2), prejudice is not automatically assumed to accompany a violation of a defendant's rights, but rather, a defendant must make a showing that he was prejudiced in order to gain relief. The defendant in this case has made such a showing.
>
> 8. The only effective remedy for the violation of the defendant's rights is the complete dismissal of the driving while impaired charge against the defendant in the above-captioned action**.**

The State gave timely notice of appeal on 28 July 2022.

At the time the order was entered, a North Carolina law mandated automatic expunction of dismissed charges. *See* N.C.G.S. § 15A-146(a4) (2023). Based on this statutory requirement, the State moved to preserve the court's file for purposes of the appeal, and the trial court entered an order to preserve the files. However, on 1 August 2022, the provisions of the statute requiring automatic expunction were stayed, with the stay set to expire 1 August 2023. 2022 N.C. Sess. Laws 47.

II. Discussion

On appeal, the State argues that the trial court erred in granting defendant's

[1] The trial court's order contained two conclusions of law labeled number 5.

Knoll motion to dismiss, and accordingly, there should be no expunction. We disagree.

On appeal, the standard of review is "whether there is competent evidence to support the trial court's findings and the conclusions." *State v. Kostick*, 233 N.C. App. 62, 68 (2014) (citation omitted). "If there is a conflict between the state's evidence and defendant's evidence on material facts, it is the duty of the trial court to resolve the conflict and such resolution will not be disturbed on appeal." *Id.* (citing *State v. Lewis*, 147 N.C. App. 274, 277 (2001)).

"Findings of fact which are not challenged are presumed to be correct and are binding on appeal." *State v. Labinski*, 188 N.C. App. 120, 124 (2008) (citation and internal quotation marks omitted). "Even when challenged, a trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Aguilar*, 287 N.C. App. 248, 252 (2022) (citation and internal quotation marks omitted). Here, the State does not challenge any of the trial court's findings of fact. Thus, "[w]e limit our review to whether these facts support the trial court's conclusions." *State v. Eliason*, 100 N.C. App. 313, 315 (1990) (citation omitted).

"Dismissal of charges for violations of statutory rights is a drastic remedy which should be granted sparingly. Before a motion to dismiss should be granted . . . it must appear that the statutory violation caused irreparable prejudice to the preparation of defendant's case." *Labinski*, 188 N.C. App. at 124 (citation and

internal quotation marks omitted). In cases "arising under N.C.G.S. § 20-138.1(a)(2), prejudice will not be assumed to accompany a violation of defendant's statutory rights, but rather, defendant must make a showing that he was prejudiced in order to gain relief." *State v. Knoll*, 322 N.C. 535, 545 (1988).

In *Knoll*, our Supreme Court consolidated three cases where defendants charged with DWI challenged their detentions for violations of their statutory and constitutional rights. *Id.* at 536. One of the defendants Hicks had a BAC of .18, and the *Knoll* Court held that Hicks's statutory rights were violated by his detention. *Id.* at 542. Specifically, the following findings of fact were unchallenged on appeal: (1) the defendant created no disturbance and was cooperative and polite; (2) there was no clear and convincing evidence that, if he were released, he would create a threat of physical injury to himself or others or of damage to property; (3) the defendant should have been released; and (4) the defendant's confinement was at a time crucial to his ability to gather evidence and have witnesses to his condition at the time. *Id.* at 542–43.

The facts here are strikingly similar to the defendant Hicks in *Knoll*. The State has not challenged any of the trial court's findings of fact, and this Court and the State are bound by those findings on appeal. Like in *Knoll*, the trial court here found (1) "Defendant was at all times polite and cooperative[.] . . . There was no evidence offered to the court that the defendant created a disturbance, or would do so if released; just the contrary[,]" (2) "[t]he magistrate's written findings on form AOC-

CR-270 were 'BAC .17, Red Glassy Eyes, Slurred Speech, Odor of Alcohol[,]' " and (3) "[*n*]*o other evidence* was offered to support the conclusion by clear and convincing evidence that defendant's level of impairment was such that his release on unsecured bond would present a danger of physical injury to him or damage to property." (emphasis added). These findings of fact were sufficient to support the conclusions that defendant Hicks was not a threat and should have been released, and they are sufficient to support the trial court's conclusions here.

In challenging the trial court's conclusion of law 3, the State argues defendant's BAC of .17 is sufficient clear and convincing evidence itself to support detaining the defendant. This contention is in direct contradiction to the holding with regard to defendant Hicks in *Knoll*, and thus we reject that argument.

During oral argument, the State also took the position that the magistrate did not need to make any findings other than use the "magic words" that defendant presented a danger to himself or others or damage to property to support a hold until sober order. Finding no precedent in our case law to support such a position, we reject this interpretation of the statute.

The State further argues that a finding of slurred speech, glassy eyes, and an odor of alcohol should be enough to distinguish this case from *Knoll*. The Court in *Knoll* was clear that where a defendant could have taken a taxi to be within the presence of his wife in a short amount of time, a BAC of .18, without more evidence to support the defendant would be a threat to himself, others, or property, was not

sufficient evidence to support his detention.

The same facts are present here—the State presented nothing more than defendant's BAC and that he had slurred speech, odor of alcohol, and red eyes. These classic signs of impairment, which are, more often than not, used to determine probable cause to arrest, standing alone are not sufficient to show that one presents a danger to himself, others, or property if released from custody so long as they are not operating a vehicle. In fact, the trial court found that "defendant had funds on his person to pay for a taxi or an Uber ride back home, and . . . he would have been able to be back home in the presence of his wife within 25 to 30 minutes." Because the trial court found as a fact that defendant had the means and intent to use a third party to transport himself home to his wife but was discouraged from doing so by the magistrate and arresting officer, the evidence does not support a finding that defendant presented a danger to himself, others, or property. Accordingly, the trial court did not err in concluding there was not clear and convincing evidence defendant was a threat and should have been released.

Finally, the State argues that even if defendant was held improperly, he did not make the requisite showing of irreparable prejudice to his case. We again turn to *Knoll* and the defendant Hicks as controlling authority. The *Knoll* Court held that defendant Hicks was irreparably prejudiced by the magistrate failing to inform him of his statutory rights to have witnesses to his condition *and* by his confinement when he could have taken a taxi and been within the presence of his wife within 30 minutes.

Id. at 542. The *Knoll* Court reasoned that because the findings of fact "were in no way challenged, . . . the evidence presented in each case was adequate to support the finding of fact that the defendant was prejudiced, and . . . this finding in turn supports the trial judge's conclusion that defendant was irreparably prejudiced." *Id.* at 545–46.

The State argues that unlike defendant Hicks, defendant here was informed of and waived his rights in signing the "Implied Consent Offense Notice" when he checked the box indicating "I do not wish to contact anyone for the purposes of observing me *at the jail* or administering an additional chemical analysis." (emphasis added). Even if defendant waived his right to have someone observe him at the jail, he did not waive his right to have friends or family observe his condition outside the jail, which is what would have occurred had he been permitted to call a taxi and return home to his wife. In fact, the trial court found that defendant "intended to comply with the unsecured bond provisions and then obtain a taxi or *Uber* to travel home to have his wife observe his condition at their home." The trial court further found that "defendant asked the arresting officer and the magistrate if he could call a taxi or an Uber to pick him up and drive him home[,]" and "[b]oth the officer and the magistrate told him that any such driver would be required to come inside and actually sign to take responsibility for him as a 'sober, responsible adult' which they did not think a driver would be willing to do." Further, "defendant was not offered the opportunity to use a telephone after he was admitted into jail custody[,]" and his

"confinement for approximately 11 hours was at a time crucial to his ability to gather evidence and have witnesses to his condition at that time."

As was the case in *Knoll*, these unchallenged findings of fact support the trial court's conclusions of law 4, 5, 5, 7, and 8 that defendant suffered and made a showing of prejudice as a result of his confinement and that the only effective remedy was dismissal. Therefore, the trial court properly concluded that defendant was detained in violation of his statutory and constitutional rights.

Accordingly, because the expunction statute was in effect when the trial court granted defendant's *Knoll* motion to dismiss, the dismissed charge remains expunged from defendant's record in accordance with the provisions of N.C.G.S. § 15A-146(a4).

III. Conclusion

For all the foregoing reasons, we hold the trial court properly granted defendant's *Knoll* motion to dismiss and that the dismissed charge was subject to automatic expunction from defendant's record.

AFFIRMED.

Judges FLOOD and THOMPSON concur.

Report per Rule 30(e).