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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1032

Filed: October 3, 2017

Forsyth County, No. 15CRS050070

STATE OF NORTH CAROLINA,

v.

DARREN THOMAS TAYLOE, Defendant.

Appeal by defendant from judgment entered 1 December 2015 by Judge Lindsay R. Davis in Forsyth County Superior Court. Heard in the Court of Appeals 5 April 2017.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Brenda Menard, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for defendant-appellant.*

BERGER, Judge.

On December 1, 2015, a Forsyth County jury found Darren Thomas Tayloe (“Defendant”) guilty of assault with a deadly weapon inflicting serious injury. Defendant was sentenced to thirty to forty-eight months in prison. On appeal, Defendant argues that insufficient evidence was introduced to support his conviction

of assault with a deadly weapon inflicting serious injury, and that his trial counsel rendered per se ineffective assistance of counsel by making an unauthorized concession of guilt. We disagree.

Factual & Procedural Background

On January 2, 2015, Robert Pierce Barnes (“Barnes”) was at his home, which he shares with his mother, chopping wood for their wood-burning stove. Defendant lived approximately five miles away and came to help Barnes, his brother, chop wood. As Barnes chopped wood, a piece flew into the air and struck Defendant’s four-year-old son.

Defendant became angry when he saw his son was injured. He then walked toward the victim, picked up a child’s scooter, and beat Barnes with the scooter for a sustained period of time. Barnes was unable to testify at trial how many times Defendant hit him, and stated that he “must have blacked out.”

When Defendant finally stopped beating Barnes, Barnes ran into the house and phoned his neighbor, Shelly Dixson (“Dixson”). On the phone, Barnes told Dixson, “He’s going to kill me. Help me. Help me.” When Defendant saw Barnes calling for help, Defendant began assaulting him again. Barnes sought refuge in the bathroom of his home, but Defendant followed him and continued assaulting him. While in the bathroom, Defendant hit Barnes with “something hard.” Barnes testified that he was “seeing stars” at this point of the assault. Meanwhile, Dixson

STATE V. TAYLOE

*Opinion of the Court*

left her home and drove directly to Barnes' house where she found Defendant standing in the entrance to the house, yelling and cursing at Barnes. As Dixson sat in her car waiting for Defendant to leave, he picked up the scooter and fled.

Dixson called the Forsyth County Sheriff's Department for assistance. Dixson then observed Barnes as he exited his home. He was covered with "blood . . . everywhere . . . [and] barely [able to] walk." She testified that "blood [was] pouring out of his head . . . [and] we didn't know what all was hurt because blood was coming from everywhere." In addition, she testified Barnes had "a huge . . . very deep gash in his head . . . [and] three or four smaller ones in his head that were bleeding . . . [with] cuts up-and-down his arms . . . [as well as an injury] on his leg . . . like something had burned him."

Dr. David Howe, an orthopedic surgeon and the State's expert witness, testified to Barnes' injuries. Dr. Howe saw that Barnes had lacerations around his extremities; an open, segmental fracture in the ulna bone, where the "bone ha[d] come through the skin"; a fracture to the radial head; and a dislocated elbow. Dr. Howe immediately performed surgery, using plates and screws to repair Barnes' arm, and staples to close the wound on his arm. However, because the assault fractured his bones into many pieces, Barnes lost multiple bone fragments leaving his arm deformed.

STATE V. TAYLOE

*Opinion of the Court*

At the close of all the evidence, the trial court conducted a charge conference, during which Defendant's counsel notified the court that his client consented to making admissions of guilt to several lesser-included misdemeanor offenses. The trial court instructed the jury on each of those misdemeanors, as well as the felony of assault with a deadly weapon inflicting serious injury. Defendant was found guilty of the felony, and gave timely notice of appeal.

Analysis

Defendant asserts that his conviction must be vacated because the State failed to prove a "nexus" connecting the deadly weapon utilized in the assault on Barnes to the serious injury he sustained. He couches his sufficiency of the evidence argument in constitutional due process terms, arguing that he was convicted on the basis of a theory that had not been presented to the jury. However, this argument is unavailing.

First, Defendant made no objection at trial based on any constitutional issues. He only moved to dismiss the assault with a deadly weapon inflicting serious injury charge based on insufficiency of the evidence. "It is well settled that constitutional issues cannot be raised for the first time on appeal." *State v. Wright*, 200 N.C. App. 578, 584, 685 S.E.2d 109, 114 (2009), *appeal dismissed*, 363 N.C. 812, 693 S.E.2d 142 (2010) (citation omitted). We will therefore not address his constitutional argument.

Second, Defendant's insufficiency of the evidence argument claims that a "nexus" is a required element connecting the deadly weapon to the serious injury. In support of this argument Defendant has cited several cases that are inapplicable.

In Defendant's brief, for the standard of review that this Court should use for Defendant's contentions, he cites *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 580 S.E.2d 1 (2003) and *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004). The former case is a civil case in which we reviewed a motion to dismiss made pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The latter case invokes our standard of review for administrative decisions made in the context of the N.C. Administrative Procedures Act. Neither case applies here.

In support of his "nexus" requirement, Defendant cites the following: *State v. Lotharp*, 148 N.C. App. 435, 559 S.E.2d 807, *rev'd for reasons stated in the dissent*, 356 N.C. 420, 571 S.E.2d 583 (2002), which held that using disjunctive and conjunctive connectors in jury instructions addressing various dangerous weapons in an assault with a deadly weapon inflicting serious injury jury charge would not create a fatal ambiguity and discussed the possible effect these instructions would have on the unanimity of the jury's verdict; *State v. James*, 321 N.C. 676, 365 S.E.2d 579 (1988), which, while reviewing the sufficiency of the evidence presented for an assault with a deadly weapon with intent to kill inflicting serious injury, makes no mention

of any nexus requirement; and *State v. Griffin*, 84 N.C. App. 671, 353 S.E.2d 679 (1987), which reversed a conviction of assault with a deadly weapon inflicting serious injury because the only connection between the defendant and the assault was the defendant being seen later with a weapon. None of these cases supports Defendant's argument. Our own search has found none as well. "It is not the role of this Court to craft defendant's arguments for him." *State v. Earls*, 234 N.C. App. 186, 192, 758 S.E.2d 654, 658, *disc. review denied*, 367 N.C. 791, 766 S.E.2d 643 (2014) (citation omitted).

In conclusion, because Defendant failed to raise constitutional issues during trial, we will not review them here. Also, because Defendant's argument has no grounding in North Carolina law, we will not adopt a "nexus" requirement connecting the deadly weapon element to the serious injury element of an assault with a deadly weapon inflicting serious injury offense. Accordingly, we find no error.

Defendant next argues that he was denied the effective assistance of counsel when his trial counsel made unauthorized concessions of guilt during closing arguments. However, Defendant's counsel tendered to the trial court an "Authorization to Make Admission of Criminal Culpability" ("Authorization"), which was signed by Defendant, acknowledged and affirmed in open court, and gave Defendant's counsel permission to concede Defendant's guilt for the misdemeanors of assault with a deadly weapon, assault inflicting serious injury, and simple assault.

STATE V. TAYLOE

*Opinion of the Court*

Defendant contends these concessions allegedly amounted to a concession of guilt to assault with a deadly weapon inflicting serious injury, the felony of which Defendant was ultimately convicted. We disagree.

To prevail on an ineffective assistance of counsel claim, a defendant must demonstrate his defense counsel's performance at trial "fell below an objective standard of reasonableness." *State v. Braswell*, 312 N.C. 553, 561-62, 324 S.E.2d 241, 248 (1985) (citation omitted). To prove this, Defendant must show counsel's performance was deficient, and that this deficient performance prejudiced Defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693 (1984). "[A]dmission of the defendant's guilt . . . to the jury [without the defendant's consent] is per se prejudicial error." *State v. Harbison*, 315 N.C. 175, 177, 337 S.E.2d 504, 505 (1985), *writ of cert. denied*, 476 U.S. 1123, 90 L. Ed. 2d 672 (1986).

Legally sufficient consent by a defendant to his counsel's admission of guilt "requires more than [the defendant's] implicit consent based on an overall trial strategy and defendant's intelligence." *State v. Matthews*, 358 N.C. 102, 108, 591 S.E.2d 535, 540 (2004). "For [this Court] to conclude that a defendant permitted his counsel to concede his guilt to a lesser-included crime, the facts must show, at a minimum, that defendant *knew* his counsel [was] going to make such a concession." *Id.* at 109, 591 S.E.2d at 540 (emphasis in original). Though our Supreme Court has "declined to set out what constitutes an acceptable consent by a defendant," *State v.*

STATE V. TAYLOE

*Opinion of the Court*

*McDowell*, 329 N.C. 363, 387, 407 S.E.2d 200, 213 (1991), a “trial court must be satisfied that, prior to any admissions of guilt at trial by a defendant’s counsel, the defendant must have given knowing and informed consent, and the defendant must be aware of the potential consequences of his decision.” *State v. Maready*, 205 N.C. App. 1, 7, 695 S.E.2d 771, 776, *writ denied, review denied*, 364 N.C. 329, 701 S.E.2d 247 (2010) (citations omitted).

Here, Defendant’s counsel never explicitly conceded Defendant’s guilt to the felony of assault with a deadly weapon inflicting serious injury. Counsel tendered to the trial court the signed Authorization granting him permission to concede guilt to three misdemeanors: assault with a deadly weapon, assault inflicting serious injury, and simple assault. However, this Court “need not decide whether the . . . admission[] [submitted] by Defendant’s trial counsel [was] tantamount to an admission of Defendant’s guilt of [assault with a deadly weapon inflicting serious injury] given that Defendant expressly consented to the strategy employed and the admission[] made by his trial counsel.” *State v. Pemberton*, 228 N.C. App. 234, 243, 743 S.E.2d 719, 726 (2013).

Defendant’s Authorization stated, in pertinent part:

Notice to the Court that defendant’s counsel . . . is authorized by the defendant to make the following admission of criminal culpability to the court and the jury in these matters. Defendant hereby notifies the Court that after due consultation with counsel, the defendant specifically authorizes counsel to make the following

STATE V. TAYLOE

*Opinion of the Court*

admission in this case, fully realizing that said admission subjects defendant to criminal responsibility. Defendant authorizes counsel to admit as follows: the offenses of Assault Inflicting Serious Injury, Assault with a Deadly Weapon and Simple Assault. Defendant has authorized counsel to enter into the record the foregoing admission.

Defendant's Authorization evidences "more than [his] implicit consent based on overall trial strategy and [his] intelligence." *Matthews*, 358 N.C. at 108, 591 S.E.2d at 540. In executing the Authorization, Defendant showed he, "at a minimum, . . . knew his counsel [was] going to make . . . a concession" to the three misdemeanors, *Id.* at 109, 591 S.E.2d at 540 (emphasis omitted), and he specifically authorized his trial counsel to do this, fully realizing it subjected him to criminal responsibility.

Furthermore, upon submission of the document to the trial court, the court made specific inquiries of Defendant to ensure his authorization was knowing and informed. After swearing in Defendant and ensuring that Defendant understood his right to remain silent, the trial court summarized Defendant's Authorization and asked if Defendant was authorizing his counsel to admit criminal responsibility for the misdemeanor offenses of assault inflicting serious injury, assault with a deadly weapon, and simple assault. The court asked if Defendant understood the possible punishments for these crimes, and if Defendant considered it in his best interest to make the authorization after consultation with counsel. Defendant answered affirmatively to each. He also affirmed that he was satisfied with his counsel's advice

and legal representation. Furthermore, Defendant affirmed that he was making this decision freely, voluntarily, and under no coercion.

The trial court took all reasonable precautions to ensure that Defendant made a knowing and informed decision to consent to his counsel's admissions of guilt, as well as Defendant being aware of the potential consequences of this decision. We will not change the outcome of Defendant's decision simply because now, with hindsight, he regrets having made this choice. Accordingly, Defendant's ineffective assistance of counsel claim is denied.

Conclusion

Defendant's motion to dismiss was properly denied by the trial court as sufficient evidence was introduced at trial to support Defendant's conviction for assault with a deadly weapon inflicting serious injury. In addition, Defendant's claim for ineffective assistance of counsel is denied as he consented to the admissions made at trial.

NO ERROR.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).