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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-684

Filed: 6 February 2018

Guilford County, Nos. 14 CRS 83281–83

STATE OF NORTH CAROLINA

v.

CHRISTOPHER DORSEY

Appeal by defendant from judgments entered 28 January 2016 by Judge Susan E. Bray in Guilford County Superior Court. Heard in the Court of Appeals 28 November 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Thomas O. Lawton III, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for defendant.

DIETZ, Judge.

Defendant Christopher Dorsey appeals his convictions on multiple felony charges stemming from a violent home invasion. Several portions of the trial transcript were lost when the court reporter's computer files were corrupted. Nevertheless, as explained below, the transcript and the presiding judge's

contemporaneous notes show that there was sufficient evidence to convict Dorsey and Dorsey has not shown that the unavailability of the missing portions prejudiced him. Accordingly, we find no error in the trial court's judgments.

Facts and Procedural History

In 2013, two men broke into Shirley Martin's home while Martin and her daughter were present. The men wore medical masks to hide their faces. One man was white, the other black. Martin's daughter saw the black man carrying a small, black handgun.

The men became angry when they were unable to find a safe they believed was in the home. One assailant brutally struck Martin in the face with a hard, black object, knocking out teeth and breaking bones in Martin's face. Martin required considerable surgery to address her injuries.

Law enforcement believed the home invasion may be related to Martin's son, who was involved with illegal drugs. Following leads concerning Martin's son, investigators identified Charles Brenner Washington, Alfonso Jamal "Mal" Smith and Nekevius "Neko" Shackelford as suspects. After interviewing Shackelford, investigators also identified Defendant Christopher Dorsey as a suspect.

Smith, Washington, and Shackelford pleaded guilty to their roles in the home invasion. As part of their plea deals, Washington and Shackelford testified for the State, claiming that Dorsey was the black man who entered the home carrying a gun

and that he made a phone call during the crime. This testimony conflicted with Smith's testimony. Smith claimed that Dorsey was not involved in the crime and that Shackelford was the man who attacked the Martins. Martin testified that she could not identify the men who broke into her home because they were masked, but Martin told the jury that Shackelford did not have the same stature as her attacker.

The State also presented evidence concerning cell phones from which calls were placed or received near the crime scene, and which the State attributed to the four suspects from the night of the home invasion. Shackelford had two phones, one of which he claims was a prepaid wireless phone that he gave to Dorsey. Dorsey's mother's testified that she "may have" called Shackelford's prepaid wireless number to reach Dorsey on the night of the crime.

The jury found Dorsey guilty on all charges and Dorsey timely appealed his conviction and sentence. While preparing this case for appeal, the parties discovered that some digital files of the court reporter who transcribed the trial were corrupted. As a result, the court reporter could not create a transcript of the entire fourth day of trial and roughly an hour at the end of the third day. The parties apparently were unable to create a narrative of the missing portions of the transcript, but submitted notes taken by Judge Susan Bray, who presided over the trial.

Analysis

I. Missing transcript of the trial proceedings

Dorsey first argues that the missing portions of the trial transcript deprived him of his right to meaningful appellate review. As explained below, we reject this argument.

Courts have long recognized that appellate counsel cannot effectively represent their clients without a record of the testimony and evidence presented at trial and the court's instructions to the jury. *Hardy v. United States*, 375 U.S. 277, 282 (1964); *State v. Lawrence*, 352 N.C. 1, 16, 530 S.E.2d 807, 817 (2000). Ordinarily, this record of the proceedings comes in the form of a verbatim transcript produced by a court reporter. *Id.*

But courts also have emphasized that an incomplete or deficient transcript alone is not enough to require a new trial. *State v. Hobbs*, 190 N.C. App. 183, 186, 660 S.E.2d 168, 170 (2008). Instead, the defendant must show that the unavailability of the missing portions of the transcript prejudiced the defendant's ability to challenge his conviction or sentence on appeal. *Id.* Importantly, a defendant cannot rely on mere speculation or categorical assertions to satisfy the prejudice requirement: "the use of general allegations of prejudice is insufficient to show reversible error resulting from the loss of specific portions of testimony caused by gaps in recording." *State v. Owens*, 160 N.C. App. 494, 499, 586 S.E.2d 519, 523

(2003). In other words, the defendant must specify *how* he has been prejudiced by the portions of the transcript that are missing. *State v. Boggess*, 358 N.C. 676, 685, 600 S.E.2d 453, 459 (2004); *State v. Hammonds*, 141 N.C. App. 152, 167, 541 S.E.2d 166, 177 (2000), *aff'd*, 354 N.C. 353, 554 S.E.2d 645 (2001).

Applying this precedent here, Dorsey has not shown that the missing portions of the transcript prejudiced him on appeal. As an initial matter, Judge Bray's notes provide a general understanding of the content of most of the missing material, allowing this Court to understand what occurred in those portions of the trial. When both the available transcript and Judge Bray's notes are considered together, there is more than sufficient evidence for the jury to convict Dorsey: both Washington and Shackelford testified that Dorsey was one of the men who broke into the victims' home; the State submitted evidence showing that someone in the vicinity of the victims' home used Shackelford's prepaid wireless number to make a phone call, and that that same number was later used to call Dorsey's mother and girlfriend on the night of the crime; and Shackelford and Dorsey's mother both tied Dorsey to calls from that prepaid wireless number. Moreover, nothing in Judge Bray's notes indicate that the jury heard any testimony that was objectionable or that should have been excluded. Thus, the available portions of the transcript and Judge Bray's contemporaneous notes demonstrate that there was sufficient evidence to convict Dorsey.

We therefore turn to Dorsey's specific arguments for why the missing portions of the transcript prejudiced his ability to appeal the judgments against him. Dorsey argues that missing portions of the transcript include all of the testimony of the State's cell phone expert, and portions of Shackelford's and Washington's testimonies. Dorsey contends that these were "some of the most important sections of the trial" and that, because no transcript of that testimony is available, Dorsey "is unable to set out all the facts upon which [his] appeal is based" and unable "to identify and list all potential issues." But as explained above, this type of categorical assertion of prejudice is insufficient to support a new trial. *Owens*, 160 N.C. App. at 499, 586 S.E.2d at 523. Because Dorsey has not identified any specific prejudice stemming from these missing portions of the transcript, we must reject his argument. *See Boggess*, 358 N.C. at 685, 600 S.E.2d at 459; *Owens*, 160 N.C. App. at 499, 586 S.E.2d at 523; *Hammonds*, 141 N.C. App. at 167, 541 S.E.2d at 177.

II. Denial of Dorsey's motion to dismiss

Dorsey also argues that the trial court erred by denying his motion to dismiss the charge of assault with a deadly weapon inflicting serious injury.

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). A trial court properly denies a motion to dismiss if there is substantial evidence that the defendant committed each essential element of the charged offense. *Id.* When reviewing challenges to the

sufficiency of the evidence, this Court "must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *State v. Fritsch*, 351 N.C. 373, 378–79, 526 S.E.2d 451, 455 (2000).

The essential elements of assault with a deadly weapon inflicting serious injury are (1) an assault (2) with a deadly weapon (3) inflicting serious injury (4) not resulting in death. N.C. Gen. Stat § 14-32(b); *State v. Woods*, 126 N.C. App. 581, 592, 486 S.E.2d 255, 261 (1997).

Dorsey argues that there was insufficient evidence that he used a deadly weapon. Specifically, although he does not dispute that a handgun is a deadly weapon, he argues there was insufficient evidence that he struck the victim with a handgun. We disagree.

Viewing the evidence in the light most favorable to the State, the record shows that Dorsey struck the victim with a small, black object hard enough to knock the victim's teeth out and break a bone in her face. The victim's daughter testified that Dorsey had a small, black handgun.

To be sure, the victim testified that she did not get a good look at the object that struck her and that it could have been a cell phone. But Dorsey's possession of a small, black handgun fitting the description of the object that struck the victim, combined with the severity of the victim's injury, constitute sufficient evidence from which a reasonable jury could infer that Dorsey struck the victim with the handgun,

not a cell phone. Accordingly, there was sufficient evidence to send the assault charge to the jury.

Conclusion

For the foregoing reasons, we find no error in the trial court's judgments.

NO ERROR.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).