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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-993

Filed: 5 June 2018

Wayne County, No. 14CRS054833

STATE OF NORTH CAROLINA

v.

ALQUAN DE'SHAWN HILL, Defendant.

Appeal by Defendant from judgment entered 21 April 2017 by Judge Jay D. Hockenbury in Wayne County Superior Court. Heard in the Court of Appeals 6 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Peter A. Regulski, for the State.

Marilyn G. Ozer for the Defendant.

DILLON, Judge.

Alquan De'Shawn Hill ("Defendant") appeals from the trial court's judgment based on a jury's verdict finding him guilty of first degree murder and other felonies based on events which occurred in the early morning of 31 October 2014, in which three vehicles were involved in a car chase and shooting in Goldsboro. After careful

review, we find no error at trial or in the jury's verdict, but vacate and remand as to sentencing.

I. Background

The evidence at trial tended to show as follows:

On the night of 30 October 2014, Defendant traveled with Anthony Graham and several others in two vehicles from Kinston to Goldsboro to seek out individuals whom they believed had vandalized Mr. Graham's car a few days earlier. Defendant drove his Honda Accord, and another individual drove a Ford Expedition. The two vehicles stopped near a restaurant where they waited for the four individuals believed to have damaged Mr. Graham's car. The four individuals exited the restaurant, got into a van, and left the parking lot. Defendant and his companions chased the van in the Accord and the Expedition.

As they approached a "T" intersection, individuals in the Accord and Expedition fired shots at the van. The van attempted to turn left at the intersection while maintaining a high speed. The van, however, was unable to complete the turn and collided with a tree on the far side of the road.

The Accord and the Expedition slowed down, and individuals in both vehicles continued firing. Defendant drove away in the Accord. Individuals in the Expedition, however, got out of their vehicle, walked over to the crashed van, fired more shots into the van, then returned to the Expedition and drove away.

Shanekqua Thompson and Deonte Morrison were both riding in the back passenger area of the van and both sustained gunshot wounds. Ms. Thompson died at the scene, while Mr. Morrison survived.

The jury found Defendant guilty of one count of first degree murder for the death of Ms. Thompson and one count each of assault with a deadly weapon with intent to kill inflicting serious bodily injury and discharging a firearm into an occupied conveyance in operation resulting in serious bodily injury for the injuries sustained by Mr. Morrison.

The trial court sentenced Defendant to life imprisonment without parole for the first degree murder conviction, and for a term of 92 to 123 months for the remaining charges. Defendant appeals.

II. Analysis

A. Admission of Video Surveillance Evidence

Defendant first challenges the admission as substantive evidence of video surveillance footage obtained from a nearby home on the corner where the incident occurred. Specifically, Defendant argues that the State failed to show that the video was reliable and that he was prejudiced because the video footage formed a link between Defendant and the shootings. We disagree.

We review whether a video recording was properly authenticated before the trial court *de novo* as a question of law. *State v. Crawley*, 217 N.C. App. 509, 515, 719

S.E.2d 632, 637 (2011). On appeal, a defendant must show that the evidence was admitted in error, and that, absent such error, a different result would have been reached at trial. *See State v. Nelson,* 341 N.C. 695, 701, 462 S.E.2d 225, 228 (1995).

Our Supreme Court has stated that "[e]vidence that [1] the recording process is reliable and that [2] the video introduced at trial is the same video that was produced by the recording process is sufficient to authenticate [video footage] and lay a proper foundation for its admission as substantive evidence." *State v. Snead*, 368 N.C. 811, 814, 783 S.E.2d 733, 736 (2016); N.C. Gen. Stat. § 8-97 (2015).

Multiple cameras captured footage of the vehicle chase down the road, the van's attempt to turn left, the van wrecking into the tree at the intersection, the Accord and the Expedition turning at the intersection, and the gunshots following the wreck. At trial, the State offered the video footage as evidence illustrating witness testimony and as substantive evidence of the events depicted. The investigating officer testified that the owner allowed him to take the surveillance system because "it would not record and [the owner] could not review it." However, *Snead* does not require that the individual introducing the evidence be the owner of the footage, or even have knowledge of the surveillance system's functions at the time of recording. Authentication of video evidence requires only that the proponent show an understanding of how the video system works, explain how he obtained the video

footage, and that it was indeed the same footage originally recovered. *See Snead*, 368 N.C. at 815, 783 S.E.2d at 737.

Here, the investigating officer testified that he was personally familiar with how the video surveillance system operated, and that he had been able to view, download, and copy the footage from the system. The owner's inability to access the footage does not negate the officer's ability to extract the footage. Further, the officer confirmed that the video shown at trial was the video he copied from the video surveillance system. The proponent of video evidence need only "satisfy the trial court that the item is what it purports to be and has not been altered." *Id.* We hold that the investigating officer's testimony was sufficient to authenticate the video footage, and the trial court did not err in admitting the evidence.

B. Evidence of Mr. Morrison's "Serious" Injuries

In his second argument, Defendant contends that the State's evidence was insufficient to show that Mr. Morrison sustained serious injuries. Without proof that Mr. Morrison's injuries were "serious," Defendant contends, the charge of assault with a deadly weapon with intent to kill inflicting serious bodily injury lacked an essential element necessary for conviction. We disagree.

We review the denial of a defendant's motion to dismiss for insufficiency of the evidence for whether the State "presented substantial evidence in support of each element of the charged offense." *State v. Jones*, 367 N.C. 299, 304, 758 S.E.2d 345,

349 (2014) (citation omitted). "In this determination, all evidence is considered in the light most favorable to the State, and the State receives the benefit of every reasonable inference supported by that evidence." *Id.*

Assault with a deadly weapon with intent to kill inflicting serious injury requires the State to show that the act committed by the defendant resulted in *serious injury* to the victim. *See* N.C. Gen. Stat. § 14-32(a) (2015). "Serious injury" means any "injury that causes great pain and suffering." *State v. Phillips*, 328 N.C. 1, 20, 399 S.E.2d 293, 303 (1991). Factors considered in determining the seriousness of an injury include (1) pain and suffering; (2) loss of blood; (3) hospitalization; and (4) time lost from work. *See State v. Tice*, 191 N.C. App. 506, 509, 664 S.E.2d 368, 271 (2008). Our Supreme Court has instructed that "[w]hether a serious injury has been inflicted depends upon the facts of each case and is generally for the jury to decide under appropriate instructions." *State v. James,* 321 N.C. 676, 365 S.E.2d 579 (1988); *State v. Everhardt*, 327 N.C. 777, 781, 392 S.E.2d 391, 393 (1990).

The issue here is whether evidence concerning the gunshot wounds suffered by Mr. Morrison, wounds which were treated at a hospital but which caused no extended complications, was sufficient to allow the jury to decide that Mr. Morrison's injuries were "serious." Mr. Morrison received three gunshot wounds along the right side of his body. He was able to walk away from the scene of the incident, and then subsist long enough to reach a preferred hospital despite there being a closer option. Mr.

Morrison was treated in the emergency room and then discharged. Defendant contends that the relative brevity of both Mr. Morrison's treatment and his subsequent pain prevents his injury from being "serious."

Though many of the cases cited by Defendant involve prolonged pain as a factor considered in determining whether an injury is "serious,"[1] the amount of time a victim suffers is but one factor in determining whether his or her injury is serious. *See Tice*, 191 N.C. App. at 509, 664 S.E.2d at 271; *State v. Hedgepeth*, 330 N.C. 38, 53, 409 S.E.2d 309, 318 (1991) ("Evidence that the victim was hospitalized . . . is not necessary for proof of serious injury."). Further, our Supreme Court has expressed that the State need only prove the existence of a physical injury to reach the jury:

> Cases that have addressed the issue of the sufficiency of evidence of serious injury appear to stand for the proposition that as long as the State presents evidence that the victim sustained a physical injury as a result of an assault by the defendant, it is for the jury to determine the question of whether the injury was serious.

State v. Alexander, 337 N.C. 182, 189, 446 S.E.2d 83, 87 (1994). In *Alexander*, the victim was injured when the force of a shotgun blast drove glass shards into his arm and shoulder. *Id.* The Court held that evidence of blood on the victim's arm,

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[1] *State v. McLean*, 211 N.C. App. 321, 712 S.E.2d 721 (2011) (evidence showed that victim suffered a shotgun wound, bled, and the bullets eventually came out six months later, but victim testified he had no pain and did not suffer); *Tice*, 191 N.C. App. 506, 509, 664 S.E.2d 368 (evidence showed victim took a month to heal following a gunshot wound, but victim walked to his car and drove himself to the hospital immediately after being shot); *State v. Bagley*, 183 N.C. App. 514, 644 S.E.2d 615 (2007) (evidence showed victim was in pain for two to three weeks, but victim drove himself home and then returned to the scene to give a police statement before being driven to the hospital).

treatment at a hospital, and testimony that the victim had appeared "shaken" was enough to submit the issue of seriousness to the jury. *Id.*

Here, though Mr. Morrison reported that his injuries did not persist, he did suffer three gunshot wounds through-and-through his body, bled, and, according to his treating physician, appeared to be in pain. We hold that the evidence presented was enough to avoid Defendant's motion to dismiss and to allow the jury to determine whether Mr. Morrison sustained serious injuries.

We note Defendant's contention that the State's failure to prove "serious injury" prevented his conviction for first-degree murder based on the theory of felony murder, but we conclude that this contention lacks merit. Specifically, the jury found Defendant guilty of the first-degree murder of Ms. Thompson, not only on the theory of felony murder, but also separately under the theory of premeditation and deliberation. Further, for the reasons stated above, we hold that there was sufficient evidence to submit the issue of "serious injury" to the jury to support a finding that Defendant committed the underlying felony, and the jury's verdict rightfully stands. We, therefore, find no reversible error.

C. Sentencing

Lastly, Defendant argues that his sentence was improper because the trial court failed to announce in open court that the sentences of life imprisonment for the first degree murder conviction and of a term of years for the other convictions would

run consecutively. Indeed, the record shows that the trial court did not announce in the presence of Defendant whether the sentences would run consecutively or concurrently, but did enter a written judgment later which indicated that the sentences would run consecutively.

Defendant is correct that he has a common law right to be present when a sentence is pronounced, *see State v. Pope*, 257 N.C. 326, 330, 126 S.E.2d 126, 129 (1962), and that our General Assembly has provided that multiple sentences, by default, run concurrently where not otherwise indicated. N.C. Gen. Stat. § 1354(a) (2015) ("If not specified or not required by statute to run consecutively, sentences shall run concurrently."). When the trial court did not state in open court that Defendant's sentences would run consecutively, it was reasonable for Defendant to infer that his sentences would run concurrently. Defendant and his counsel were not given an opportunity to be heard regarding this substantive change in what was expected. *State v. Crumbley*, 135 N.C. App. 59, 67, 519 S.E.2d 94, 99 (1999). We hold that this determination should have been made and announced in Defendant's presence, and, therefore, direct the trial court on remand to hold a proper hearing to make this determination.

III. Conclusion

We conclude that Defendant received a fair trial, free from prejudicial error. We conclude that Defendant was sentenced appropriately for each conviction.

However, we conclude that the trial court erred in ordering Defendant's sentences to run consecutively outside his presence. We, therefore, remand the matter for the limited purpose of holding a hearing to determine whether Defendant's sentences will run consecutively or concurrently.

NO ERROR AT TRIAL, REMANDED FOR NEW SENTENCING HEARING.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).