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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-544

Filed: 17 March 2020

Buncombe County, Nos. 08 CRS 122–24, 51510–24

STATE OF NORTH CAROLINA

v.

JEREMY MICHAEL RANDALL

Appeal by defendant from order entered 26 September 2018 by Judge Marvin Pope in Buncombe County Superior Court. Heard in the Court of Appeals 7 January 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant.

DIETZ, Judge.

Jeremy Randall is an inmate serving a sentence for twelve counts of first-degree rape and six counts of statutory rape. In this appeal, Randall challenges the trial court’s denial of his purported request for an inventory of biological evidence relevant to his case.

As explained below, this argument is meritless. Randall's filing was not a request for an inventory—it requested an order compelling the State to produce to Randall various pieces of evidence that Randall contends are in the State's possession. We cannot fault the State or the trial court for declining a request that Randall never made. Accordingly, we affirm that trial court's order.

Facts and Procedural History

In October 2008, Defendant Jeremy Randall pleaded guilty to twelve counts of first-degree rape and six counts of statutory rape involving a single victim over a two-year period from 2006 through 2007. He received a sentence of 240 to 297 months in prison.

In May 2016, Randall filed a “Motion to Locate and Preserve Evidence and Motion for Post-Conviction DNA Testing.” The State contacted the Buncombe County Sheriff's Office and reported that the only item of evidence in State custody was Randall's computer. The State explained that law enforcement did not collect, and did not possess, any biological evidence and there was no indication in the State's file of any biological evidence that could be tested.

In March 2017, the trial court denied Randall's motion and Randall appealed to this Court. On 5 June 2018, this Court affirmed the trial court's denial of Randall's motion for post-conviction DNA testing and dismissed his argument that the trial court erred by failing to order an inventory of biological evidence. *State v. Randall*,

__ N.C. App. __, __, 817 S.E.2d 219, 222 (2018) (*Randall I*). With respect to the inventory issue, this Court found it “not properly before our Court” because there was no indication in the record that Randall had requested an inventory or that the trial court had considered that request. *Id.*

On 24 July 2018, Randall filed a lengthy, handwritten “Motion to Locate and Preserve Evidence,” which is the subject of this appeal. In this second motion, Randall asked for “an Order to locate and preserve any and all physical and biological evidence” related to his case. Randall then wrote that he “affirmatively and unequivocally makes his written request for the following seven ‘labs’ specifically pursuant to N.C. Gen. Stat. § 15A-268(a7).” Randall’s motion concluded with a “written request that the State produce” specific listed items and asserted that the trial court should order the State to produce those items if necessary. Many of the items were not biological evidence that could be subjected to DNA testing. The trial court denied Randall’s motion.

Randall appealed, arguing that the trial court failed to treat his motion as a request for an inventory of all biological evidence in the State’s custody. The State, in its appellee brief, asserted that the statute governing this issue, N.C. Gen. Stat. § 15A-268, does not provide a right to appeal. In response, Randall petitioned for a writ of certiorari.

At some point, this Court will need to address whether N.C. Gen. Stat. § 15A-268 affords a right to appeal from the denial of a request for an inventory of biological evidence in the State’s custody. But this case, in which Randall’s lengthy, handwritten filing jumbles together many unrelated issues and the trial court’s order addressed them all in a single ruling, is a poor vehicle to resolve the question. Accordingly, in our discretion, we allow the petition and issue a writ of certiorari to review the merits of Randall’s argument, and leave the question of whether there is a right to appeal for another day and a more suitable case.

Analysis

Randall argues that the trial court erred by summarily denying his motion—a motion which, he claims, requested an inventory of any biological evidence in his case under N.C. Gen. Stat. § 15A-268(a7). We reject this argument because Randall’s motion did not request an inventory.

Under N.C. Gen. Stat. § 15A-268(a7), upon a defendant’s written request, a custodial agency is required to provide “an inventory of biological evidence relevant to the defendant’s case that is in the custodial agency’s custody.” But this Court repeatedly has held that a defendant seeking an inventory under Section 15A-268(a7) must *request* an inventory—this Court will not construe a filing as requesting an inventory when its plain words do not do so.

For example, in *State v. Doisey*, this Court held that where a defendant's motion under Section 15A-268 "sought only that certain 'physical evidence obtained during the investigation of his criminal case *be located and preserved*,'" the defendant's argument that he was entitled to an inventory is "not properly before this Court" because the defendant "did not make any written request for an inventory." 240 N.C. App. 441, 447–48, 770 S.E.2d 177, 181–82 (2015).

Likewise, in *State v. Tilghman*, we held that a "request for the location and preservation of evidence is not a request for an inventory of evidence." __ N.C. App. __, __, 821 S.E.2d 253, 258 (2018). "Defendant's motion was not for an *inventory* of evidence. He titled his motion as a 'Motion to Locate and Preserve Evidence'" and "requested an order 'to Locate and Preserve any and all physical and biological evidence.'" *Id.* "Where a defendant does not make any written request for an inventory . . . it follows that the trial court did not rule on such a request" and "there is no ruling for this Court to review." *Id.*

This case is indistinguishable from *Doisey* and *Tilghman* (and, for that matter, this Court's holding on this issue in *Randall I*). Although Randall's motion included a citation to the statute governing an inventory, Randall never actually requested an inventory. The only fair reading of his lengthy, handwritten filing is that Randall sought to compel the State to produce a specific group of "labs" or laboratory test results that Randall contends are relevant to his case, along with various documents

and other evidence not covered by the State's post-conviction DNA testing laws. That request, whatever its merits, is not a request for an inventory of all biological evidence in the State's custody.

Simply put, we cannot fault either the State or the trial court for failing to treat Randall's filing as a request for an inventory of biological evidence. That is not what Randall's motion requested. We therefore affirm the trial court's order.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Chief Judge McGEE and Judge YOUNG concur.

Report per Rule 30(e).