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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-128

No. COA20-477

Filed 6 April 2021

Lenoir County, No. 15 CRS 051770

STATE OF NORTH CAROLINA

v.

JAIME LUIS TORRES, Defendant.

Appeal by Defendant from judgment entered 23 August 2018 by Judge William W. Bland in Lenoir County Superior Court. Heard in the Court of Appeals 24 February 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Michael T. Henry, for the State.

Sarah Holladay, for Defendant-Appellant.

INMAN, Judge.

¶ 1

Jaime Luis Torres (“Defendant”) appeals from jury verdicts finding him guilty of first-degree murder, armed robbery, and conspiracy to commit armed robbery and from a civil judgment ordering him to reimburse the State for court-appointed attorney’s fees. Defendant contends the trial court committed plain error by admitting into evidence recordings of Defendant’s phone calls from jail. Defendant

also argues he was not given notice or the opportunity to be heard on the fee issue. After careful review, we hold Defendant’s trial was free from prejudicial error, but we vacate and remand the civil judgment to the trial court for further proceedings consistent with *State v. Friend*, 257 N.C. App. 516, 809 S.E.2d 902 (2018).

I. FACTUAL & PROCEDURAL BACKGROUND

The evidence presented at trial tends to show following:

¶ 2

Over the course of several days in early July 2015, Defendant and others planned to rob Jack Davis (“Mr. Davis”) in his home. On 19 July 2015, Defendant, two other men, and one woman went to Mr. Davis’s home to commit the robbery. Defendant knocked on the back door. When Mr. Davis opened the door, Defendant “jumped on [Mr. Davis]” and put “him in a headlock” so he “couldn’t move.” Defendant and his accomplices violently assaulted Mr. Davis, raided the home for valuables, and left, stealing Mr. Davis’s truck. Mr. Davis suffered multiple blunt force traumas, including 20 major wounds to his head. He died in the hospital two days later.

¶ 3

Defendant was interviewed by police and eventually arrested and charged in the robbery and murder of Mr. Davis. While in police custody at Lenoir County Jail, Defendant made several calls to his mother. Calls made from the jail are recorded and stored electronically by the jail’s phone system provider, CenturyLink.

¶ 4

Defendant’s case came on for trial in August 2018. Over the objection of defense counsel, the trial court admitted, and the jury heard the following excerpts of

the jail calls made on 4 August 2015, 24 August 2015, 8 July 2016, and 5 April 2017, respectively:

I ain't had no weapon. I mean, they could see in the camera that I ain't had no weapon . . . I know I ain't steal the vehicle though . . . they got the video, they can see me jumping in the back of the pickup . . . they could hit me with accessory . . . the one that stole the vehicle was Johnny . . . all I did was jump in the back. I caught the ride . . . I ain't had nothing in my hands.

I ain't break in the house, he opened the door.

Everybody trying to say that he got shot, no he didn't. The autopsy report is going to show it, so that way they can't hit us with murder. It's gonna be either manslaughter or involuntary manslaughter.

I ain't did shit to that man, man. I tackled him and that was it. It ain't went down 'til Johnny got there.

¶ 5 The State also presented to the jury home surveillance video from the day of the attack, which showed Defendant and three others entering Mr. Davis's home and driving away in his truck. One of Defendant's accomplices who participated in the planning, robbing, and beating of the victim narrated the footage for the jury. Two of the accomplices, called as witnesses by the State, described in detail Defendant's role in the robbery and murder.

¶ 6 On 23 August 2018, the jury found Defendant guilty of first-degree murder, armed robbery, and conspiracy to commit armed robbery. The trial court consolidated the murder and robbery charges and sentenced Defendant to life imprisonment

without the possibility of parole, to run consecutively with a prison sentence of 64 to 89 months for conspiracy.

¶ 7 At sentencing, the trial court added, “Attorneys’ fees will be determined when—as—upon application. And will also be made a civil judgment.” The trial court asked no questions of Defendant or his counsel about attorney’s fees. Defendant gave oral notice of appeal.

¶ 8 One month later, after defense counsel submitted a fee application, the trial court entered a civil judgment ordering Defendant to pay \$72,678.47 in attorney’s fees. Defendant filed a petition for writ of certiorari requesting review of the civil judgment.

II. ANALYSIS

A. *Recorded Jail Calls*

¶ 9 Defendant contends that the trial court plainly erred in admitting recordings of Defendant’s jail calls because the State failed to call a qualified witness to properly authenticate them. Although Defendant’s trial counsel objected to this evidence on other grounds, Defendant challenges the authentication of this evidence for the first time on appeal.¹ We therefore review for plain error. *See State v. Sneed*, 210 N.C.

¹ Trial counsel objected to the jail calls on several bases, including the Fourth, Fifth, Sixth, and Fourteenth Amendments and North Carolina Rule of Evidence 901. Trial counsel did not argue that the State failed to lay the appropriate foundation to authenticate the recordings as a business record. Defendant acknowledges that the correct standard of review on appeal is plain error.

App. 622, 627-29, 709 S.E.2d 455, 459-60 (2011) (reviewing the admission of business records for plain error when defense counsel did not object at trial that “the State failed to lay the necessary foundation for admission”); *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). Defendant must convince us that absent the alleged error, “the jury probably would have reached a different result.” *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993).

¶ 10 Here, regardless of whether the trial court erred in admitting the recordings of Defendant’s jail calls, Defendant cannot show plain error in light of other, overwhelming evidence of his guilt. Surveillance video showed Defendant, along with his accomplices, entering and leaving Mr. Davis’s home on the day of the robbery and murder. Two of Defendant’s accomplices testified extensively about Defendant’s role in robbing and beating the victim. Given this evidence, we conclude that Defendant has not demonstrated that absent the recordings of his phone conversations from jail, the jury probably would have reached a different verdict.

B. Attorney’s Fees

¶ 11 Defendant challenges the civil judgment for attorney’s fees because the trial court failed to provide Defendant notice or an opportunity to be heard on the matter. Defendant has filed a petition for writ of certiorari seeking our review of the issue because he did not give written notice of appeal in the civil judgment.

¶ 12 We may, in our discretion, hear appeals by writ of certiorari “in appropriate

circumstances . . . when the right to prosecute an appeal has been lost by failure to take timely action.” N.C. R. App. P. 21(a)(1) (2021). Here, though Defendant’s counsel gave oral notice of appeal of the criminal judgment, Defendant lost his right to appeal the civil judgment of attorney’s fees by failing to provide *written* notice of appeal in accordance with North Carolina Rule of Appellate Procedure 3(a).

¶ 13 The State argues we should deny Defendant’s petition because he did not seek review until one year and ten months after the civil judgment was entered. The State refers us to a civil case, *Huebner v. Triangle Research Collaborative*, 193 N.C. App. 420, 667 S.E.2d 309 (2008), in which this Court held a delay of two years and nine months was unreasonable and declined to review the plaintiff’s appeal. *Id.* at 425-26, 667 S.E.2d at 312-13. However, here, unlike the plaintiff in a civil case, Defendant did not choose the civil forum, and judgment was imposed upon him without prior notice or an opportunity to be heard. Defendant’s delay in his petition was no fault of his own and his argument is meritorious, as explained below. In our discretion, we allow the petition and review the civil judgment in this case.

¶ 14 Trial courts may order a convicted indigent defendant to pay for the amount of fees incurred by the defendant’s court-appointed counsel through a civil judgment. *State v. Jacobs*, 172 N.C. App. 220, 235, 616 S.E.2d 306, 316 (2005). However, a defendant is entitled to notice and the opportunity to be heard before attorney’s fees can be entered. *Id.* In *State v. Friend*, this Court held specifically that “trial courts

should ask defendants—personally, not through counsel—whether they wish to be heard on the issue” to avoid denial of due process rights. *Friend*, 257 N.C. App. at 523, 809 S.E.2d at 907.

¶ 15 In this case, the State concedes that the trial court did not give Defendant notice of the amount of attorney’s fees to be paid or an opportunity to be heard before it entered the civil judgment against him almost a month after his trial concluded. Accordingly, we vacate the civil judgment and remand the matter of attorney’s fees to the trial court for further proceedings. *Id.*

III. CONCLUSION

¶ 16 Based on the foregoing reasons, we hold Defendant has failed to demonstrate reversible error in his criminal conviction, but we vacate and remand the civil judgment of attorney’s fees for further proceedings.

NO ERROR IN PART; VACATED AND REMANDED IN PART.

Judges DILLON and JACKSON concur.

Report per Rule 30(e).