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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-191

No. COA 20-694

Filed 15 March 2022

Harnett County, Nos. 18 CRS 53507–10

STATE OF NORTH CAROLINA

v.

JENNIFER ANN JACKSON and TIMOTHY JAMES RAY, Defendants.

Appeal by Defendants from judgments entered 17 December 2019 by Judge Gale M. Adams in Harnett County Superior Court. Heard in the Court of Appeals 2 November 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorneys General Tamara M. Van Pala and Anne J. Brown, for the State.

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

Patterson Harkavy LLP, by Narendra K. Ghosh, for Defendant Ray.

GRIFFIN, Judge.

¶ 1 Defendants Jennifer Ann Jackson and Timothy James Ray appeal from judgments entered upon jury verdicts finding them guilty of conspiracy to commit first degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, common law robbery, and possession of a stolen motor vehicle. Jackson was

also found guilty of attempted first-degree murder. Defendants argue that the trial court committed multiple errors requiring a reversal of their convictions and a new trial. After review, we conclude that Defendants received a fair trial, free from prejudicial error.

I. Factual and Procedural Background

¶ 2 Jackson met the victim, Carol Bennett, while smoking crack at a mutual acquaintance's house. A few days later, Ms. Bennett received a call from Jackson requesting that she "take [Jackson] somewhere to pick up some money[.]" Ms. Bennett agreed, got dressed, and met Jackson, who was accompanied by Ray. Jackson then asked Ms. Bennett to drive Defendants to Fayetteville because "[t]here was someone there that was going to give [Jackson] some money."

¶ 3 After retrieving the money, Jackson told Ms. Bennett that she wanted to acquire some crack cocaine. Ms. Bennett suggested that they get the drugs from a dealer they both knew, but Jackson said no. Ms. Bennett then suggested they try somewhere in "the Bunnlevel area" since Jackson was from there, but Jackson responded, "No, we can't go there." After Ms. Bennett and Jackson agreed on a dealer from whom to obtain the crack cocaine, Ms. Bennett drove to the street where the dealer wanted to meet. At Defendants' request, Ms. Bennett dropped Defendants off at a stop sign before driving further down the road to purchase the drugs. Ms. Bennett then drove to the end of the road and exchanged the money given to her by

Jackson for the drugs.

¶ 4 After the exchange, Ms. Bennett "drove immediately back . . . to the end of the road[, and Defendants] hopped in the car[.]" Defendants then directed Ms. Bennett to take several turns and drive down a dirt road "that goes back to a back field . . . [with] a pile of trash at the end of it." While Ms. Bennett drove, Defendants smoked the crack cocaine. Ms. Bennett stated that she kept no portion of the drugs and had not planned to use any drugs that day. Defendants whispered among themselves in the car. After Ms. Bennett pulled off the dirt road, Defendants instructed Ms. Bennett to drive even further down the road, which she did. Ray stepped out of the car to urinate; he then "pulled open [Ms. Bennett's] car door."

¶ 5 Ms. Bennett testified Ray looked at her with a "cold and dark" look on his face that was "empty [and] spaceless[,]" which made her believe "something bad was going to happen." Ray said, "[Y]ou know I have to do this." Ms. Bennett responded, "[W]hatever you think you need to do . . . you don't have to do it. I have a son and a grandchild. I have money. Take my car." Ray again stated, "[N]o, I have to do this." Ms. Bennett requested to retrieve her pocketbook and inhaler, but Ray said, "[N]o, you won't get any of that." Ms. Bennett kept her hands on the steering wheel of the car, but "[Ray] took [Ms. Bennett] by [her] wrists and pulled [her] out of [her] car." Ms. Bennett then yelled, but Ray responded, "[N]o one can hear you out here."

¶ 6 Ray pulled Ms. Bennett to the side of the dirt road where some trees were

located. As Ms. Bennett gripped a tree, Ray called for Jackson. Jackson then exited the car with a knife. Jackson attacked Ms. Bennett with the knife while Ray held Ms. Bennett. Ray held and dragged Ms. Bennett while Jackson "came to [Ms. Bennett] and cut [her] on the side of [her] neck." Ms. Bennett was pulled to the ground facedown. "[She] felt stabbing in [her] back, and . . . was yelling . . . [,] 'Please stop. Please stop.'"

¶ 7 Jackson said, "I can still see her breathing," so Ms. Bennett tried to control her breathing. Ray responded, "I can still see her breathing too. Make sure you cut her neck good, and stab her in the heart." Jackson attempted to follow Ray's instructions, and Ray responded by saying "you did a good job, baby. I don't think she is going to make it." Defendants threw dirt over Ms. Bennett's body.

¶ 8 Defendants got into Ms. Bennett's car and drove away with all of Ms. Bennett's belongings in the car. After a few moments, Ms. Bennett got up to find help. Once Ms. Bennett found someone, they called 911, and she was taken to the hospital.

¶ 9 Jackson conversely testified to a gradual escalation of conflict between Ms. Bennett and Defendants. According to Jackson, after Ms. Bennett returned to the car from purchasing the crack cocaine, Jackson expressed her dissatisfaction with the quantity Ms. Bennett obtained for the price. While at the end of the dirt road, "Ms. Bennett reache[d] between the seats . . . and pick[ed] up some dope" in addition to what Ms. Bennett had already given Jackson. Jackson then asked, "Where did you

get this dope from? . . . [I]s that why my dope was short when you brought it back to me[,] . . . the dope I paid for?" Ms. Bennett responded, "[N]o, bitch, we're not having this. You can get the fuck out of my car." Ms. Bennett also referred to Ray using a racial slur.

¶ 10 Jackson admitted to hitting Ms. Bennett because of Ms. Bennett's statements. A physical altercation between Jackson and Ms. Bennett ensued. Both of them got out of the car and continued fighting. Jackson claimed seeing "something silver in [Ms. Bennett's] hand" during one of Ms. Bennett's swings at her, causing Jackson to "fear for [her] life." Although Ms. Bennett had a small axe, box cutters, and screwdriver in her car, Jackson stated she had no knowledge of any tools in the back of Ms. Bennett's car. Jackson then pulled out her pocket knife, "swung it a few times[,]" and "cut Ms. Bennett across her face[.]" Jackson stopped because the blood startled her. Defendants then returned to Ms. Bennett's car, and Ray drove away. According to Jackson's testimony at trial, Ray never participated in the fight with Ms. Bennett.

¶ 11 The evidence also tended to show that Defendants pawned the items from Ms. Bennett's car, including "old coins, silver coins, and a ring [from Ms. Bennett's] grandmother . . . , and a pair of gold earrings [Ms. Bennett's] grandmother had given [her,]" as well as other items. Defendants burned and abandoned Ms. Bennett's car.

¶ 12 The general trauma surgeon who treated Ms. Bennett noted "multiple stab

wounds to [Ms. Bennett's] neck, . . . upper back . . . [and] sides, the right side of [her] upper chest," as well as other injuries. The surgeon also noted Ms. Bennett "had air leaking into her lung around the chest cavity . . . that could compress the lungs and reduce the beating of [Ms. Bennett's] heart," and that the injuries Ms. Bennett suffered "could kill[.]" In total, Ms. Bennett received two stab wounds on her neck, "between 14 and 15 on her upper back," one on her hand, and "one on the right side [of her] upper chest." Forensic testing of Ray's shirt and shorts indicated the presence of Ms. Bennett's blood and DNA.

¶ 13 At trial, the State presented three recorded conversations between Jackson and various visitors to her while she was in jail. In the recordings, Jackson stated that "there is no way anybody is going to find that car[,]" that Defendants "did it together[,]" and that "[Ms. Bennett] got the best of me. [Ray] held her[.]" The State sought to introduce the recordings in its rebuttal in order to impeach prior contradicting testimony by Jackson. Ray objected to the admission of the recordings based on the Confrontation Clause and *Bruton v. United States*, 391 U.S. 123 (1968). The State disagreed because Jackson was a testifying witness subject to cross-examination by Ray. Ray argued that the recordings should have been included in the State's cross-examination of Jackson instead of during the State's rebuttal, after Jackson was no longer on the stand as a witness.

¶ 14 The trial court admitted the recordings. Ray provided a general objection for

the record but did not request any limiting instruction for the jury. Ray never attempted to recall Jackson for cross-examination regarding the newly admitted recordings. However, he asserts that the trial court's statement that "[Ray's Counsel] cannot now cross-examine . . . Jackson about those statements" rendered futile any attempt to recall Jackson to the stand.

¶ 15 Jackson claimed she acted in self-defense. The trial court provided the jury with an instruction on self-defense. The jury found Defendants guilty of conspiracy to commit first degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, common law robbery, and possession of a stolen motor vehicle. The jury also found Jackson guilty of attempted first degree murder. Defendants provided notice of appeal in open court.

II. Analysis

¶ 16 Defendants argue that the trial court committed several errors requiring reversal of their convictions and a new trial. We address each of their arguments and conclude that Defendants received a fair trial, free from prejudicial error.

A. Jackson's Appeal

¶ 17 Jackson argues that the trial court erred by (1) denying her motion to dismiss the charge of conspiracy to commit first degree murder and (2) failing to instruct the jury on the lesser included offense of attempted voluntary manslaughter based on a theory of imperfect self-defense.

1. Motion to Dismiss

¶ 18 Jackson argues that the trial court erred by denying her motion to dismiss the charge of conspiracy to commit first degree murder because "the evidence strongly suggested that [Defendants'] assault on [Ms.] Bennett was spontaneous and not pre-planned." We disagree.

¶ 19 "A motion to dismiss is properly denied if substantial evidence of each essential element of the offense charged is presented at trial." *State v. Quick*, 323 N.C. 675, 682, 375 S.E.2d 156, 160 (1989) (citation omitted). "Substantial evidence is relevant evidence that a reasonable person might accept as adequate . . . to support a particular conclusion." *State v. Hunt*, 365 N.C. 432, 436, 722 S.E.2d 484, 488 (2012) (citation omitted). "The evidence must be considered in the light most favorable to the State[,] and the State is entitled to every reasonable inference to be drawn from that evidence." *Quick*, 323 N.C. at 682, 375 S.E.2d at 160 (citation omitted).

¶ 20 "Criminal conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means." *State v. Cox*, 375 N.C. 165, 169, 846 S.E.2d 482, 485 (2020) (citation omitted). "The heart of the conspiracy is the agreement. It is not necessary that the object sought by the agreement be accomplished." *State v. Potter*, 252 N.C. 312, 313, 113 S.E.2d 573, 574 (1960) (citation omitted). "A conspiracy may be shown by express agreement or an implied understanding" and may be established by "circumstantial evidence, or by a

defendant's behavior." *State v. Choppy*, 141 N.C. App. 32, 39, 539 S.E.2d 44, 49 (2000) (citations omitted).

¶ 21 "To prove that the defendant committed conspiracy to commit first-degree murder, the State must prove that the defendant agreed to perform every element of the crime—i.e., that he agreed to the intentional killing of a victim after premeditation and deliberation." *Id.* "[T]he finding of an agreement to kill is equivalent to the finding of an agreement to premeditate and deliberate." *State v. Brewton*, 173 N.C. App. 323, 331–32, 618 S.E.2d 850, 857 (2005) (citing *State v. Gibbs*, 335 N.C. 1, 48, 436 S.E.2d 321, 348 (1993)).

¶ 22 Viewing the evidence in the light most favorable to the State, we hold that a rational juror could have found that Defendants had an "express agreement or an implied understanding" to murder Ms. Bennett. *Choppy*, 141 N.C. App. at 39, 539 S.E.2d at 49. After purchasing drugs from the dealer, Defendants directed Ms. Bennett to take several turns and drive down a dirt road "that goes back to a back field . . . [with] a pile of trash at the end of it." Although a rational juror could conclude that Defendants instructed Ms. Bennett to drive down the dirt road so they could use drugs, one could just as easily conclude that Defendants did so for reasons that support the State's theory. Defendants did not wait to use the drugs until they arrived at the end of the dirt road. Instead, they began smoking the crack-cocaine almost immediately after it was purchased and while Ms. Bennett was driving. After

Ms. Bennett pulled off the dirt road, Defendants instructed Ms. Bennett to drive even further down the road. All the while, Defendants were whispering to each other, indicating that that they were discussing something that they obviously did not want Ms. Bennett to hear.

¶ 23 The nature of the assault also tends to show it was coordinated and deliberate. When Ms. Bennett finally stopped the car, Ray "pulled open [Ms. Bennett's] car door" and stated, "[Y]ou know I have to do this." He then dragged Ms. Bennett to the side of the road and called for Jackson. Jackson immediately exited the car with a knife and attacked Ms. Bennett while Ray held Ms. Bennett in place. At one point, Jackson said, "I can still see her breathing," to which Ray responded, "I can still see her breathing too. Make sure you cut her neck good, and stab her in the heart." Jackson then attempted to follow Ray's instructions, and Ray praised her, saying "you did a good job, baby. I don't think she is going to make it." Afterwards, Defendants threw dirt over Ms. Bennett's body.

¶ 24 Although each of Defendants' actions standing alone may not constitute substantial evidence of an agreement to kill Ms. Bennett, "[c]ircumstantial evidence is often made up of independent circumstances that point in the same direction. These independent circumstances are like 'strands in a rope, where no one of them may be sufficient in itself, but all together they may be strong enough to prove the guilt of the defendant beyond a reasonable doubt.'" *State v. Parker*, 354 N.C. 268,

279, 553 S.E.2d 885, 894 (2001) (citation omitted). Moreover, "a substantial evidence inquiry examines the sufficiency of the evidence presented *but not its weight*, which is a matter for the jury. [I]f there is substantial evidence—whether direct, circumstantial, or both—to support a finding that the" defendant committed the charged offense, "the case is for the jury and the motion to dismiss should be denied." *Hunt*, 365 N.C. at 436, 722 S.E.2d at 488. We hold that the State presented substantial evidence of conspiracy to commit first degree murder.

2. Lesser Included Offense

¶ 25 Jackson argues that the trial court erred by failing to instruct the jury on the charge of attempted voluntary manslaughter based on a theory of imperfect self-defense. We disagree.

¶ 26 "In North Carolina, a trial judge must submit lesser included offenses as possible verdicts, even in the absence of a request by the defendant, where sufficient evidence of the lesser offense is presented at trial." *State v. Huckabee*, 278 N.C. App. 558, 2021-NCCOA-353, ¶ 10 (citation omitted). However, because Jackson "did not object to the trial court's instructions or request an instruction on lesser-included offenses, we must review this assignment under the plain error standard[.]" *State v. Collins*, 334 N.C. 54, 62, 431 S.E.2d 188, 193 (1993) (citation and internal quotation marks omitted). "[B]efore engaging in plain error analysis[,] it is necessary to determine whether the instruction complained of constitutes error." *State v.*

Cummings, 361 N.C. 438, 470, 648 S.E.2d 788, 807 (2007) (citation omitted). Under the plain error standard, "[t]he appellate court must be convinced that absent the error the jury probably would have reached a different verdict." *Id.* (citation and internal quotation marks omitted).

¶ 27 "The sole factor determining the judge's obligation to give . . . an instruction [on a lesser-included offense] is the presence, or absence, of any evidence in the record which might convince a rational trier of fact to convict the defendant of a less grievous offense." *State v. Wright*, 304 N.C. 349, 351, 283 S.E.2d 502, 503 (1981).

> An instruction on voluntary manslaughter[] based on the theory of imperfect self-defense[] is appropriate where there is evidence that a defendant (1) believed it was necessary to kill the deceased in order to save himself from death or great bodily harm; (2) the belief was reasonable; and (3) although initially acting without murderous intent, the defendant was the original aggressor[.]

State v. Maldonado, 241 N.C. App. 370, 378, 772 S.E.2d 479, 485 (2015) (citing *State v. Norris*, 303 N.C. 526, 530, 279 S.E.2d 570, 573 (1981)).

¶ 28 We hold that no rational juror could conclude that Jackson reasonably "believed it was necessary to kill [Ms. Bennett] in order to save [her]self from death or great bodily harm[.]" *Id.* Jackson testified that she "fear[ed] for [her] life" because she saw "something silver in [Ms. Bennett's] hand." However, this is insufficient to justify the degree of force used by Jackson. The general trauma surgeon who treated Ms. Bennett noted "multiple stab wounds to [Ms. Bennett's] neck, . . . upper back . . .

[and] sides, the right side of [her] upper chest," as well as other injuries. In total, Ms. Bennett received two stab wounds on her neck, "between 14 and 15 on her upper back," one on her hand, and "one on the right side [of her] upper chest." Even assuming the evidence in the light most favorable to Jackson, no rational juror could conclude that she reasonably believed it necessary to stab Ms. Bennett "between 14 and 15" times in her upper back "in order to save [her]self from death or great bodily injury." *Id.* This argument is without merit.

B. Ray's Appeal

¶ 29 Ray argues that the trial court erred by (1) admitting Jackson's recorded statements during the State's rebuttal in violation of the Confrontation Clause; (2) failing to provide the jury with a limiting instruction regarding the recorded statements; and (3) denying his motion to dismiss the charge of conspiracy to commit first degree murder. Because we have already concluded *supra* that a juror could rationally find that Defendants agreed to murder Ms. Bennett, we need not separately address Ray's argument regarding his motion to dismiss the conspiracy charge. Accordingly, our analysis is limited to his arguments with respect to Jackson's recorded statements.

1. Jackson's Recorded Statements

¶ 30 Ray argues that "the trial court erred in admitting Jackson's recorded statements implicating . . . Ray during the State's rebuttal" in violation of his rights

under the Confrontation Clause and *Bruton v. United States*, 391 U.S. 123 (1968). We disagree.

¶ 31 In general, "*Bruton v. United States* . . . prohibits the admission of incriminating statements made by nontestifying codefendants." *State v. Workman*, 344 N.C. 482, 496, 476 S.E.2d 301, 308 (1996). Our Supreme Court has articulated the specific requirements of *Bruton* as follows:

> [I]n joint trials of defendants[,] it is necessary to exclude extra[-]judicial confessions unless all portions which implicate defendants other than the declarant can be deleted without prejudice to either the State or the declarant. If such deletion is not possible, the State must choose between relinquishing the confession or trying the defendants separately. The foregoing pronouncement presupposes (1) that the confession is inadmissible as to the codefendant, and (2) that the declarant will not take the stand. *If the declarant can be cross-examined, a codefendant has been accorded his right to confrontation.*

State v. Wright, 282 N.C. 364, 368–69, 192 S.E.2d 818, 821 (1972) (emphasis added) (citations omitted).

¶ 32 Even in cases where an extra-judicial confession by a defendant is introduced after that defendant has testified, a codefendant's rights under the Confrontation Clause are not violated where the codefendant fails "to ask the court's permission to recall [the declarant] for further cross-examination." *Id* at 369, 192 S.E.2d at 821. For example, in *Wright*, two defendants, Wright and Glenn, were tried for the same offense in the same proceeding. *Id.* at 365, 192 S.E.2d at 819. Wright chose to testify

at trial. *Id.* at 369, 192 S.E.2d at 821. After Wright's testimony concluded, a detective testified "that after his arrest[,] Wright told him that he overheard a conversation at the bus station between . . . Glenn [and another] in which they discussed robbing a cab driver." *Id.* at 368, 192 S.E.2d at 821.

¶ 33 On appeal, Glenn argued that "it was error to allow th[e] testimony since it relate[d] to a statement by a codefendant which implicate[d] Glenn in the crime, citing *Bruton v. United States*[.]" *Id.* The Court rejected this argument because, "[a]lthough [the detective's] testimony concerning Wright's statement came during . . . rebuttal testimony after Wright had testified, Glenn had the right—which he did not pursue—to ask the court's permission to recall Wright for further cross-examination." *Id.* at 369, 192 S.E.2d at 821. The Court held that "[i]n the absence of such a request, Glenn waived his right to further cross-examine Wright" and thus his rights under the Confrontation Clause were not violated. *Id.*; *see also Workman*, 344 N.C. at 496, 476 S.E.2d at 308 ("We note that th[e] testimony [at issue] was offered by the State in rebuttal. At that point in the trial, [the] codefendant . . . had already testified and was available for cross-examination by [the defendant]. *Bruton* therefore does not apply in this instance.").

¶ 34 As in *Wright*, Jackson's recorded statements were admitted during the State's rebuttal and after her testimony had concluded. Nonetheless, Ray did not "ask the trial court's permission to recall [Jackson] for further cross-examination" after the

recorded statements were admitted. *Wright*, 282 N.C. at 369, 192 S.E.2d at 821; *Workman*, 344 N.C. at 496, 476 S.E.2d at 308.

¶ 35 Ray argues that, unlike in *Wright* or *Workman*, the trial court in this case stated at trial that "now that [Jackson] is off the witness stand, [Ray] can't recall her[.]" Ray argues that requesting to recall Jackson to the stand would have thus been futile given the trial court's statements. However, the trial court's statements do not change the fact that Ray did not request to recall Jackson to the stand. He cannot now assert that his rights under the Confrontation Clause were violated when he did not attempt to recall Jackson to the stand and question her about the recordings. Similarly, a trial court may forecast how it may rule on an objection if one were lodged, but that does not relieve a party from the need to lodge an objection anyway in order to preserve the matter for appeal.

¶ 36 Additionally, and despite the trial court's statements to the contrary, Jackson could have been recalled to the stand by Ray without issue at the trial court's discretion. *State v. Ellison*, 213 N.C. App. 300, 325–26, 713 S.E.2d 228, 245 (2011) ("N.C. Gen. Stat. § 15A-1226 provides 'clear authorization for a trial judge, within his discretion, to permit a party to introduce additional evidence at any time prior to the verdict' and allows the 'judge [to] permit a party to offer new evidence which could have been offered in the party's case in chief or during a previous rebuttal as long as the opposing party is permitted further rebuttal.'" (quoting *State v. Quick*, 323 N.C.

675, 681–82, 375 S.E.2d 156, 159 (1989))). Because Ray did not request that the trial court exercise its discretion and allow him to recall Jackson to the stand, we hold that the admission of the recorded statements did not violate the Confrontation Clause.

2. Limiting Instruction

¶ 37 Ray also argues that "the trial court erred in failing to give a limiting instruction regarding Jackson's [recorded] statements that implicated . . . Ray." Regardless of whether the trial court erred in failing to provide a limiting instruction to the jury, we hold that Ray cannot show prejudice resulting from the failure to so instruct.

¶ 38 "When, at a joint trial, evidence is admitted against one defendant which is not admissible against a co-defendant and the co-defendant makes a general objection to the evidence, the court is required to give a limiting instruction to the jury." *State v. Robinson*, 136 N.C. App. 520, 522, 524 S.E.2d 805, 807 (2000) (citing *State v. Franklin*, 248 N.C. 695, 104 S.E.2d 837 (1958)). "The objecting defendant must make either a timely general objection or a specific request for a limiting jury instruction, but is not required to request a limiting instruction if he makes a general objection." *Id.* (citation omitted). "It is the duty of the trial court to give a specific limiting instruction due to the inherent danger of confusing the jury with the admission of evidence applicable to only one of multiple defendants." *Id.*

¶ 39 "To be entitled to a new trial," however, the "defendant has the burden of showing the error prejudiced him in some way." *Id.* "A defendant is prejudiced . . . when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises. The burden of showing such prejudice . . . is upon the defendant." N.C. Gen. Stat. § 15A-1443(a) (2019).

¶ 40 Assuming *arguendo* that the trial court erred by not providing the limiting instruction, Ray has not shown prejudice resulting from the lack of a limiting instruction. In the recordings at issue, Jackson stated that "there is no way anybody is going to find that car[,]" that Defendants "did it together[,]" and that "[Ms. Bennett] got the best of me. [Ray] held her[.]" However, there is ample other evidence establishing Ray's guilt. Ms. Bennett testified that Ray dragged her from her car and held her down while Jackson stabbed her multiple times with a pocket knife. Forensic testing of Ray's shirt and shorts indicated the presence of Ms. Bennett's blood and DNA. The evidence also tended to show that Defendants pawned the items from Ms. Bennett's car, including "old coins, silver coins, and a ring [from Ms. Bennett's] grandmother . . . , and a pair of gold earrings [Ms. Bennett's] grandmother had given [her,]" as well as other items. Four witnesses confirmed in their testimony that Ray sold items to at least three different pawnshops after the assault, and the items were identified as belonging to Ms. Bennett.

¶ 41 In light of all of the evidence implicating Ray in the crimes charged, we hold that he has not shown prejudice entitling him to a new trial.

III. Conclusion

¶ 42 For the foregoing reasons, we hold that Defendants received a fair trial, free from prejudicial error.

NO PREJUDICIAL ERROR.

Judges MURPHY and JACKSON concur.

Report per Rule 30(e).