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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-631

Filed 02 May 2023

Lincoln County, Nos. 20 CRS 51349, 334, 335

STATE OF NORTH CAROLINA

v.

JOSHUA McRAVION

Appeal by defendant from judgments entered 15 October 2021 by Judge Alan Z. Thornburg in Lincoln County Superior Court. Heard in the Court of Appeals 12 April 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Lewis W. Lamar, Jr., for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

ARROWOOD, Judge.

Joshua McRavion (“defendant”) appeals from judgments entered upon his convictions for attempted first-degree murder, assault with a deadly weapon with intent to kill, possession of a firearm by a felon, and attaining the status of habitual felon. On appeal, defendant argues that he was denied the ability to meaningfully appeal his habitual felon conviction. For the following reasons, we affirm defendant’s

conviction.

I. Background

On 7 June 2020, Ja'Tavion Thompson ("Mr. Thompson") was at his grandmother's, Mabel Poston's ("Ms. Poston"), residence on Mauney Drive in Lincolnton visiting with family. Mr. Thompson, who was sixteen at the time, was with Ms. Poston, his brother Jaquarius, his sisters, Mahoyeney, Destiny, and Te'onkia, and various other family members, including defendant, who is Ms. Poston's nephew.

During the gathering, defendant and Mr. Thompson had a verbal altercation, and defendant left the residence. Shortly thereafter, defendant returned through the woods, emerging from a trail that led from Packaging Unlimited,¹ a nearby business, to the backyards of Mauney Drive. Defendant was carrying a 12-gauge shotgun. Although Ms. Poston was trying to grab and stop defendant, he went up to Mr. Thompson and pointed the gun at his neck. After a few minutes, defendant shot the firearm, and although Mr. Thompson was able to get out of the way, the bullet still "graze[d] the side of [his] head[.]" Mr. Thompson went to Atrium Health hospital for treatment, as there was "blood coming from his head," and "his hair appeared to be . . . torn from his scalp."

¹ The business is formerly Packaging Unlimited but has since changed names to Hood Container Corporation. Since all parties refer to the business as Packaging Unlimited, we do the same for ease of reading.

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Law enforcement was contacted about Mr. Thompson's gunshot wound. When law enforcement initially spoke with Mr. Thompson, he told them that he was shot by "a black male wearing cargo shorts and a black T-shirt with a Dallas Cowboys tattoo and a star on his arm" on the Rail Trail in Lincolnton. While law enforcement initially responded to the Rail Trail, they eventually went to Mauney Drive to collect a shell casing and ask Mr. Thompson's brother to show them where the shooting happened on the Rail Trail. While law enforcement was speaking with Mr. Thompson's brother, Ms. Poston came over and informed them that the shooting actually happened in her backyard and defendant was identified as the shooter.

Thereafter, law enforcement obtained a warrant for defendant's arrest for the attempted first-degree murder of Mr. Thompson. As part of their investigation, law enforcement also went to Packaging Unlimited and obtained surveillance camera footage from their parking lot. The video showed an individual walking from the parking lot down the path toward Mauney Drive and then walking back to the business. When the individual returned to the parking lot, they had a short interaction with a second person, then got into a vehicle and left the parking lot of the business. The next day, defendant turned himself in.

Defendant was subsequently indicted for attempted first-degree murder, assault with a deadly weapon with intent to kill, possession of a firearm by a felon, and attaining the status of habitual felon. The matters came on for trial in Lincoln County Superior Court on 11 October 2021, Judge Thornburg presiding.

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At trial, different witnesses testified as to their accounts of the event. Mr. Thompson testified that after he said something “disrespectful” to defendant, and they had a verbal disagreement, defendant left and returned with a firearm. He testified he told defendant to shoot him while defendant held a gun to his neck for close to three minutes. Mr. Thompson said he moved his head “just in time[,]” but the bullet still grazed the side of his head. When he went to the hospital, Mr. Thompson admitted he initially lied to police because he was concerned his grandmother would get evicted from her residence.

Ms. Poston also testified. Ms. Poston testified after the verbal argument between Mr. Thompson and defendant, she got defendant “calmed down, [and] he left.” When defendant returned with the firearm, she attempted to stop him by grabbing his shirttail, but he held the gun at Mr. Thompson’s neck for “about five or ten minutes” before firing.

Mr. Thompson’s siblings also testified. Te’onkia and Jaquarius testified that defendant was the person in the surveillance video from Packaging Unlimited. Te’onkia also testified that while defendant had the gun pointed at Mr. Thompson’s neck, he stated he would kill Mr. Thompson and his father. Furthermore, Jaquarius testified that after the shooting, he followed defendant down the path to Packaging Unlimited in an attempt to “de-escalat[e] the situation” and watched him leave in a vehicle. Jaquarius identified himself as the second person in the Packaging Unlimited surveillance footage with defendant.

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Defendant also testified in his defense. Defendant testified that he was initially verbally arguing with Mr. Thompson because Mr. Thompson raised his voice at Ms. Poston. When they had another verbal disagreement, defendant told Mr. Thompson that “since [he was] pretending to be a tough guy, [they should] go around the side of the house and fight.” However, defendant contended that Mr. Thompson threatened him as Mr. Thompson stated he would call his father and “have [his father] shoot [defendant] in the face.” At that point, Ms. Poston intervened and told defendant he had to leave, so he got a ride and left.

Thereafter, defendant “walked over to the mill[,]” where he had buried a “Mossberg pump shotgun” “under some of the old bricks” and “secure[d] [his] weapon . . . in case [he] saw [Mr. Thompson’s] father coming.” Defendant testified he got the gun because Mr. Thompson “told [him] his daddy was going to shoot [him] in the face when he caught [him].” After he got his gun, he asked someone to give him a ride to Mauney Drive, but his friend took him to the parking lot of Packaging Unlimited. From there, defendant walked the pathway “from Packaging Unlimited to the backyards of Mauney Drive” with the shotgun.

Defendant testified he only planned to “scare” Mr. Thompson and “show him that being disrespectful can get [him] in a very, very messed up situation[.]” Although defendant claimed he had no intention of killing Mr. Thompson, he testified that when Ms. Poston was trying to hold him back and “hitting [his] back[,]” the momentum made the gun go off. On cross-examination, defendant admitted he had

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someone dispose of the firearm in the river, but he refused to provide the name of the person. Furthermore, defendant admitted it was him in the Packaging Unlimited surveillance video.

At the close of the State's case and at the close of all evidence, defendant made a motion to dismiss the charges for "insufficiency of the evidence and for variance." Both motions were denied. On 15 October 2021, defendant was found guilty of attempted first-degree murder, assault with a deadly weapon with intent to kill, and possession of a firearm by a felon.

Thereafter, the State requested to proceed to the habitual felon trial. As part of their case-in-chief, the State sought to admit Exhibits 41-43, certified copies of defendant's prior convictions for robbery with a dangerous weapon, possession of a firearm by a convicted felon, and malicious conduct by a prisoner. Defendant objected to the admission of the documents, arguing that the exhibits should not be "presented without testimony of some witness" to satisfy the Confrontation Clause. In response, the State argued the certified copies were self-authenticating under Rule 902 and admissible "without any extrinsic testimony." The exhibits were admitted over defendant's objection.

At the close of the State's evidence and at the close of all evidence, defendant moved for dismissal based on "insufficiency of the evidence and for variance[.]" Both motions were denied. Defendant did not present any evidence at this portion of the trial and was found guilty of attaining the status of habitual felon.

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Following the guilty verdicts, defendant was sentenced in the presumptive range of 117 to 153 months active sentence for the convictions of attaining the status of habitual felon and possession of a firearm by a felon, and in the presumptive range of 117 to 153 months for the assault conviction, to run consecutively. Defendant was also sentenced to 251 to 314 months for the attempted first-degree murder conviction, to run concurrently with the other sentences. Defendant gave oral notice of appeal in open court.

II. Discussion

On appeal, defendant's sole argument is that he was denied the ability to meaningfully appeal his habitual felon conviction because he was unable to locate State's Exhibit 42, a certified true copy of defendant's prior conviction for possession of a firearm by a convicted felon. Defendant contends the Superior Court file did not contain any of the three State exhibits admitted during the habitual felon portion of his trial, and after recovery efforts, he was only able to locate two of the exhibits. Furthermore, defendant argues that without State's Exhibit 42, he is "denied any meaningful ability to: (1) review the exhibit for error; and (2) contest on appeal the trial court's rulings on his authentication objection and motion to dismiss the habitual felon charge." We disagree.

"To determine whether the right to a meaningful appeal has been lost, our Courts conduct a three-step inquiry." *State v. Yates*, 262 N.C. App. 139, 142, 821 S.E.2d 650, 653 (2018) (citation omitted). First, the Court must determine whether

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the defendant has made sufficient efforts to obtain the missing information. *Id.* (citation omitted). Next, this Court will determine whether defendant's recovery "efforts produced an adequate alternative[.]" or a document "that would fulfill the same function" as the one missing. *Id.* (internal quotation marks and citation omitted). If no such alternative is available, we must determine whether the lack of this document denied defendant the meaningful opportunity for appellate review to the extent that a new trial is necessary. *Id.* (citation omitted). "To prevail on such grounds, a party must demonstrate that the missing recorded evidence resulted in prejudice." *State v. Quick*, 179 N.C. App. 647, 651, 634 S.E.2d 915, 918 (2006) (citation omitted).

Here, while we commend defendant's appellate counsel's efforts to locate State's Exhibit 42, we find there are alternatives which would fulfill the same function as the missing exhibit, rendering its absence non-prejudicial. Based on the transcript, the State sought to introduce certified copies of three of defendant's prior felony convictions. This was evidenced by State's Exhibits 41 and 43, which were located by defendant. Although State's Exhibit 42 was not located, the State provided a supplement to the record on appeal which included a certified copy of the conviction. This certified copy of the conviction provided by the State is sufficient to fulfill the same function. Despite defendant's claim that it is speculative whether this document is the same charge discussed in the transcript, the case files are identical.

The cases relied upon by defendant are distinguishable. In *In re Shackelford*,

this Court determined the “limited reconstruction” of the missing verbatim transcript of the defendant’s involuntary commitment hearing was prejudicial, necessitating a new hearing. *In re Shackelford*, 248 N.C. App. 357, 362, 789 S.E.2d 15, 19 (2016). There, this Court held that the respondent’s attorney’s notes from the hearing were insufficient to allow for meaningful appellate review, as they “consist[ed] of five pages of bare-bones handwritten notes that—in addition to not being wholly legible—clearly d[id] not amount to a comprehensive account of what transpired at the hearing.” *Id.* at 363, 789 S.E.2d at 19-20. Furthermore, in *In re Shackelford*, this Court noted that cases in which an adequate alternative to a verbatim transcript did exist, “the transcript of the proceeding at issue was only *partially* incomplete, and any gaps therein were capable of being filled.” *Id.* at 362, 789 S.E.2d at 19 (emphasis in original). Defendant’s reliance on *State v. Yates* is likewise misplaced. *State v. Yates*, 262 N.C. App. 139, 821 S.E.2d 650. In *Yates*, this Court determined defendant’s incomplete transcript, and inability to fill in those gaps, which covered “a critical stage of the trial[,]” was prejudicial, necessitating a new trial. *Id.* at 147, 821 S.E.2d at 656.

Still, defendant argues that the missing exhibit is necessary, and a certified true copy of that charge will not suffice, because he needs the exhibit to review it for error and contest the trial court’s ruling on defense’s objection and motion to dismiss the habitual felon charge for insufficient evidence. This argument is unpersuasive as defendant had the opportunity to review State’s Exhibits 41 and 43 and does not raise

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any authentication issues concerning those exhibits nor does he argue on appeal that the trial court erred in denying his motion to dismiss the habitual felon charge based on the exhibits he was able to locate. Therefore, defendant's claim that there *may* be authentication issues with the one missing exhibit and the certified copy of his prior felony conviction is unconvincing. Rather, we hold the certified copy is an adequate alternative as it fills any gaps in information that may have been missing from the files and fulfills the same function as the missing exhibit. *Yates*, 262 N.C. App. at 142, 821 S.E.2d at 656; *In re Shackleford*, 248 N.C. App. at 362, 789 S.E.2d at 19. Accordingly, we find defendant's argument is without merit.

III. Conclusion

For the following reasons, we affirm defendant's habitual felon conviction.

AFFIRMED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).