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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-988

Filed 06 June 2023

Duplin County, No. 20CRS51388

STATE OF NORTH CAROLINA

v.

WILLIE CARL HORTON, JR.

Appeal by defendant from judgment entered 15 June 2022 by Judge G. Frank Jones in Duplin County Superior Court. Heard in the Court of Appeals 24 May 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Jessica V. Sutton, for the plaintiff-appellee.*

*Wake Forest University School of Law Appellate Advocacy Clinic, by John J. Korzen, for the defendant-appellant.*

TYSON, Judge.

William Carl Horton, Jr. (“Defendant”) appeals from judgment entered on a jury’s verdict for one count of misdemeanor failing to work after being paid and one count of felony obtaining property by false pretenses. We dismiss Defendant’s appeal for his failure to file a timely notice of appeal.

**I. Background**

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Lester Kemp Britt (“Britt”) lives in Duplin County. His sister, Tammy Ard (“Ard”), helps him manage his business and finances, because Britt is on disability and suffers from learning deficits. Britt lives in the house he inherited from his grandmother, which needs “right much work.” According to Britt, the house needed new vinyl on the exterior, screens on the front and back porch, and windows.

Defendant is a home repair contractor located in eastern North Carolina. Britt met Defendant at a gas station in June 2020. Britt noticed Defendant was dressed like a construction worker, and he approached Defendant. Britt asked Defendant if he completed home repairs and, if so, if he would be willing to do some work on his house.

Defendant agreed to replace the wire screens on Britt’s front and back porch for \$2,000. Defendant completed the repair. Britt was satisfied with Defendant’s work and felt he had “done a good job.” Britt asked Defendant to install seventeen windows and replace the exterior vinyl siding. Defendant told Britt he needed a \$4,000 down payment to purchase materials. Britt paid Defendant the \$4,000 in cash on 4 June 2020. Defendant gave Britt a receipt, which was entered into evidence at trial. The receipt stated the total project would cost \$16,000, which Britt agreed to pay \$400 towards the remaining balance each month.

At some point, Britt changed the vinyl color to “Carolina blue.” This color change was a “special order.” Defendant also informed Britt the windows were backordered due to supply chain issues caused by the COVID-19 pandemic.

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Defendant had not commenced work by September 2020, and Britt had not paid any monthly installments. In those three months, Britt contacted Defendant several times. Britt testified Defendant offered several explanations: (1) one time he said he had contracted COVID-19 and was quarantined for two weeks; (2) during a later phone call “he said the windows hadn’t come in”; (3) he later “said he was working down at the beach, and got a job down there” and “would get back with [Britt] as soon as he could”; (4) another time “he said he was in church.”

Britt’s sister, Ard, had met Defendant when he was repairing the porch screen, and initially believed a backorder in supplies was causing Defendant’s delay. Ard eventually grew suspicious of Defendant and the delays.

During one of Britt’s phone conversations with Defendant, Defendant said he purchased the windows for the replacement from Builders’ Discount in Wendell. Ard contacted Builders’ Discount to inquire about whether Defendant had ordered the windows. The store manager told Ard no orders for seventeen windows had been placed. Ard called Defendant, and Defendant gave Ard his business name, told Ard he had placed orders with the store before, and instructed Ard to have the manager pull his file.

When the store confirmed a file did not exist under Defendant’s business name and an order for seventeen windows had not been placed, Ard threatened to “press charges.” She also contacted the police department. Detective Green (“Det. Green”) began investigating the matter.

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Det. Green first called Builders' Discount, which confirmed an order for seventeen windows had not been placed. Det. Green also contacted Defendant. Defendant agreed to speak with him and admitted to forming an agreement with Britt and accepting the \$4,000 cash deposit. Defendant, however, refused to tell Det. Green the identity or source where he purportedly purchased any materials. Det. Green instructed Defendant it was in his best interest to inform him if he had ordered the materials. Defendant complied and told Det. Green that Ard contacted a business he planned to order the windows from, "talked ugly about him to a manager[,] [a]nd . . . they would not sell him any materials."

Defendant told Det. Green he would return the funds to Britt on a particular date and time, which Det. Green relayed to Ard and Britt. During a phone conversation with Ard, Defendant similarly expressed agreement to return the \$4,000 cash deposit if Ard agreed not to press charges. When Defendant failed to appear at the meeting and stopped answering his phone, Ard updated Det. Green.

Defendant never started the repair nor returned the funds to Ard. Defendant was charged with misdemeanor failure to work after being paid and felony obtaining property by false pretenses on 23 October 2020. He was indicted on both charges on 24 May 2021, along with an ancillary indictment for habitual felon status based on prior charges. All three charges were joined together for trial.

A trial was held between 13 and 15 June 2022, and the jury found Defendant guilty of misdemeanor failure to work after being paid and felony obtaining property

by false pretenses. Defendant pled guilty to habitual felon status. The trial court sentenced him as a prior record level II offender to 63 to 88 months in prison. Defendant gave oral notice of appeal the day *after trial and sentencing* on 16 June 2022.

## II. Jurisdiction

Our Rules of Appellate Procedure provides two ways for criminal defendants to file an appeal by:

- (1) giving oral notice of appeal *at trial*, or
- (2) *filing notice of appeal with the clerk of superior court* and serving copies thereof upon all adverse parties *within fourteen days after entry of the judgment* or order or within fourteen days after a ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order.

N.C. R. App. P. 4(a) (emphasis supplied).

“Compliance with the requirements for entry of notice of appeal is jurisdictional.” *State v. Oates*, 366 N.C. 264, 266, 732 S.E.2d 571, 573 (2012) (citing *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 197-98, 657 S.E.2d 361, 365 (2008)).

Our Supreme Court explained in *Oates* that Rule 4 “permits oral notice of appeal, *but only if given at the time of trial.*” *Id.* at 268, 732 S.E.2d at 574 (citing N.C. R. App. P. 4(a)(1)). “Otherwise, notice of appeal must be in writing and filed with the clerk of court.” *Id.* (citing N.C. R. App. P. 4(a)(2)).

Here, Defendant entered an oral notice of appeal the day after the trial was completed and judgment was entered. On 15 June 2022, both the State and Defense rested its case-in-chief, the jury deliberated and returned its verdict, Defendant was sentenced, and judgment was entered. The following day, 16 June 2022, Defendant's counsel entered oral notice of appeal in open court.

Defendant's untimely oral notice of appeal fails to comply with the unambiguous requirements of N.C. R. App. P. 4(a). *Id.* at 268, 732 S.E.2d at 574. Defendant has not filed a petition for writ of *certiorari* as an alternative means to invoke this Court's jurisdiction. *See* N.C. Gen. Stat. § 15A-1444 (2021); N.C. R. App. P. 21. Defendant's oral notice appeal is untimely and dismissed.

### **III. Conclusion**

Compliance with N.C. R. App. P. 4(a) is a jurisdictional requirement. *Oates*, 366 N.C. at 266, 732 S.E.2d at 573. Defendant entered his oral notice of appeal the day *after* trial concluded and judgment was entered. This Court lacks jurisdiction to review and adjudicate Defendant's appeal. *Id.* at 268, 732 S.E.2d at 574. Defendant's appeal is dismissed. *It is so ordered.*

DISMISSED.

Judge ZACHARY and Judge STADING concur.

Report per Rule 30(e).