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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-321

Filed 19 December 2023

Lee County, No. 16CRS51444

STATE OF NORTH CAROLINA

v.

LARRY TYRELL GREEN, Defendant.

Appeal by defendant from judgment entered 14 July 2022 by Judge Claire V. Hill in Lee County Superior Court. Heard in the Court of Appeals 15 November 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc X. Sneed, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for defendant-appellant.

GORE, Judge.

On 18 July 2016, the Lee County grand jury indicted defendant Larry Tyrell Green for first-degree murder and felony conspiracy. On 14 July 2022, the jury found defendant guilty of first-degree murder and not guilty of conspiracy. The trial court sentenced defendant to life imprisonment without parole. Defendant gave oral notice of appeal in open court. Defendant appeals from the final judgment of the Superior

Court, Lee County. This Court has jurisdiction pursuant to N.C.G.S. §§ 7A-27 and 15A-1444.

Defendant raises two issues on appeal: (1) whether the trial court erred in instructing the jury on flight, and (2) whether the trial court abused its discretion in declining to impose sanctions for a purported discovery violation under N.C.G.S. § 15A-903. Upon review, we discern no error in the trial court's judgment.

I.

A.

On 13 June 2016, the victim in this case died from a stab wound to his chest after an altercation in his front yard. Defendant suspected that his friend, the victim, was involved in a sexual relationship with his girlfriend, Kelsey Bahnsen, and the mother of his children, Jessica McCaffrey.

Sally Spencer¹ testified she was the victim's fiancée. Spencer and the victim lived together in a trailer park with Spencer's two boys. At approximately 1:00 a.m. on 13 June 2016, defendant, McCaffrey, and Bahnsen visited the victim's trailer to address defendant's speculation that the victim had been maintaining a sexual relationship with Bahnsen and McCaffrey. They spoke for thirty minutes. Bahnsen and McCaffrey assured Spencer that neither of them had been sleeping with the victim, and they left everything "pretty amicably."

¹ A pseudonym.

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Bahnsen testified she was involved in a sexual relationship with defendant in June 2016. She stated defendant was very controlling; he dictated how she spent her money, with whom she spoke and when. Bahnsen testified defendant was also splitting living arrangements with McCaffrey.

Following the early morning visit to the victim's trailer, defendant, Bahnsen, and McCaffrey returned to McCaffrey's house. Later that day, McCaffrey left the home, and defendant was angry. When McCaffrey returned, defendant went outside to speak with her. McCaffrey told defendant that she and Bahnsen slept with the victim. Bahnsen testified that she did not sleep with the victim, but she told defendant that she did because he threatened her with a box cutter, and she was afraid.

Next, three men arrived at defendant's home: Eddie Alston, Von Dingle, and Onedrea Edwards. Defendant spoke with them, and he announced they were going to the victim's home to speak with him. According to Edwards, they were going to the victim's home to beat him up. Edwards testified that defendant, Bahnsen, and McCaffrey took "Molly," — a "hallucinating drug" — before leaving defendant's house. Edwards, Alston, and McCaffrey got in the same car and drove over to the victim's house. Defendant, Dingle, and Bahnsen drove over in Dingle's truck. Defendant was angry during the drive; he told Bahnsen to admit she slept with the victim. Bahnsen testified defendant told her to get the victim to tell the truth and handed her a box cutter. When everyone arrived at the victim's trailer, defendant got out of the truck,

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beat on the side of the trailer, and told the victim to come out. The victim and Spencer came out onto the front porch where defendant, Bahnsen, and McCaffrey were standing. The three other men stood off to the side.

Bahnsen told the victim to admit they slept together, and they started arguing. Bahnsen had a box cutter in her hand and tried to “swing on” the victim. Spencer pushed her, and the victim jumped off the porch and ran. Four of the State’s witnesses presented varying testimony about the events that followed.

Spencer testified that after she saw the victim jump off the porch and run towards the neighbor’s house, she saw a tall, muscular black man tackle the victim and start punching him in the head. Spencer stated she watched as defendant, Bahnsen, and McCaffrey stabbed the victim. On cross-examination, Spencer described the knife that defendant was holding as, “Probably a pocketknife. Like a bigger one, though, with a good-size blade on it.” She further stated she did not “remember specifics about it besides it was a big blade. A big blade.” McCaffrey had a knife with a 2.5- to 3-inch blade. Spencer attempted to intervene, but defendant threatened to stab her. The victim ran towards the front porch, and defendant continued to beat the victim with a PVC pipe that he had picked up off the ground.

Edwards, who was initially charged with murder and conspiracy to commit murder in relation to this case, testified on behalf of the State. In exchange for his testimony, Edwards pled guilty to second-degree kidnapping. Edwards testified he watched defendant stab the victim in the “chest area” with a pair of needle-nose

pliers. Edwards also testified he witnessed both Bahnsen and McCaffrey stab the victim with box cutters.

Spencer's friend, Mary Driscoll,² was present at the home and watched the altercation intermittently by opening and closing the front door. Spencer asked Driscoll to call 911. At the mention of 911, the assailants immediately got into their cars and left the scene.

The victim was taken to the hospital where he died from his injuries. The victim had several stab wounds on his chest, right shoulder, back of the neck, and right forearm. The cause of death was a 4-inch penetrating stab wound to the chest that penetrated the victim's heart. Police found a pair of needle-nose pliers in the victim's driveway, as well as defendant's hat.

When defendant and the others left the victim's home, they went to a gas station, a friend's house, and back to defendant and McCaffrey's home. Defendant, Bahnsen, and McCaffrey all changed clothes. They gave the clothes they had worn during the assault to Alston, and Alston disposed of the clothes. Bahnsen and McCaffrey also gave Alston the box cutter and knife that they had used during the assault. Later, law enforcement obtained a search warrant and entered defendant's home; police officers found defendant in a bedroom hiding under a blanket on the floor.

² A pseudonym.

B.

At trial, defendant filed a written motion for dismissal/mistrial alleging the testimony of two State witnesses — Ms. Driscoll and Ms. Spencer — contained *significantly new or different* information that was not disclosed to the defense. On appeal, defendant limits his analysis to a discussion of Spencer’s testimony only.

Ms. Spencer (the victim’s fiancée), testified on direct examination that she saw defendant holding a knife with a blade that was “maybe four, five inches[]” long. Spencer’s prior written statement to police stated “[defendant] was standing over top of [the victim] stabbing him with a pocketknife multiple times.” On cross-examination, Spencer again described the length of the blade as “about four or five inches.” Spencer further stated:

[DEFENSE COUNSEL]: Would you describe the — how would you describe the knife that you say that [defendant] had that day? Would you describe it as a pocketknife or a knife, knife?

[MS. SPENCER]: Probably a pocketknife. Like a bigger one, though, with a good-size blade on it. I don’t recall, you know, remember specifics about it besides it was a big blade. A big blade.

After Spencer’s testimony, defense counsel indicated he wanted to conduct a voir dire of Spencer to determine whether the State should have disclosed Spencer’s oral statement about the size of the knife that defendant was holding during the assault. Spencer testified she had a telephone conversation with one of the prosecutors prior to trial:

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[DEFENSE COUNSEL]: Okay. Did you tell [the prosecutor] it was a pocketknife that you saw?

[MS. SPENCER]: No.

[DEFENSE COUNSEL]: Did you tell [the prosecutor] it was a knife that had a long blade?

[MS. SPENCER]: Yes.

[DEFENSE COUNSEL]: Did [the prosecutor] talk with you anything about the medical examiner's findings?

[MS. SPENCER]: No.

[DEFENSE COUNSEL]: Did [the prosecutor] ask you what happened?

[MS. SPENCER]: Yeah.

[DEFENSE COUNSEL]: Did you tell [the prosecutor] the same thing that you testified to?

[MS. SPENCER]: Yes, I did.

The trial court denied defendant's motion for dismissal/mistrial and declined to impose any other sanction.

At the charge conference, the State asked the trial court to instruct the jury on flight because defendant left the scene when 911 was called, Bahnsen could not find defendant, and defendant was ultimately found on the floor hiding under a blanket. Defense counsel argued defendant was found at his house. The trial court advised it would be instructing on flight, and defense counsel objected.

II.

A.

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Defendant argues the trial court erred in instructing the jury on flight. We disagree.

“The trial court’s decisions regarding jury instructions are reviewed de novo by this Court.” *State v. Osorio*, 196 N.C. App. 458, 466 (2009) (cleaned up). “Under a de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33 (2008) (cleaned up).

In North Carolina, the trial court may not instruct the jury on defendant’s flight unless “there is some evidence in the record reasonably supporting the theory that defendant fled after commission of the crime charged” *State v. Irick*, 291 N.C. 480, 494 (1977). “Mere evidence that defendant left the scene of the crime is not enough to support an instruction on flight. There must also be some evidence that defendant took steps to avoid apprehension.” *State v. Thompson*, 328 N.C. 477, 490 (1991) (citation omitted).

In *State v. Anthony*, our Supreme Court held that an instruction on flight was proper where, after shooting the victim, the defendant “immediately entered his car and quickly drove away from the crime scene without rendering any assistance to the victims or seeking to obtain medical aid for them. 354 N.C. 372, 425 (2001); accord *State v. Beck*, 346 N.C. 750, 752 (1997) (holding that an instruction on flight was proper where the defendant “fired two gunshots at the victim and then left the residence without rendering any assistance to the victim or seeking to obtain any

medical aid for him.”).

In this case, the State presented evidence that defendant and his fellow assailants stabbed the victim — multiple times — with box cutters and a pair of needle nose pliers. Immediately upon hearing that Driscoll was calling 911, defendant and the other assailants quickly drove away from the scene of the crime. When defendant and the others left the victim’s home, they went to a gas station, a friend’s house, and then back to defendant’s house. There is no evidence in the record that defendant, or any other assailant, made any effort to render aid to the victim or to obtain medical assistance for the victim. Defendant was subsequently arrested after the police served a search warrant at his home. Once police entered the premises, officers found defendant in the bedroom hiding under a blanket at the foot of his bed.

The facts in this case are consistent with our Supreme Court’s holding in *Anthony* and *Beck*. Thus, the trial court properly instructed the jury on flight.

B.

Next, defendant argues the trial court abused its discretion in denying his motion for dismissal/mistrial based on the State’s purported failure to disclose discovery pursuant to N.C.G.S. § 15A-903. In the alternative, defendant argues the trial court abused its discretion in failing to impose any sanctions provided by N.C.G.S. § 15A-910 based on the State’s purported failure to disclose discovery. Defendant’s arguments lack merit.

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Section 15A-903(a)(1) requires:

“[t]he State to make available to the defendant . . . oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant . . . in written or recorded form . . . [only if] there is *significantly new* or *different* information in the oral statement from a prior statement made by the witness.”

N.C.G.S. § 15A-903(a)(1) (2022) (emphasis added).

Ms. Spencer (the victim’s fiancée), testified on direct examination that she saw defendant holding a knife with a blade that was “maybe four, five inches[]” long. This testimony, defendant contends, conflicts with Spencer’s prior written statement to police, in which Spencer stated “[defendant] was standing over top of [the victim] stabbing him with a pocketknife multiple times.” Defendant asserts Spencer admitted to telling the State new information about the knife he was holding, and the State failed to disclose Spencer’s oral statement in discovery. Defendant argues he was prejudiced by the trial court’s decision not to declare a mistrial or impose other sanctions because, in defendant’s view, Spencer’s “specific testimony that defendant had a knife with a 4-to-5-inch blade singled defendant out as the person who inflicted the fatal injury” as “it matched the medical examiner’s testimony that the cause of death was a 4-inch penetrating stab wound to the chest.” In contrast, the State denied reviewing Spencer’s testimony in detail prior to trial and denied discussing the finding of the medical examiner with Spencer.

Upon review of the record, it is unclear whether the trial court expressly found

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that a discovery violation had in fact occurred. Regardless:

[E]ven if the prosecutor's actions constituted a discovery violation, the trial court still retained broad discretion to determine if sanctions were appropriate under N.C.G.S. § 15A-910. Unless the trial court abused that discretion, the decision will not be reversed. The choice of which sanction, *if any*, to impose is left to the sound discretion of the trial court. A trial court will not be reversed on appeal absent a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision. Additionally, discretionary rulings of the trial court will not be disturbed on the issue of failure to make discovery absent a showing of bad faith by the state in its noncompliance with the discovery requirements.

State v. Nolen, 144 N.C. App. 172, 184 (2001) (cleaned up).

Assuming, *arguendo*, and without deciding that a discovery violation occurred, defendant fails to demonstrate prejudice. The medical examiner in this case opined that the victim “died from multiple sharp force injuries due to different weapons with pointed or sharp edges to them, and the most significant wound was the stab wound of the chest.” Defendant was on notice that at least three individuals witnessed him stab the victim in the chest area; at trial, three different witnesses testified they saw defendant stabbing the victim in the chest.

Spencer estimated, based on her own recollection and perception of events, the length of the blade on defendant's knife. Defendant raised no objection to this testimony, and defense counsel was afforded the opportunity to cross-examine Spencer regarding any discrepancy between her trial testimony and her prior statement to police. *See State v. Taylor*, 311 N.C. 266 (1984) (no error to deny the

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defendant's motion for sanctions where defense counsel was afforded opportunity to examine evidence before the opening of court the next day). Further, the trial court noted in its written order denying defendant's motion for dismissal/mistrial that defendant did not request a recess or continuance at any time upon hearing the testimony now at issue. If, as defendant suggests, the State failed to comply with our discovery statutes, defendant also has not made any showing that the State acted in bad faith. We are also unable to conclude, as stated in the trial court's order, "that such serious improprieties occurred [at trial] as would make it impossible [for defendant] to attain a fair and impartial verdict." Accordingly, the trial court did not abuse its discretion in denying defendant's motion for dismissal/mistrial and did not abuse its discretion by declining to impose any other sanction pursuant to § 15A-910.

III.

For the foregoing reasons, we discern no error in the trial court's judgment.

NO ERROR.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).