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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-803

Filed 20 August 2024

Transylvania County, No. 22 CRS 50240

STATE OF NORTH CAROLINA,

v.

JAMES DAREN SISK, Defendant.

Appeal by defendant from judgment entered 1 February 2023 by Judge Peter B. Knight in Transylvania County Superior Court. Heard in the Court of Appeals 20 February 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Katashia L. Cooper, for the State.*

*Stephen D. Fuller for the Defendant-Appellant.*

PER CURIAM.

The record shows that Defendant James Daren Sisk was tried by a jury in superior court on two misdemeanor charges: communicating threats and simple assault. He was convicted on the communicating threats charge but acquitted on the simple assault charge. He appeals his conviction. The only issue on appeal concerns the trial court's denial of Defendant's motion to continue the trial.

STATE V. SISK

*Opinion of the Court*

The charges arose from an incident occurring on 18 February 2022 between Defendant and Michael Roberson. They had known each other for decades but had a negative relationship. On the day in question, Mr. Roberson drove up to an ATM at a gas station. Around the same time, Defendant drove up to the ATM. The two men jumped out of their vehicles and had an altercation.

The matter was called for trial on 30 January 2023, almost a year after the incident. Defendant's counsel moved for a continuance. The motion was denied.

On 1 February 2023, after a jury was empaneled, the State presented its case. Mr. Roberson was the only witness for the State. He testified that Defendant threatened him, including a threat that he would burn Mr. Roberson's house down. He also testified that Defendant spit on him and slammed his arm in a vehicle door.

After the State rested its case, Defendant's counsel again asked for a one-day continuance. Specifically, counsel indicated that she wanted to call a deputy who was working at the courthouse three months earlier on 25 October 2022, when Defendant was initially tried in district court. Defendant's counsel argued that the deputy's statement would show that Mr. Roberson was not truthful. The trial court, however, again denied the motion.

Defendant called one witness, a woman traveling with Defendant at the time of the incident. She testified that she saw Defendant and Mr. Roberson yelling near the ATM at each other but did not see any assault or hear any specific threat.

The jury considered the testimonies of Mr. Roberson and of Defendant's friend and returned a verdict convicting Defendant of only the misdemeanor communicating threats charge.

On appeal, Defendant argues that the trial court erred by not allowing him a one-day continuance so that the deputy could testify.

Generally, "[a] motion for continuance is within the sound discretion of the trial court and reviewable upon appeal only for abuse of discretion." *State v. Gardner*, 322 N.C. 591, 594, 369 S.E.2d 593, 596 (1988). "However, when a motion to continue is based on a constitutional right, the trial court's ruling becomes a question of law and, upon appeal, it is subject to review by examination of the particular circumstances as presented by the record." *Id.*

We have considered Defendant's arguments and conclude that he was not deprived of a constitutional right to prepare his defense. He was represented by the same counsel in the district court trial over three months earlier who had ample time to prepare a defense. We further conclude that the trial court did not abuse its discretion in denying Defendant's motion to continue. And even if the trial court's order implicated a constitutional right of Defendant to prepare his defense, we do not see how Defendant was prejudiced.

Specifically, Defendant asked for a continuance to have time to subpoena a deputy to testify about interactions she and a bailiff had with Mr. Roberson on the day of Defendant's district court trial. This statement was submitted as an offer of

proof to the superior court judge. In that statement, the deputy stated that Mr. Roberson had approached her and told her that Defendant had threatened him in the courthouse parking lot prior to the district court trial but that security cameras could not confirm or deny the accusation as any interaction between Mr. Roberson and Defendant was out of the view of the camera. Further, the deputy stated that the bailiff had told her that Mr. Roberson had accused Defendant of stealing a flag off his truck in the court parking lot, but the security footage did not confirm his account to the bailiff. It appears Defendant wanted to present the deputy for purposes of impeachment of Mr. Roberson, although the exact purpose, relevance, or admissibility of the proposed testimony of the deputy is not entirely clear. In any event, the trial court allowed Defendant's counsel some latitude to question Mr. Roberson on these matters and defendant has failed to demonstrate prejudice to his defense.

We have carefully reviewed Defendant's arguments and the record before us and conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Panel consisting of Chief Judge DILLON and Judges STROUD and STADING.

Report per Rule 30(e).