

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-558

Filed 3 September 2024

Robeson County, No. 19 CRS 54864

STATE OF NORTH CAROLINA

v.

ALEXANDER THOMAS

Appeal by defendant from judgments entered 14 December 2022 by Judge James G. Bell in Robeson County Superior Court. Heard in the Court of Appeals 6 February 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Kyle Peterson, for the State.

Richard J. Costanza for defendant-appellant.

ZACHARY, Judge.

Defendant Alexander Thomas appeals from the trial court's judgments entered upon a jury's verdicts finding him guilty of assault with a deadly weapon with intent to kill inflicting serious injury and discharging a weapon into occupied property causing serious bodily injury. Defendant argues that the indictment charging him with discharging a weapon into occupied property causing serious bodily injury failed

to allege an essential element of the offense, and that the trial court therefore lacked subject-matter jurisdiction to enter judgment. Defendant also argues that the trial court erred by denying his motion to dismiss this charge because the State presented insufficient evidence that the victim suffered a serious bodily injury as a result of Defendant's actions.

After careful review, we conclude that the indictment was facially valid and did not contain a jurisdictional defect as to the charge of discharging a weapon into occupied property causing serious bodily injury. We further conclude that the trial court properly denied Defendant's motion to dismiss this charge. Accordingly, we conclude that Defendant received a fair trial, free from prejudicial error.

I. BACKGROUND

The evidence at trial, viewed in the light most favorable to the State, tended to show the following:

In the early afternoon of 2 September 2019, Nathon Sanderson was hosting a Labor Day celebration with his family at his home in Robeson County. While Sanderson grilled, his younger brother was riding an ATV down an "old dirt road." Upon his return, the younger brother told Sanderson that some men had pulled their guns on him at the end of the road. Sanderson knew where his brother had been riding and concluded that the armed men were Defendant and Defendant's brother, who lived at the end of the road. Sanderson drove to Defendant's home "to see . . . what the occurrence was."

When Sanderson approached the property, he saw Defendant's brother "standing at the end of the dirt road to the left with an assault rifle." Sanderson asked whether his younger brother had been "disturbing the property or causing a scene for him to draw a rifle on him." In response, Defendant's brother laughed

Defendant then approached the "passenger side of [Sanderson's] vehicle, emerging around drinking a beer, communicating threats instantly." Defendant asked Sanderson if he was "ready to die[,] " and if he was "a crazy m*****[.]" When Sanderson told Defendant that he was not there "to cause any trouble[,] " Defendant "[i]nstantly threw a 380 or 9 millimeter" and shot Sanderson in the face. Sanderson "fell over" from the shot while still in his vehicle and tried to reach for his own firearm.

As Sanderson attempted to flee in his vehicle, Defendant and his brother began shooting at his retreating truck in "rapid succession" with an AR-15 assault rifle loaded with "380" rounds or with "a 556 round." The rounds penetrated the back cab window of Sanderson's truck as well as the driver's side door and the back passenger glass cabin. Sanderson recalled that bullets continued to hit him as he attempted to retreat and that his "blood was splatter[ing]" the front seats.

Sanderson backed his truck into a ditch across the street while attempting to flee and then "sideswiped a tree and basically [drove] as far as [he] could go before [he] opened the door and fell on the dirt." Sanderson tried to wave down a passing 18-

wheeler for help, but the trucker honked his horn in response to Sanderson's perceived wave and continued driving past.

A neighbor who heard the gunshots "ran to where [Sanderson] was and picked [him] up and rushed [him] to the hospital." Defendant and his brother shot Sanderson ten times in total, and Sanderson's truck bore numerous bullet holes.

After Sanderson's condition was stabilized at a Lumberton hospital, he was airlifted to Chapel Hill, where he underwent extensive surgery for his many injuries. Sanderson's doctors were unable to remove "four or five" bullets, which remain permanently in Sanderson's body.

On 6 July 2020, a Robeson County grand jury returned an indictment charging Defendant with assault with a deadly weapon with intent to kill inflicting serious injury and discharging a weapon into occupied property causing serious bodily injury.

This matter came on for trial on 13 December 2022. On 14 December 2022, the jury returned verdicts finding Defendant guilty of both charges. The trial court entered judgment, imposing two consecutive active sentences of 96 to 128 months in the custody of the North Carolina Division of Adult Correction. Defendant gave oral notice of appeal in court.

II. DISCUSSION

Defendant contends that the indictment charging him with discharging a weapon into occupied property causing serious bodily injury failed to properly allege the essential element of serious bodily injury, leaving the trial court without subject-

matter jurisdiction to enter judgment against him for that charge. Defendant further argues that the trial court should have granted his motion to dismiss this charge because the State failed to present substantial evidence that Sanderson suffered a serious bodily injury.

A. Sufficiency of the Indictment

Defendant first asserts that Count II of the indictment, charging him with discharging a weapon into occupied property causing serious bodily injury, was fatally deficient due to the absence of any allegation that Sanderson suffered “serious bodily injury,” an “essential element required to establish a violation of N.C. Gen. Stat. [§] 14-34.1(c)[.]” According to Defendant, this “fatal defect” deprived the trial court of subject-matter jurisdiction.

1. Preservation

Both “jurisdictional and non-jurisdictional pleading issues [are] automatically preserv[ed] . . . for appellate review.” *State v. Singleton*, __ N.C. __, __, 900 S.E.2d 802, 819 (2024). “Thus, issues related to alleged indictment defects, jurisdictional or otherwise, remain automatically preserved despite a defendant’s failure to object to the indictment at trial.” *Id.* at __, 900 S.E.2d at 821. However, non-jurisdictional issues require a showing of error *and* prejudice in order to merit relief. *Id.* at __, 900 S.E.2d at 821 (“As these species of errors in a charging document are not jurisdictional, a defendant seeking relief must demonstrate not only that such an error occurred, but also that such error was prejudicial.”).

2. Standard of Review

“The sufficiency of an indictment is a question of law reviewed de novo.” *State v. White*, 372 N.C. 248, 250, 827 S.E.2d 80, 82 (2019). Under de novo review, this Court “considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (cleaned up).

3. Analysis

Our Supreme Court has recently explained that there are “two distinct species of indictment deficiencies, jurisdictional and non-jurisdictional[.]” *Singleton*, ___ N.C. at ___, 900 S.E.2d at 812. A jurisdictional defect—one that divests a trial court of its subject-matter jurisdiction to render judgment—exists where the State’s indictment fails to charge the defendant with a crime against the State. *Id.* at ___, 900 S.E.2d at 813–14. “[J]urisdictional defects are rare” *Id.* at ___, 900 S.E.2d at 805; *e.g., id.* at ___, 900 S.E.2d at 818 (explaining that a jurisdictional defect might include, for example, “charging a defendant with a crime committed in another state” or charging a defendant with “conduct that does not constitute a criminal offense” such as “wearing a pink shirt on a Wednesday”).

By contrast, a nonjurisdictional defect, or “mere pleading deficiency,” occurs where the indictment fails “to allege with sufficient precision facts and elements of a crime[.]” *Id.* at ___, ___, 900 S.E.2d at 805, 814. Thus, “[t]aken together with the purpose of an indictment to put the defendant on notice of the crime being charged

and to protect the defendant from double jeopardy, a test for indictment validity becomes whether the indictment alleges facts supporting the essential elements of the offense to be charged.” *State v. Stewart*, ___ N.C. ___, ___, 900 S.E.2d 652, 656 (2024) (cleaned up).

This category of pleading deficiency is not a jurisdictional flaw, however: “so long as a crime against the laws and people of this State has been alleged, defects in indictments do not deprive the trial court of jurisdiction.” *Id.* at ___, 900 S.E.2d at 655. To obtain relief, a defendant must instead “show that the indictment contained a statutory or constitutional defect and that such error was prejudicial.” *Id.* at ___, 900 S.E.2d at 655.

In the instant case, Defendant does not assert that Count II of the indictment fails to charge *any* crime. Rather, Defendant contends that the indictment failed to impart the trial court with subject-matter jurisdiction because there is no allegation that Sanderson suffered “serious bodily injury,” an essential element of the charged offense. We disagree.

N.C. Gen. Stat. § 14-34.1 criminalizes the act of discharging any firearm and certain barreled weapons into occupied property:

(a) Any person who willfully or wantonly discharges or attempts to discharge any firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second into any . . . vehicle . . . while it is occupied is guilty of a Class E felony.

(b) A person who willfully or wantonly discharges a weapon described in subsection (a) of this section into an . . . occupied vehicle . . . that is in operation is guilty of a Class D felony.

(c) If a person violates this section and the violation results in serious bodily injury to any person, the person is guilty of a Class C felony.

N.C. Gen. Stat. § 14-34.1(a)–(c) (2023). The State charged Defendant in this case with violating subsection (c).

Here, Count II of the indictment—captioned “DIS WEAP OCC PROP SER BOD INJ”—alleges:

[T]he defendant named above unlawfully, willfully and feloniously did discharge an unknown type of handgun, a firearm, into a Chevrolet, a vehicle, located on Marigold Lane, Lumberton, NC . . . while it was actually occupied by . . . Sanderson, and in operation, inflicting approximately 10 gunshot wounds to the face, upper torso, and thigh region of . . . Sanderson, all against the form of the statute in such case made and provided against the peace and dignity of the State.

Count II of the indictment further cites the relevant statute—“G.S. No. . . . 14-34.1(C)”—and lists an offense date of “09/02/2019[.]”

To begin, Defendant’s contention that an error in this count of the indictment divested the trial court of subject-matter jurisdiction is inapt. Indeed, as Defendant acknowledges, even if the indictment fails to sufficiently allege serious bodily injury, it alleges a lesser-included offense. Thus, even assuming, *arguendo*, error in the indictment, any error would be a mere pleading deficiency, and, therefore,

nonjurisdictional. *See Singleton*, ___ N.C. at ___, 900 S.E.2d at 814 (“[A]n indictment must charge a crime to be valid, but superficial errors in the manner or form of the charge shall not impact the validity of the indictment and cannot affect the court’s jurisdiction over the charged crime.”). Defendant’s argument is overruled.

Moreover, the indictment sufficiently alleges the facts and elements of the crime with which Defendant was charged. Defendant does not contend that he was not placed on notice of the charge levied against him, rendering him unable to prepare for trial or to protect himself from double jeopardy. *See, e.g., id.* at ___, 900 S.E.2d at 821 (“An indictment might fail to satisfy constitutional purposes by failing to provide notice sufficient to prepare a defense and to protect against double jeopardy” (cleaned up)). Defendant “never objected” before the trial court regarding “the language of the indictment or alleged that it failed to put him on notice of the charged offense.” *Stewart*, ___ N.C. at ___, 900 S.E.2d at 656; *see Singleton*, ___ N.C. at ___, 900 S.E.2d at 821 (“[W]here non-jurisdictional deficiencies exist in criminal indictments, the better practice is for defendants to raise the issue in the trial courts.”). Furthermore, Defendant does not contend that he suffered any prejudice. *See Singleton*, ___ N.C. at ___, 900 S.E.2d at 821 (“As these species of errors in a charging document are not jurisdictional, a defendant seeking relief must demonstrate not only that such an error occurred, but also that such error was prejudicial.”).

Count II of the indictment alleges facts supporting each essential element of the offense of discharging a weapon into occupied property causing serious bodily injury. “[T]he indictment states the charge against [D]efendant in a plain, intelligible, and explicit manner, citing the statute under which [D]efendant was charged. Defendant was placed on notice of the charge levied against him, allowing him to prepare for trial and protecting him from double jeopardy.” *Stewart*, ___ N.C. at ___, 900 S.E.2d at 656.

Accordingly, Count II of the indictment is facially valid, having sufficiently alleged each essential element of N.C. Gen. Stat. § 14-34.1(c). Defendant’s arguments are without merit.

B. Motion to Dismiss

Next, Defendant contends that the trial court erred when it denied his motion to dismiss the charge of discharging a weapon into occupied property causing serious bodily injury because “[t]he State did not introduce substantial evidence showing Sanderson suffered serious bodily injury.”

1. Standard of Review

“We review the denial of a motion to dismiss based on an insufficiency of evidence de novo.” *State v. Steele*, 281 N.C. App. 472, 476, 868 S.E.2d 876, 880, *disc. review denied*, 382 N.C. 719, 878 S.E.2d 809 (2022). “In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each

essential element of the crime and that the defendant is the perpetrator.” *State v. Osborne*, 372 N.C. 619, 626, 831 S.E.2d 328, 333 (2019) (citation omitted).

Substantial evidence is that amount of evidence “necessary to persuade a rational juror to accept a conclusion.” *Id.* (citation omitted). The evidence must be “considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom.” *Id.* (cleaned up). “[I]f the record developed before the trial court contains substantial evidence, whether direct or circumstantial, or a combination, to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied.” *Id.* (cleaned up).

2. Analysis

Defendant contends that the trial court erred in denying his motions to dismiss where the State failed to present substantial evidence to show that Defendant’s discharge of the firearm caused “serious bodily injury” to Sanderson.

As discussed above, Defendant was charged in this case with violating N.C. Gen. Stat. § 14-34.1(c). N.C. Gen. Stat. § 14-34.1(c) provides that, “[i]f a person violates [N.C. Gen. Stat. § 14-34.1(a)–(b)] and the violation results in serious bodily injury to any person, the person is guilty of a Class C felony.” N.C. Gen. Stat. § 14-34.1(c).

N.C. Gen. Stat. § 14-34.1(c) does not define the term “serious bodily injury.” *See id.* However, our General Assembly defines the term in N.C. Gen. Stat. § 14-32.4,

in the same Article as N.C. Gen. Stat. § 14-34.1. N.C. Gen. Stat. § 14-32.4 criminalizes the act of “assault inflicting serious bodily injury.” *Id.* § 14-32.4.

N.C. Gen. Stat. § 14-32.4 defines the term “serious bodily injury” as “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.” *Id.* § 14-32.4(a).

Likewise, the North Carolina Pattern Jury Instruction for the charged offense in this case, N.C. Gen. Stat. § 14-34.1(c), defines “serious bodily injury” the same as the General Assembly defines that phrase in N.C. Gen. Stat. § 14-32.4: “Serious bodily injury is defined as bodily injury that creates or causes a substantial risk of death[,] serious permanent disfigurement[,] coma[,] a permanent or protracted condition that causes extreme pain[,] permanent or protracted loss or impairment of the functions of any bodily member or organ[,] [or] prolonged hospitalization.” N.C.P.I. Criminal 208.90G (cleaned up).

The trial court instructed the jury consistent with this pattern jury instruction for the offense charged, including the element of “serious bodily injury”: “Serious bodily injury is defined as bodily injury that creates or causes serious permanent disfigurement, a permanent or protracted condition that causes extreme pain or permanent or protracted loss or impairment of the functions of any bodily member or organ.” Moreover, “we are limited to [the definition provided in] this instruction in

determining whether there is sufficient evidence to allow a jury to find this element of the offense.” *State v. Rushing*, 268 N.C. App. 285, 289, 836 S.E.2d 262, 265 (2019); *State v. Rouse*, 198 N.C. App. 378, 382, 679 S.E.2d 520, 524 (2009) (“It is well settled that a defendant may not be convicted of an offense on a theory of guilt different from that presented to the jury.” (cleaned up)).

“Whether a serious bodily injury can be found depends upon the facts of each case and is generally for the jury to decide under appropriate instructions.” *Rushing*, 268 N.C. App. at 289, 836 S.E.2d at 265 (cleaned up).

Here, Sanderson testified that he suffered ten gunshot wounds to various parts of his body. He testified that he lost a portion of his intestines as a result of Defendant’s attack upon him. Additionally, Sanderson described that he “was shot on the right side of [the] face,” with a bullet “lodging between [his] cheek”; that bullets “split the side of [his] cheek” and “split [his] ear in two.” Sanderson further explained how one bullet “launched through [his] groin, through [his] intestines and through [his] liver[,]” and that additional bullets tore through his “back calf muscle[,]” “upper chest[,]” both legs, as well as his arm. Sanderson vividly described how the front seats of his vehicle had “blood splattered from the other side after [he] was hit with the bullets.”

The State introduced eight photographs of Sanderson’s injuries for the jury to review, and Sanderson described the injuries shown in those photographs. Sanderson testified that he “lost a lot of blood” and that he did not know whether he “was going

to make it or not.” It took approximately 15 minutes to get to the hospital, and, once there, Sanderson “was immediately put on standby to . . . [be] lifted from Lumberton to Chapel Hill” for treatment. At the trauma center, Sanderson underwent “surgery removing all [of his] intestines[.]” Sanderson also testified that, although doctors corrected some of his bullet wounds, they left four or five bullets in him. In addition, he needed a colostomy bag while he was in the hospital and the scar tissue on his abdomen remains.

Viewed in the light most favorable to the State, substantial evidence at trial supported that Sanderson suffered a serious bodily injury caused by Defendant’s conduct in unlawfully discharging a firearm into Sanderson’s occupied vehicle in violation of N.C. Gen. Stat. § 14-34.1(c). Defendant’s arguments lack merit, and the trial court did not err when it denied his motion to dismiss this charge.

III. CONCLUSION

For the reasons stated herein, we conclude that the indictment charging Defendant with discharging a weapon into occupied property causing serious bodily injury was facially valid and did not contain a jurisdictional defect. We further conclude that the trial court did not err in denying Defendant’s motion to dismiss the same charge.

NO ERROR.

Chief Judge DILLON and Judge FLOOD concur.

Report per Rule 30(e).