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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-203

Filed 1 October 2024

Forsyth County, No. 19CRS54103

STATE OF NORTH CAROLINA

v.

ALPHONZO LEON SMITH

Appeal by defendant from judgment entered 13 September 2023 by Judge William Anderson Long, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 11 September 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Ann Stone, for the State.*

*Phoebe W. Dee, for the Defendant-Appellant.*

PER CURIAM.

**I. Background**

Alphonzo Smith (“Defendant”) was involved in a long-term on-again-off-again relationship with Keyerra Johnson (“Johnson”). Defendant did not own a cellphone, so Johnson loaned him a cellphone.

Defendant and Johnson were visiting together at Defendant’s mother’s house

STATE V. SMITH

*Opinion of the Court*

on 23 April 2019. Defendant and Johnson argued, and Defendant asked Johnson to leave. Johnson refused to leave until Defendant returned the cellphone she had loaned to him.

Defendant grabbed Johnson's shirt and pulled her to the floor. Defendant dragged Johnson by her shirt throughout the house. Johnson attempted to grab onto the wall while Defendant was dragging her, causing her two front teeth to bump into the door of the refrigerator. Both of Johnson's front teeth were chipped from the incident. Defendant's mother called for police to respond to the disturbance.

Defendant was charged with assault on a female on 23 April 2019 and convicted in Forsyth County District Court on 1 September 2020. Defendant appealed.

Over three years later, a trial was held on 11 September 2023 in Forsyth County Superior Court. The jury found Defendant guilty on 13 September 2023. Defendant was sentenced to 150 days of imprisonment in the misdemeanor confinement program, suspended for 60 months of supervised probation. Defendant's sentence also included 37 days of special probation as an intermediate sanction.

Defendant purportedly entered Notice of Appeal after the jury had returned its verdict, but before judgment thereon had been entered by Judge Long.

## **II. Analysis**

A criminal defendant's right to appeal is purely a creation of statute. *State v. Berryman*, 360 N.C. 209, 214, 624 S.E.2d 350, 354 (2006). Rule 4(a) permits criminal

STATE V. SMITH

*Opinion of the Court*

defendants to enter a notice of appeal from a “judgment or order” by either entering the notice of appeal: (1) orally at trial, or (2) by “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[.]” N.C. R. App. P Rule 4(a)(1)-(2).

This Court has previously held a defendant fails to comply with Rule 4 when oral notice of appeal is entered “prematurely . . . before entry of the final judgment.” *State v. Lopez*, 264 N.C. App. 496, 503, 826 S.E.2d 498, 503 (2019) (exercising its discretion to allow the defendant’s petition for writ of *certiorari* to reach the merits of his appeal).

A writ of *certiorari* may be issued in “appropriate circumstances” to permit review of an otherwise defective appeal. N.C. R. App. P. 21(a)(1). “*Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citation omitted). “A petition for the writ must show merit or that error was probably committed below.” *Id.* (citation omitted). Otherwise, the petition should be denied. *State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835, 839 (2021) (citing *Grunder*, 251 N.C. at 189, 111 S.E.2d at 9); *State v. Rouson*, 226 N.C. App. 562, 567, 741 S.E.2d 470, 473 (2013) (“Failing to present a meritorious claim or reveal error in the proceeding below, defendant has failed to present good cause for the issuance of a writ of *certiorari*.” (citation omitted)).

In Defendant’s purported appeal, he argues the trial court committed an error of law by allowing several electronic messages between Defendant and Johnson to be

STATE V. SMITH

*Opinion of the Court*

admitted into evidence. After Defendant was charged with assault on a female, but before trial, Defendant sent several messages to Johnson begging her not to testify, apologizing for damaging her teeth, and offering to pay for her dental bills if she refrained from testifying at trial. Defendant objected at trial to the admission of these messages under Rules of Evidence 403 and 404(b), arguing his conduct may be considered witness tampering and evidence of another crime. N.C. Gen. Stat. § 8C-1, Rules 403 and 404(b) (2023).

The trial court overruled Defendant's objections and allowed the evidence for the limited purpose of corroborating Johnson's testimony. The trial court instructed the jury during the jury charge: "A photograph of the alleged victim and text messages were introduced into evidence in this case for the purpose of illustrating and explaining the testimony of the witness. These photographs and text messages may not be considered by you for any other purpose."

"Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain the testimony of another witness." *State v. Harrison*, 328 N.C. 678, 681, 403 S.E.2d 301, 303 (1991) (citation and quotation marks omitted). "Deciding whether to receive or exclude corroborative testimony, so as to keep its scope and volume within reasonable bounds, is necessarily a matter which rests in large measure in the discretion of the trial court." *State v. Garcell*, 363 N.C. 10, 39-40, 678 S.E.2d 618, 637 (2009) (citations and internal quotation marks omitted).

This decision rested within Judge Long's discretion to admit the messages for

corroborative purposes. *Id.* The messages were not otherwise used to allege Defendant had a propensity to commit the crime of which he was charged, in violation of Rule 404(b) of the Rules of Evidence. N.C. Gen. Stat. § 8C-1, Rule 404(b).

### **III. Conclusion**

Defendant violated Rule 4 when oral notice of appeal was entered “prematurely . . . before entry of the final judgment.” *Lopez*, 264 N.C. App. at 503, 826 S.E.2d at 503. Defendant has failed to show any abuse in the trial court’s decision, *Garcell*, 363 N.C. at 39-40, 678 S.E.2d at 637, and has failed to demonstrate “merit or that error was probably committed below.” *Grundler*, 251 N.C. at 189, 111 S.E.2d at 9.

He has also failed to show “good and sufficient cause” to support issuance of the writ. *Id.*; *Ricks*, 378 N.C. at 741, 862 S.E.2d at 839; *Rouson*, 226 N.C. App. at 567, 741 S.E.2d at 473. Defendant’s petition for writ of *certiorari* is denied and his appeal is dismissed.

DISMISSED.

Panel consisting of Chief Judge DILLON and Judges TYSON and WOOD.

Report per Rule 30(e).