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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-175

Filed: 3 October 2017

Mecklenburg County, Nos. 15 CRS 25213, 213363

STATE OF NORTH CAROLINA

v.

JONATHAN ANDRE RAMSEY, Defendant.

Appeal by Defendant from judgment entered 14 July 2016 by Judge W. David Lee in Mecklenburg County Superior Court. Heard in the Court of Appeals 25 September 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Katherine M. McCraw, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant-appellant.

MURPHY, Judge.

Jonathan Ramsey (“Defendant”) appeals from a judgment entered upon a jury verdict finding him guilty of common law robbery and his guilty plea to attaining the status of an habitual felon. On appeal, Defendant asserts that he was deprived of his constitutional right to effective assistance of counsel. We dismiss Defendant’s

ineffective assistance claims without prejudice to his right to assert them in a motion for appropriate relief.

Background

On 29 March 2015, Jamie Block was robbed and physically assaulted by two men after exiting a bus in Charlotte, North Carolina. After viewing surveillance camera video from the bus, officers of the Charlotte-Mecklenburg Police Department identified the men as Defendant, who was wearing a black hoodie, and Stefon Boatwright, who was wearing a red hoodie.¹

Detective Wolfe prepared a photographic lineup that included a photograph of defendant to show to Block. On 5 May 2016, Block viewed the photographic lineup, but he was unable to identify any of the people in the lineup as one of the robbers. Detective Wolfe later showed Block still frames taken from the bus surveillance video of the two men getting off at the same stop as Block. The facial characteristics in the still frames were described by Detective Wolfe as “grainy,” but the clothing was “distinctive.” Block identified the two men as being his robbers.

Defendant was indicted on charges of robbery with a dangerous weapon, conspiracy with a deadly weapon, and attaining the status of an habitual felon. At trial, during Block’s testimony, the bus surveillance video was played for the jury.

¹ During trial, Detective Wolfe testified that he knew Boatwright and that Boatwright had admitted to being the person on the bus in the red hoodie.

STATE V. RAMSEY

Opinion of the Court

Block was asked if he saw “the man who robbed [him,]” and he answered “yes,” and that the robbers “looked like the first two people that got off there.” By “first two people,” he meant “there was one in red and one in black” and “those [were] the men that robbed [him]. He testified that he could not “be certain” that the men who robbed him walked off the bus that night, because he “didn’t see ‘em walk off the bus,” but he further stated, “they weren’t there when I got there.” He did not see the robbers’ faces and “couldn’t identify them that night or describe them.”

While discussing defense counsel’s motion to dismiss made at the close of the State’s evidence, the trial court stated that “it appears to me that the only identification by the alleged victim of the defendant with any certainty [was] from those still pictures [from the bus surveillance video].” The court was concerned that “this would certainly be an impermissibly suggestive showing to the victim of these still photographs.”

Defense counsel then filed a written motion to suppress all evidence of the identification of defendant. While the trial court denied the motion, concluding it was made “far too late,” it also included a curative instruction to the jury. The court instructed the jury not to consider the “testimony of the alleged victim in this case tending to show that the alleged victim identified the perpetrators of the alleged crime from still screen shots taken from the video and shown to the alleged victim by

Officer [] Wolfe.” The jury was still permitted to consider the bus surveillance video that was shown at trial.

The State dismissed the conspiracy charge at the close of the evidence. Prior to the charge conference, defense counsel requested an instruction on impeachment or corroboration by a prior statement pursuant to N.C.P.I. 105.20 be given to the jury. However, during the charge conference, defense counsel withdrew the request for that particular instruction by stating, “[n]o, I don’t want to give that actually. I was drafting it, but I want to take that out.”

The jury found Defendant guilty of common law robbery on 14 July 2016. Defendant then entered a guilty plea to attaining the status of an habitual felon. The trial court sentenced Defendant as an habitual felon to a term of 88 to 118 months’ imprisonment. Defendant gave notice of appeal in open court.

Analysis

Ineffective assistance of counsel claims are usually raised in post-conviction proceedings and not on direct appeal. *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524-25 (2001). Such claims may be reviewed on direct appeal when the cold record reveals that no further factual development is necessary to resolve the issue. *Id.* at 166, 557 S.E.2d at 524-25 (citation omitted). In the present case, we believe a further factual inquiry is necessary to determine if defense counsel’s decisions prior to and during trial, such as the admission into evidence of Officer Banham’s

testimony, Block's identification of the robbers from the still frames taken from the bus surveillance video, and the video itself were indicative of unprofessional error or a part of defense counsel's trial strategy. *See State v. Todd*, ___ N.C. ___, ___, 799 S.E.2d 834, 838 (2017).

Because the record here is insufficient to address the ineffective assistance claim, we dismiss Defendant's claim without prejudice to his right to file a motion for appropriate relief. *See Fair* at 167, 557 S.E.2d at 525 (“[S]hould the reviewing court determine the IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant's rights to reassert them during a subsequent MAR proceeding.”), *cert. denied*, 535 U.S. 1114, 153 L. Ed. 2d 162 (2002).

Conclusion

For the reasons stated above, we dismiss Defendant's claim without prejudice.

DISMISSED WITHOUT PREJUDICE.

Judge CALABRIA and TYSON concur.

Report per Rule 30(e).