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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1076

Filed 7 May 2024

Transylvania County, No. 22 CRS 050078

STATE OF NORTH CAROLINA

v.

MATTHEW AROLD, Defendant.

Appeal by Defendant from judgment entered 22 March 2023 by Judge Peter B. Knight in Transylvania County Superior Court. Heard in the Court of Appeals 16 April 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Herman M. Little, Jr., for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for Defendant.*

GRIFFIN, Judge.

Defendant Matthew Arold appeals from judgment entered upon a jury's verdict finding him guilty of communicating threats. Defendant contends the trial court erred where, upon receipt of a note with a question from the jury, it declined to answer the jury's question. Defendant further contends he was denied his "right to presence"

under the Sixth and Fourteenth Amendments when the trial court refused to disclose the contents of the note from the jury. We hold Defendant failed to preserve any issue arising from the trial court's response to the jury's note or to Defendant's request to review the note. Accordingly, we dismiss Defendant's appeal.

### **I. Factual and Procedural Background**

On 17 January 2022, Defendant and his neighbor, D. Pinto, lived in neighboring residences which shared a common driveway. That morning, Defendant stood at the property line between his property and Pinto's and began yelling at Pinto. Pinto's wife recorded a video of the interaction. Defendant repeatedly threatened to "snap" Pinto's neck. As a result, Defendant was arrested and charged with communicating threats.

On 20 March 2023, the matter came on for jury trial before Judge Knight in Transylvania County Superior Court. On 22 March 2023, the jury returned a verdict, finding Defendant guilty of communicating threats. The trial court entered judgment and sentenced Defendant to 45 days' imprisonment, suspended for 24 months of supervised probation.

Defendant timely filed notice of appeal 24 March 2023.

### **II. Analysis**

Defendant argues the trial court erred where, upon receipt of a note with a question from the jury, it declined to answer the jury's question. Further, Defendant argues he was denied his "right to presence" under the Sixth and Fourteenth

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Amendments when the trial court refused to disclose the contents of the jury's note.

We hold Defendant failed to preserve either issue for our review.

Under our North Carolina Rules of Appellate Procedure, Rule 10,

[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion.

N.C. R. App. P. 10(a)(1); *see also State v. Goodman*, 256 N.C. App. 742, 747, 808 S.E.2d 791, 795 (2017) (holding the defendant failed to preserve his alleged error for review where he failed to object after the trial judge denied a juror's request to question a witness at trial).

Here, the State introduced into evidence the video footage recorded on 17 January 2022 by Pinto's wife during Pinto's interaction with Defendant. At the close of the State's evidence and while the court was in recess, the trial court received a note from the jury with a question asking, "Is it possible to get a written script of who said what in each of the videos that the jurors heard?" The trial court, addressing both parties, stated:

[TRIAL COURT]: I'm sorry. There was a note from a juror. I've marked it as 11:45 a.m. today. And they've asked a question about the evidence. I'm proposing to just—I can do one of two things, in my opinion. I'll just not respond to it or I'll respond and say that I'm not able to answer any questions about the evidence at this time, or whatever variation of that you want me to say. What's

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[Defendant's counsel's] preference?

[DEFENDANT'S COUNSEL]: Can we know what the question was, out of curiosity?

[TRIAL COURT]: Those are my options.

[DEFENDANT'S COUNSEL]: Yes, sir. Okay. I'm happy with whatever the [c]ourt decides to do, sir.

[TRIAL COURT]: All right. Just for you to know, I'm inclined to say—well, they passed it to the sheriff's deputy, so I think I will respond and I'll just say, I'm not able to answer questions at this time prior to deliberation, period. Is that okay?

[THE STATE]: Yes, Your Honor.

[TRIAL COURT]: All right, thank you. Thanks. Sorry, we'll invite them in now.

Defendant failed to explicitly object to the trial court's decision to decline to answer the jury. Further, upon their return, the court addressed the jury directly, stating:

I'll note I did receive a note from our jury officer, our court officer, from one of your members. And I'll just note at this time I'm not able to answer questions prior to your deliberation. So thank you. I just wanted to acknowledge that I had received it.

Again, Defendant failed to explicitly object.

Nevertheless, Defendant contends “[Defendant's] counsel objected by asking to see the contents of the note.” Defendant's request, here, in no way serves as an objection to the trial court's decision regarding the jury's note. In fact, Defendant's counsel specifically indicated otherwise, stating: “Yes, sir. Okay. I'm happy with whatever the [c]ourt decides to do, sir.” Because Defendant failed to object or state

the specific grounds for the ruling it desired, Defendant's contentions are not preserved for appellate review under Rule 10. *See* N.C. R. App. P. 10(a)(1). Accordingly, we dismiss Defendant's appeal.

### **III. Conclusion**

Defendant failed preserve his contentions for appellate review pursuant to Rule 10, as he failed to object to the trial court's decision to decline to address the jury's question. Therefore, we dismiss Defendant's appeal.

DISMISSED.

Chief Judge DILLON and Judge TYSON concur.

Report per Rule 30(e).