IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ALTOINE WALKER A/K/A ALTIONE WALKER,

Appellant,

v. Case No. 5D19-1732

STATE OF FLORIDA,

Appellee.

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Opinion filed July 2, 2020

Appeal from the Circuit Court
for Marion County,
T. Michael Johnson, Judge.

James S. Purdy, Public Defender, and Andrew Mich, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Douglas T. Squire, Assistant Attorney General, Daytona Beach, for Appellee.

COHEN, J.

Altoine Walker A/K/A Altione Walker appeals his convictions of vehicular homicide, fleeing or attempting to elude, driving without a valid driver's license, and two counts of leaving the scene of a crash involving injury. We affirm.

The motor vehicle accident which led to the charges against Walker occurred when law enforcement attempted to pull over a Chrysler with four occupants—Walker,

Curleatha Brown, Curdarrius Brown, and Vaughn Monson.[1] The driver of the Chrysler fled at over 90 miles-per-hour and ran a red light, which caused a serious collision with another vehicle. After the crash, Walker and Curdarrius fled from the Chrysler on foot. Curleatha and Monson suffered extensive injuries, and Monson ultimately died as a result of the crash. At trial, the key question was who drove the Chrysler: Walker or Curdarrius.

A transcript of Walker's trial is included in the record on appeal. However, for unknown reasons, the bench conferences were not recorded or transcribed. This Court relinquished jurisdiction to the trial court, and the parties were able to reconstruct all but two of the missing bench conferences. On appeal, Walker argues that the missing portions of the transcript render this Court unable to conduct meaningful appellate review, such that we must reverse.

The seminal case regarding the absence of a transcript is Jones v. State, 923 So. 2d 486, 487–89 (Fla. 2006), in which the entire voir dire transcript was unavailable. Jones argued that he was entitled to a new trial because his appellate counsel could not determine whether any prejudicial errors occurred during voir dire. The Florida Supreme Court disagreed, holding that a defendant is not entitled to a new trial merely because a portion of the trial transcript is missing; instead, "the defendant [must] demonstrate that there is a basis for a claim that the missing transcript would reflect matters which prejudice the defendant." Id.; see also Armstrong v. State, 862 So. 2d 705, 721 (Fla. 2003) ("Armstrong has failed to link a meritorious appellate issue to the allegedly missing record and thus cannot establish that he was prejudiced by its absence."); Ferguson v.

[1] Curleatha Brown was Walker's girlfriend at the time. Curdarrius is Curleatha's adult son.

Singletary, 632 So. 2d 53, 58 (Fla. 1993) ("As to those portions which are still not transcribed, Ferguson points to no specific error which occurred during these time periods. Under these circumstances, we reject this claim.").

The first bench conference took place following Walker's objection when the State asked its DNA expert whether any of the DNA found in the Chrysler matched a relative of Curleatha.[2] The trial court overruled Walker's objection. Walker's only argument related to the missing transcript of this bench conference is that "the reconstructed record does not give the court's reasoning [for overruling his objection] thus this Court is unable to determine if that ruling is correct or not."

The second missing bench conference occurred after the State objected to Walker's closing argument that the State had endless resources, with which it could "outman" and "out-finance" a person charged with a crime. Following the bench conference, Walker continued with that theme, arguing that the jury was the great equalizer in that equation. Walker's only arguments related to that bench conference are that his reference to the jury as the "equalizer" was a toned-down version of his intended argument and that "[i]t is unknown if he agreed to tone his argument down or if the trial court ordered him to do so."

We find that Walker has not met his burden of establishing prejudice based on the missing transcripts from the two bench conferences, which were not capable of being reconstructed. Walker has pointed to no specific error related to either ruling. Like Jones, 923 So. 2d at 488, Walker's claims that the missing transcripts render this Court unable

[2] The DNA expert had previously testified that she did not have a DNA sample from Curdarrius. The State was attempting to show that DNA from the Chrysler could nevertheless be matched to Curdarrius based on a DNA sample from Curleatha.

to determine whether any prejudicial error occurred are insufficient to warrant reversal. See Armstrong, 862 So. 2d at 721; Ferguson, 632 So. 2d at 58.

AFFIRMED.

EDWARDS and GROSSHANS, JJ., concur.