

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

NO. COA01-640

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

v.

Chowan County  
No. 97 CRS 2155

MICHAEL RANKINS

Appeal by defendant from judgment entered 3 July 2000 by Judge William C. Griffin, Jr., in Chowan County Superior Court. Heard in the Court of Appeals 18 March 2002.

*Attorney General Roy Cooper, by Special Deputy Attorney General J. Charles Waldrup, for the State.*

*Nora Henry Hargrove for defendant appellant.*

McCULLOUGH, Judge.

On 3 November 1997, defendant Michael Rankins was indicted for felony escape. The case was tried before a jury at the 3 July 2000 Criminal Session of Chowan County Superior Court. The State's evidence at trial tended to show the following: On 4 September 1997, defendant was convicted of robbery with a firearm and sentenced to 146-184 months' imprisonment. Defendant was placed in custody and transferred to the Chowan County Detention Facility. On 15 September 1997, defendant was to be transferred to the Department of Corrections pursuant to the 4 September 1997 judgment

and commitment. John Wrighton, a custodial officer at the jail, told defendant to pack his belongings and prepare for the transfer. Wrighton then escorted defendant to the laundry room so defendant could return the items he had used while in jail and pack his T-shirts, socks, and other items in a paper bag. While defendant was doing this, some inmates started "hollering" for Wrighton, and he turned and walked down the hall toward them. When he turned back around a minute or two later, defendant was gone. Defendant apparently exited from the laundry area to an outside courtyard and then climbed over a brick wall. Defendant left the facility around 11:00 a.m. Defendant did not have permission to leave the facility. Defendant was captured around 11:00 p.m. that same day about five blocks from the jail.

The matter was called for trial on 3 July 2000. Prior to the start of trial, defendant asked the trial court for a continuance. Both defendant and his attorney asserted that they had not expected the escape charge to be called for trial that day. According to defendant and his attorney, another judge had entered an order stating that a robbery charge against defendant would be tried first, followed by a trial on a second robbery charge. However, no such order appeared in the court file. The trial court determined that the prior judge's calendaring referred only to the two robbery charges, and did not contemplate the escape charge when the order was entered. Accordingly, the trial court denied the motion. The trial court then allowed defendant to represent himself *pro se*, and appointed his former attorney as standby counsel.

During his opening argument, defendant stated that "I don't deny the fact that I escaped." Defendant further explained that:

What caused the escape to happen was [the prosecutor] and his key witness, Gregory Bonner, had framed me for robbery. . . . But I feel as though that I shouldn't be held liable for the escape, because I -- I only did what I felt was right. That was to escape.

Defendant declined to call any witnesses on his behalf, and did not testify or offer any documentary evidence in his defense. Defendant was convicted of felonious escape and sentenced to 8-10 months' imprisonment, the sentence to be served at the expiration of all sentences defendant was then obligated to serve. Defendant appealed.

By his first assignment of error, defendant contends that the trial court erred by denying his request for a continuance. Defendant further contends that he was forced to go to trial unprepared. According to defendant, he came to court expecting to be tried on a pending armed robbery charge, not the escape charge. Defendant claims that there was an order in the record stating that one of the armed robbery charges should be tried first. Because of the surprise, defendant argues he did not have a reasonable amount of time to prepare his case. We disagree.

This Court has stated:

A trial court's ruling on a motion to continue ordinarily will not be disturbed absent a showing that the trial court abused its discretion, but the denial of a motion to continue presents a reviewable question of law when it involves the right to effective assistance of counsel. The right to effective assistance of counsel includes, as a matter of

law, the right of client and counsel to have adequate time to prepare a defense. Unlike claims of ineffective assistance of counsel based on defective performance of counsel, prejudice is presumed in cases where the trial court fails to grant a continuance which is "essential to allowing adequate time for trial preparation."

*In re Bishop*, 92 N.C. App. 662, 666, 375 S.E.2d 676, 679 (1989) (citations omitted). Our Supreme Court further analyzed the legal standards governing the appeal of a denial of a motion to continue, stating that:

"To establish that the trial court's failure to give additional time to prepare constituted a constitutional violation, defendant must show 'how his case would have been better prepared had the continuance been granted or that he was *materially prejudiced* by the denial of his motion.' '[A] motion for a continuance should be supported by an affidavit showing sufficient grounds for the continuance.' "[A] postponement is proper if there is a belief that material evidence will come to light and such belief is reasonably grounded on known facts.'"

. . . .

. . . "[C]ontinuances should not be granted unless the reasons therefor are fully established. Hence, a motion for a continuance should be supported by an affidavit showing sufficient grounds.'"

*State v. Jones*, 342 N.C. 523, 531, 467 S.E.2d 12, 17 (1996) (citations omitted) (emphasis added). In the present case, "[d]efendant's oral motion to continue, made on the date set for trial and not supported by an affidavit, did not set forth any form of 'detailed proof indicating sufficient grounds for further delay.'" *Id.* at 532, 467 S.E.2d at 18 (citations omitted); see

also *State v. Cody*, 135 N.C. App. 722, 726, 522 S.E.2d 777, 780 (1999). Furthermore, defendant failed to show how he was materially prejudiced by the denial of his motion. The escape occurred on 15 September 1997 and defendant's trial was held on 3 July 2000. Thus, defendant had ample time to prepare for trial. There is also no evidence in the record to support defendant's contention that he had a reasonable basis for believing that the escape case would not come to trial on 3 July 2000. Accordingly, we conclude that defendant has failed to show an abuse of discretion by the trial court in failing to grant the motion for continuance. Defendant's first assignment of error is overruled.

Defendant next contends that the trial court erred by failing to instruct the jury on the defense of duress. Defendant claimed that he had to escape because his incarceration was the result of perjury or other illegal acts on the part of a law enforcement officer, and he was forced to escape until he could uncover the officer's acts. Defendant contends he should have been able to have the jury consider this as a defense.

After careful review of the record, briefs and contentions of the parties, we find no error. This Court has stated:

"In order to successfully invoke the duress defense, a defendant would have to show that his 'actions were caused by a reasonable fear that he would suffer immediate death or serious bodily injury if he did not so act.' Furthermore, a defense of duress 'cannot be invoked as an excuse by one who had a reasonable opportunity to avoid doing the act without undue exposure to death or serious bodily harm.'"

*State v. Smarr*, 146 N.C. App. 44, 55, 551 S.E.2d 881, 888 (2001) (citations omitted). "A defendant must present evidence on each element of the [duress] defense for the trial court to instruct the jury on that defense." *Id.* In the case *sub judice*, defendant did not present any evidence in his defense, relying only upon his arguments to the jury and cross-examination of the State's witnesses. The only testimony concerning defendant's claim of duress was elicited during defendant's cross-examination of Chowan County Sheriff Fred Spruill, who admitted on cross-examination that he recalled hearing defendant say that he had been "framed." However, there was no evidence admitted regarding the specifics of defendant's claim, and no evidence was offered to show that defendant had a reasonable fear that he would suffer immediate death or serious bodily injury if he did not escape. *See id.* Accordingly, we conclude the trial court properly declined to give an instruction on duress. This assignment of error is overruled.

Lastly, defendant contends that the trial court erred when it failed to intervene on its own to prohibit certain arguments by the prosecutor. The prosecutor stated in his closing argument that defendant's claims that he was wrongfully convicted were "not true." Additionally, the prosecutor stated that defendant "may say some things [in his closing argument] that a lawyer might not be able to say." Defendant contends that the prosecutor's statements were improper, and the trial court should have intervened to prohibit them. We do not agree.

Defendant did not object to any part of the prosecutor's

closing argument. Our Supreme Court has stated:

Where a defendant fails to object to the closing arguments at trial, defendant must establish that the remarks were so grossly improper that the trial court abused its discretion by failing to intervene *ex mero motu*. "To establish such an abuse, defendant must show that the prosecutor's comments so infected the trial with unfairness that they rendered the conviction fundamentally unfair."

*State v. Mitchell*, 353 N.C. 309, 324, 543 S.E.2d 830, 839, *cert. denied*, 526 U.S. 1161, 144 L. Ed. 2d 219 (1999) (quoting *State v. Davis*, 349 N.C. 1, 23, 506 S.E.2d 455, 467 (1998)). Here, defendant failed to offer any evidence to counter the State's case. In fact, defendant conceded in his opening argument that he did escape. Moreover, defendant failed to offer any evidence to support his claim of duress. Even assuming *arguendo* that the prosecutor's statements were inappropriate, the trial court's failure to intervene *ex mero motu* was harmless beyond a reasonable doubt. Thus, defendant's third assignment of error is overruled.

After careful examination of the record and the arguments presented by the parties, we conclude defendant received a fair trial, free from prejudicial error.

No error.

Chief Judge EAGLES and Judge TIMMONS-GOODSON concur.

Report per Rule 30(e).