

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-144

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 08 CRS 241885, 241972

RONALD LEE HARRIS

Appeal by defendant from judgments entered 10 September 2009 by Judge Timothy S. Kincaid in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 August 2010.

Attorney General Roy Cooper, by Assistant Attorney General Thomas O. Lawton, III for the State.

Charlotte Gail Blake for defendant-appellant.

BRYANT, Judge.

Defendant appeals from his convictions after a jury found him guilty of conspiracy to commit robbery with a dangerous weapon, robbery with a dangerous weapon, and assault with a deadly weapon inflicting serious injury. After careful review, we dismiss.

The evidence tended to show that in the early morning hours of 30 August 2008, Genoel Ronquillo ("Ronquillo") was preparing to go to bed when there was a knock on his apartment door. The person at Ronquillo's door was his former girlfriend, Sandra Watts ("Watts"). Thinking Watts was coming to get some clothes she had left in his apartment, Ronquillo let her in. Watts asked Ronquillo if he was

alone and asked if he had locked the door, and then said she would go and check. At this time, Watts let a man, whom Ronquillo identified as defendant, into the apartment. Watts and defendant came into Ronquillo's bedroom and began hitting him about the head and face. Watts demanded to know where Ronquillo's money was located. Eventually, Watts and defendant left taking Ronquillo's knife, cell phone, and his wallet which contained some cash and his paycheck. As a result of the attack, Ronquillo spent several days in the hospital. He lost some of his eyesight and some use of his fingers, and suffered a lacerated ear, a fractured skull, a fractured sinus, and a cracked rib.

At the end of the State's evidence, defendant made a motion to dismiss. The trial court did dismiss several charges against defendant, including first-degree kidnapping, felony breaking and entering, and felony larceny charges. Defendant also moved for a mistrial and in the alternative, a curative jury instruction. Defendant's motion for a mistrial was based on portions of the State's opening statement, and to some extent, comments the State made to the jury pool during voir dire. The trial court denied defendant's motion for a mistrial and curative instruction.

Defendant's sole argument on appeal is that the trial court erred in denying his motion for mistrial and alternative request for a curative instruction based on the State's comments in its opening statement, potentially misleading or confusing the jury regarding any plea agreement involving Watts. Defendant contends he was deprived of his right to a fair and impartial jury trial.

Defendant seeks a new trial based on alleged improprieties in the jury voir dire and in the State's opening statement. However, neither are part of the record on appeal. The only references in the record to the jury voir dire and the opening statements are defense counsel's motion and argument for a mistrial, which contain defense counsel's characterization of the matters; the State's response to the motion, which contains a differing characterization; and the trial court's ruling on the motion, in which the trial court agreed with the prosecutor's characterization.

"Without an adequate record . . ., this Court has no ability to determine whether prejudicial error occurred." *State v. Bellamy*, 159 N.C. App. 143, 146, 582 S.E.2d 663, 666, *cert. denied*, 357 N.C. 579, 589 S.E.2d 130 (2003). "Counsel's statement 'cannot serve as a substitute for record proof.'" *Id.* The record before us is insufficient for appellate review.

Dismissed.

Judges HUNTER, Robert C., and STEELMAN concur.

Report per Rule 30(e).