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NO. COA11-479
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 09 CRS 248059-60

JAMES RONCHEZ HOUSE

Appeal by Defendant from judgment entered 9 July 2010 by
Judge Linwood O. Foust in Superior Court, Mecklenburg County.

Heard in the Court of Appeals 1 November 2011.

*Attorney General Roy Cooper, by Special Deputy Attorney
General Sharon Patrick-Wilson, for the State.*

Charlotte Gail Blake for Defendant-Appellant.

McGEE, Judge.

James Ronchez house (Defendant) appeals from his conviction
for first-degree burglary. We find no error.

Defendant was indicted for first-degree burglary and
larceny after breaking and entering. Evidence at trial
established the following factual background. The home of John
Chapman (Mr. Chapman) was broken into on 17 September 2009. Mr.
Chapman was awakened around midnight by a banging on his front

door. He retrieved a handgun, yelled "freeze" from the top of his stairs, and then heard footsteps rushing out of his home. Mr. Chapman's wife called 911, and Mr. Chapman's family waited upstairs until police arrived. Mr. Chapman never saw the intruder.

Upon arriving at the Chapman home, officers saw that the front door appeared to have been kicked in. Mr. Chapman discovered that his laptop had been stolen and that a mounted television had been pulled away from the wall. A crime scene investigator lifted fingerprints from the television. The recovered fingerprints were compared to a fingerprint database. One of the recovered fingerprints matched Defendant's fingerprints, which were in the database.

A jury found Defendant guilty of first-degree burglary and not guilty of larceny after breaking and entering on 9 July 2010. The trial court sentenced Defendant to a mitigated-range term of fifty to sixty-nine months in prison.

At trial, Defendant filed a motion for sanctions against the State. Defendant alleged that the State failed to timely disclose all discovery, namely a reprint of Defendant's fingerprints. Defendant requested that the trial court dismiss the charges against him or exclude all evidence relating to a

search warrant used to obtain his reprint. At the time of a 13 April 2010 pretrial readiness conference, Defendant believed that all discovery had been completed. Defendant specifically inquired as to whether there were any additional fingerprints, and the State indicated that there were not. Based on this information, Defendant requested, and was granted, a peremptory setting and trial was scheduled for the 6 July 2010 session.

Despite the State's indication that discovery was complete, the State requested that Defendant's fingerprints be retaken on or about 15 June 2010. The police originally refused the State's request. However, the police obtained a search warrant for Defendant's fingerprints on 29 June 2010, and executed it on 30 June 2010. The State notified Defendant on 1 July 2010 by e-mailing defense counsel a copy of the search warrant and related documentation. The State later served Defendant with a copy of the fingerprints.

Following a hearing on Defendant's motion for sanctions, the trial court ruled that the State was not diligent in taking additional fingerprints of Defendant within the discovery period. The trial court found that this was a technical discovery violation and that the State should have notified Defendant of its intent to reprint Defendant. However, the

trial court found that the reprints were not different from the original fingerprints, which were taken in 2007, and that there was no unfair surprise to Defendant. Therefore, the trial court in its discretion allowed use of the fingerprints at trial. As a sanction for the State's failure to comply with discovery, the trial court denied the State the opportunity to present the last argument to the jury.

Defendant's sole argument on appeal is that the trial court's sanction for the State's discovery violation was inadequate. He contends that the trial court erred in failing to dismiss the charges against him or to exclude the fingerprint card as a sanction for the State's discovery violation. We disagree.

N.C. Gen. Stat. § 15A-910 provides the following:

If at any time during the course of the proceedings the court determines that a party has failed to comply with [discovery rules], the court in addition to exercising its contempt powers may

- (1) Order the party to permit the discovery or inspection, or
- (2) Grant a continuance or recess, or
- (3) Prohibit the party from introducing evidence not disclosed, or
- (3a) Declare a mistrial, or
- (3b) Dismiss the charge, with or without prejudice, or
- (4) Enter other appropriate orders.

N.C. Gen. Stat. § 15A-910(a) (2009). This statute further requires a trial court to "consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with [discovery rules]." N.C. Gen. Stat. § 15A-910(b) (2009). "We review the trial court's selection of a remedy for a violation of N.C. Gen. Stat. § 15A-910 for abuse of discretion." *State v. Remley*, 201 N.C. App. 146, 150, 686 S.E.2d 160, 162 (2009) (internal citation omitted). "An abuse of discretion results from a ruling so arbitrary that it could not have been the result of a reasoned decision or from a showing of bad faith by the State in its noncompliance." *State v. McClary*, 157 N.C. App. 70, 75, 577 S.E.2d 690, 693 (2003) (citations omitted).

After reviewing the record and transcript, we discern no abuse of discretion in the trial court's choice of sanction. In making its ruling, the trial court found that the fingerprints at issue were no different than the ones taken in 2007; they only served to provide confirmation of the original prints. Therefore, the trial court found that Defendant was not subjected to any unfair surprise. Indeed, Defendant was provided with the discovery at issue and declined a continuance. Based on the foregoing, we find that the trial court properly

considered the materiality of the subject matter and the totality of the circumstances in crafting its discovery sanction. See N.C.G.S. § 15A-910(b). Given these factors, we further find that the trial court's decision not to impose a more punitive sanction upon the State, such as dismissal of the charges or exclusion of the evidence, was the product of a reasoned decision. See *Remley*, 201 N.C. App. at 150-51, 686 S.E.2d at 162-63.

No error.

Judges ELMORE and McCULLOUGH concur.

Report per Rule 30(e).