IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-505

Filed: 15 December 2020

McDowell County, Nos. 12CRS052016, 52005

STATE OF NORTH CAROLINA

v.

CHRISTOPHER MICHAEL EDWARDS, Defendant.

Appeal by Defendant from judgment entered 1 June 2018 by Judge Jeffrey P. Hunt in McDowell County Superior Court. Heard in the Court of Appeals 13 May 2020.

Attorney General Joshua H. Stein by Special Deputy Attorney General Anne M. Middleton, for the State.

Glover & Petersen, P.A. by Ann B. Petersen, for the Defendant.

DILLON, Judge.

Defendant Christopher Michael Edwards appeals from a judgment entered pursuant to a verdict by a jury finding him guilty of first-degree felony murder. The jury also found him guilty of felonious child abuse; however, judgment was arrested as to this charge.

I. Background

Defendant, a military veteran, lived with his girlfriend Kaitlyn and *her* infant daughter. One night, Defendant offered to look after Kaitlyn's child while she was at work.

When Kaitlyn returned home from work, she checked on her daughter in her crib. However, Kaitlyn noticed that her daughter's leg was kicking. When she tried to wake her daughter, the child was unresponsive. She took her daughter to the hospital, where doctors determined she had a head injury and that surgery was necessary. While the surgery was without complication, the child's brain would not stop swelling and she suffered irreparable brain damage. Thus, doctors said that the child would live her life in a vegetative state. Kaitlyn decided to take the child off life support. Three days later the child died.

Defendant talked to investigators regarding what happened that night, though he could not remember much. He claimed his past military experience had caused him to suffer from post-traumatic stress disorder ("PTSD") which caused him to black out for periods of time. He was arrested and charged with the child's murder, as he was the only one in the house that night with the child.

Before trial, Defendant turned over to the State as discovery extensive records about Defendant's military service. During trial, however, Defendant turned over documents that Defendant's mother claimed to have discovered just the night before in a fireproof safe in her house. She claimed she was unaware that the safe contained

those documents before that time. Defendant's counsel sought to introduce the documents into evidence, contending that the papers would corroborate Defendant's testimony about some of his time in the military. However, the State objected. The trial court denied the admission of the military documents.

Defendant was found guilty of the charges and sentenced accordingly. Defendant timely appealed.

II. Analysis

Defendant makes two arguments on appeal, which we address in turn.

A. Military Files

First, Defendant argues that the trial court erred by sustaining the State's objection to the admission of documents relating to Defendant's military service discovered during the trial. We disagree.

The trial court based its ruling sustaining the State's objection on several reasons, including that Defendant was not diligent in turning over these documents to the State; that the documents were not properly authenticated; and that the exclusion was not otherwise prejudicial.

Section 15A-910(a)(3) of our General Statutes provides that a trial court may "[p]rohibit the party from introducing evidence not disclosed" in a timely manner. Defendant argues the late production of these records was not a violation of the discovery statutes because under Section 15A-905(a), he was not required to produce

"evidence not in defense custody and control when the trial started." Defendant contends that the documents were not in his "custody and control" because they were locked away in his mother's safe. Our Supreme Court has held that a decision of a trial court to order this sanction for a discovery violation will not be disturbed absent a showing of an abuse of discretion. *State v. Stevens*, 295 N.C. 21, 37, 243 S.E.2d 771, 781 (1978).

In its ruling, in sustaining the State's objection, the trial court found that "the State was caught by surprise by the attempted introduction of these new documents; that the State was not provided them during discovery; and that the State ha[d] not seen the documents until this morning; . . . that defendant's counsel repeatedly requested all documents [Defendant's mother] had in connection with the defendant's military service; and the defense attorney was not given these documents pursuant to those requests until last night." We cannot say that the trial court abused its discretion in its ruling.

Although Defendant's failure to produce the records would be sufficient reason for exclusion, as we have already determined, even if Defendant was in compliance with N.C. Gen. Stat. § 15A-905(a), the trial court did not err in ruling the military records from the safe were not properly authenticated. "As a condition precedent of admissibility" evidence must be authenticated or identified "sufficient to support a

finding that the matter in question is what its proponent claims." N.C. Gen. Stat. § 8C-1, Rule 901(a) (2017).

A trial court's determination as to whether a document has been sufficiently authenticated is reviewed *de novo* on appeal as a question of law. *State v. Owen*, 130 N.C.App. 505, 510, 503 S.E.2d 426, 430 (1998).

As to the authentication of the documents, the trial court made the following determination:

> The other military documents and records which were obtained by the defendant and provided to the State in discovery pretrial were certified by the military showing their authenticity. These documents [allegedly discovered last night in the safe] are not certified in any way to indicate authenticity.
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> * * *
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> The documents have at least one missing page and contain at least one spelling error or typographical error. All of the documents appear to be copies and not originals.
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> * * *
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> The documents in question lack sufficient indicia of authenticity to be admitted and alleged circumstances under which [they] were found last night also indicate they may lack authenticity.

Defendant contends the military records were public records admissible under Rule 901(b)(7) of our Rules of Evidence, which allows "[e]vidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office,

or a purported public record, report, statement, or data compilation in any form, is from the public office where items of this nature are kept." But public records still must be properly authenticated. "Before any writing will be admitted in evidence, it must be authenticated in some manner – i.e., its genuineness or execution must be proved." Stansbury, N.C. Evidence 379-81, 512, 513 (2d), citing numerous authorities, including *Sledge v. Wagoner*, 250 N.C. 559, 109 S.E.2d 180 (1956), and *Perkins v. Brinkley*, 133 N.C. 348, 45 S.E. 652 (1903). Even a competent public record must be correctly identified, verified, or authenticated by one of the various recognized methods prior to it being introduced into evidence. *Hughes v. Vestal*, 264 N.C. 500, 142 S.E.2d 361 (1965)*; City of Randleman v. Hinshaw*, 2 N.C. App. 381, 383, 163 S.E.2d 95, 97 (1968).

We review the trial court's ruling on authentication *de novo*: A trial court's determination as to whether a document has been sufficiently authenticated is reviewed *de novo* on appeal as a question of law. *State v. Crawley*, 217 N.C. App. 509, 515, 719 S.E.2d 632, 637 (2011).

Defendant argues that his own testimony was sufficient to authenticate the military records from the safe. Defendant is correct that the authenticity of the records can be established by testimony from someone other than the person who created the records, but the trial court is not required to accept Defendant's testimony at face value. "Our Supreme Court has held that '[t]he competency, admissibility,

and sufficiency of the evidence is a matter for the court to determine. The credibility, probative force, and weight is a matter for the jury.' " *State v. Crawley*, 217 N.C. App. 509, 516, 719 S.E.2d 632, 637 (2011) (citing *State v. Wiggins*, 334 N.C. 18, 34, 431 S.E.2d 755, 764 (1993)).

Here, the trial court noted that the records from the safe were not included within Defendant's originally produced official military records, all of which were authenticated and admitted as evidence. The trial court also noted the mistakes and irregularities in the records and the "alleged circumstances under which they were found last night." These documents were copies and, unlike the other official military records admitted, did not contain a military certification.

B. Typographical Error in Judgment

In his second argument, Defendant contends that the trial court improperly included the judgment for Defendant's felony child abuse. The trial court stated in open court that judgment on this charge would be arrested. The State concedes this error as a typographical clerical error and agrees that it should be corrected. "When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (internal quotation marks omitted) (citation omitted). We remand so this error can be corrected.

III. Conclusion

We conclude that Defendant received a fair trial, free from reversible error. We, however, remand and direct the trial court to correct the error in Defendant's sentence and judgment.

NO ERROR; REMANDED TO CORRECT TYPOGRAPHICAL ERROR.

Judges STROUD and YOUNG concur.

Report per Rule 30(e).