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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-937

Filed 05 September 2023

Randolph County, No. 21 CRS 51083

STATE OF NORTH CAROLINA

v.

JESSIE JAQUAN PRATT

Appeal by defendant from judgment entered 11 March 2022 by Judge James M. Webb in Randolph County Superior Court. Heard in the Court of Appeals 9 August 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Michael T. Henry, for the State.*

*Leslie Rawls for defendant-appellant.*

TYSON, Judge.

Jessie Jaquan Pratt (“Defendant”) appeals from judgment entered after a jury’s verdict convicted him of second-degree murder. We find no error.

**I. Background**

Defendant and Olivia Phippen-McSwain were involved in a romantic relationship for approximately five years. Defendant and Phippen-McSwain

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procreated a child, who was born in September 2020.

Defendant and Pippen-McSwain agreed to an unwritten custody arrangement for care of their child. Defendant and Pippen-McSwain did not reside together, but their agreement provided for the care of their child when the other parent was working or busy. Both parents, in the event either of them became involved in a relationship, agreed their child was not to be in the presence of the romantic partner until Defendant and Pippen-McSwain had sat down and discussed the matter. Both had informed the other they were dating other persons.

Defendant had spent the prior three days with the child and his family in Candor. Pippen-McSwain had requested for Defendant to return the child to her home on the evening of 3 April 2021 in Asheboro. Defendant expected to arrive at 11:00 p.m. Defendant routinely carried a handgun and possessed a .40-caliber Beretta handgun that day.

Pippen-McSwain had received a call from her boyfriend, Robert Spencer, asking if he and two friends, William Gaddy and Nigel Shamburger, could visit her house for drinks before going to a party later that night. Pippen-McSwain did not want Defendant to encounter Spencer. Pippen-McSwain texted Defendant's phone to inform him she had company and to ask him to let her know when he was getting close to her home.

Defendant did not see this text message. When Defendant arrived at Pippen-McSwain's house, he saw Spencer sitting on the couch through the living room

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window. Defendant saw Spencer get up and begin “speed walking” towards the kitchen. Defendant believed this was a “trap” set by Pippen-McSwain to get him “locked up or killed”, and he wondered if Spencer thought he would be too fearful to come inside. Believing violence may occur, Defendant left his child sleeping in the car and went towards the door with the Beretta pistol at his side. Pippen-McSwain opened the door and urged Defendant to stop and not to enter her house.

Defendant pulled Pippen-McSwain out of the way and approached Spencer, while both Spencer and Gaddy moved towards the back door. Defendant noticed Gaddy “pass[ed] something” to Spencer while they were “trying to get out the back door.” Defendant believed the item was a gun. The item Gaddy passed was later determined to be a .40-caliber Glock pistol with a twenty-two round capacity magazine.

Spencer and Gaddy were unable to open the back door. Defendant and Spencer did not speak with each other and began exchanging gunfire. Spencer fired the .40-caliber Glock pistol three times before the weapon jammed. One bullet struck Defendant in the leg, but it passed “in and out” without striking bone. The other two shots struck the wall and chair behind Defendant.

Defendant emptied his Beretta .40-caliber pistol during the incident, striking Spencer nine times. Defendant testified Spencer had fired first. Spencer had entry wounds on his left side and back. During the incident, Pippen-McSwain covered Spencer by throwing herself on top of him while he fell. Pippen-McSwain was struck

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by a bullet behind her left ear, which continued through her skull “knock[ing] out [her] whole top row of teeth on her left side” and severed a “huge chunk of her tongue” as the bullet exited through her mouth.

Testimony tended to show Spencer was shot, while facing the back door. Four bullet holes were found on the floor beneath Spencer’s body and bullets were recovered from the dirt in the crawlspace beneath the kitchen. Responders found Spencer deceased on the kitchen floor.

Defendant purportedly did not know Phippen-McSwain had been struck, exited the home to his vehicle, placed his .40-caliber Beretta on top of his car, and called law enforcement. While on the call Defendant saw Phippen-McSwain bleeding and rendered aid to her, while awaiting medical assistance. Law enforcement recovered both Defendant’s .40 caliber Beretta pistol and the .40-caliber Glock pistol from beside Spencer’s body in the kitchen.

Defendant was indicted for first-degree murder on 5 April 2021. The day the case was called for trial on 7 March 2022, Defendant’s counsel filed a motion seeking a continuance to “allow Defendant’s Investigator to interview all potential witnesses and obtain a Ballistics Expert and others to examine all relevant physical evidence[.]” The next day Defendant also filed a *pro se* motion for a continuance and sought for his family to have additional time to seek other counsel. Following hearings on both 7 and 8 March 2022 the trial court denied Defendant’s motions for continuance.

Defendant testified on his own behalf. The trial court instructed the jury on

first-degree murder, second-degree murder, and voluntary manslaughter. The jury was also instructed on imperfect self-defense.

The jury found Defendant guilty of second-degree murder and the trial court sentenced Defendant in the mitigated range to an active sentence of 166 to 212 months in prison. Defendant appeals.

## **II. Jurisdiction**

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a2)(1) (2021).

## **III. Issue**

Defendant argues the trial court erred by denying his motions to continue.

## **IV. Standard of Review**

A motion to continue generally rests within the trial court's discretion and is reviewable on appeal only for an abuse of discretion. *State v. Thomas*, 294 N.C. 105, 111, 240 S.E.2d 426, 431 (1978) (citations omitted). When the motion to continue is based upon a constitutional right, "the question presented is one of law and not of discretion, and the order of the court below is reviewable" on appeal. *State v. Harris*, 290 N.C. 681, 686, 228 S.E.2d 437, 440 (1976) (citations omitted).

## **V. Defendant's Motion to Continue**

Defendant contends he received ineffective assistance of counsel and his due process rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and by Article I, Sections 19 and 23 of the North

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Carolina Constitution were violated.

Criminal defendants are constitutionally guaranteed “a fair and a competent attorney.” *Engle v. Isaac*, 456 U.S. 107, 134, 71 L.Ed.2d 783, 804 (1982). “To establish a constitutional violation, a defendant must show that he did not have ample time to confer with counsel and to investigate, prepare and present his defense.” *State v. Tunstall*, 334 N.C. 320, 329, 432 S.E.2d 331, 337 (1993) (citation omitted).

In order to show ineffective assistance of counsel, a defendant must satisfy the two-prong test announced by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668, 687, 80 L.Ed.2d 674, 693 (1984). This test for ineffective assistance of counsel has also been explicitly adopted by the Supreme Court of North Carolina for state constitutional purposes. *State v. Braswell*, 312 N.C. 553, 562-63, 324 S.E.2d 241, 248 (1985).

Pursuant to *Strickland*:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.

*Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693; accord *Braswell*, 312 N.C. at 561-62,

324 S.E.2d at 248.

Defendant has failed to show the trial court abused its discretion, and he has failed to demonstrate he suffered prejudice in the denial of his motions to continue. Defendant's appellate counsel asserts the additional time may have bolstered Defendant's self-defense claim. No additional evidence is proffered or tendered to support this claim. Defendant makes no showing of any deficient representation of his counsel through trial. Defendant did not and cannot meet either prong of *Strickland*. He cannot show the alleged errors are "so serious as to deprive [him] of a fair trial" nor did he demonstrate any prejudice. *Id.* Defendant's argument is overruled.

## **VI. Conclusion**

Defendant had nearly a year from the occurrence of the events until scheduled trial, and he had ample time to investigate, prepare, and present his defense. The trial court did not err in declining to grant Defendant's motions to continue filed immediately prior to scheduled trial. Defendant has not shown ineffective assistance of counsel.

Defendant received a fair trial, free from prejudicial errors he preserved and argued. We find no error in the jury's verdict or in the judgment and mitigated sentence entered thereon. *It is so ordered.*

NO ERROR.

Judges CARPENTER and FLOOD concur.

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Report per Rule 30(e).