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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. CO23-463

Filed 20 February 2024

Mecklenburg County, Nos. 21 CRS 209113-14

STATE OF NORTH CAROLINA

v.

JAMARIO CLINTON, Defendant.

Appeal by defendant from judgments entered 14 September 2022 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 20 November 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Laura H. McHenry, for the State.

Dysart Willis, by Drew Nelson, for the defendant-appellant.

STADING, Judge.

Defendant Jamario Clinton appeals from judgments entered after a jury convicted him of (1) attempted first-degree murder, (2) assault with a deadly weapon with intent to kill inflicting serious injury, and (3) possession of a firearm by a felon. For the reasons below, we find no error in the jury instruction but remand only for the purpose of correcting a clerical error in the aggravating factor form.

I. Background

On 21 March 2021, Christopher Coletrane (“Coletrane”) and his three-year-old daughter were playing at a park near his mother’s home. Approximately two or three hours later, Coletrane and his daughter were walking back to his mother’s home, when they were approached by defendant, who stopped his car and rolled down the passenger side window. Thinking defendant wanted to talk to him, Coletrane approached the car and stood about six feet from the window. Defendant leveled an explicit insult at Coletrane and shot him through the window, which struck him in the groin. Then, defendant exited the car and fired eleven more shots at Coletrane, hitting him multiple times in the left thigh and stomach. Coletrane collapsed on the ground, bleeding, and defendant drove away. Coletrane’s mother and sister heard the gunshots from their home and ran outside to get Coletrane’s daughter. Coletrane managed to pick himself up and fell into a nearby yard. Seeing that Coletrane was not dead, defendant doubled back and shot Coletrane again, this time striking his arm. A neighbor also rushed to help upon hearing gunshots and the daughter’s screams.

Despite sustaining multiple gunshot wounds—to his arm, groin, stomach, and thigh—Coletrane survived and testified at trial. The State also called Coletrane’s mother and the neighbor as witnesses. In its closing argument, the State specified that defendant’s first shot served as the basis for the charge of assault with a deadly weapon with intent to kill inflicting serious injury, while the “next twelve show you

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a premeditated and deliberate thought to bring about the course of those actions, to make sure that . . . Coletrane died.” The trial court read the general pattern jury instructions for each charge to the jury and did not specify which shootings should be the basis of each charge. The jury found defendant guilty of attempted first-degree murder, assault with a deadly weapon with the intent to kill inflicting serious injury, and possession of a firearm by a felon.

At the sentencing phase, the State requested that the jury consider the presence of Coletrane’s daughter at the scene as an aggravating factor for both charges of attempted first-degree murder and assault with a deadly weapon with the intent to kill inflicting serious injury. N.C. Gen. Stat. § 15A-1340.16(d)(13a) (2023). After closing arguments from the State and defendant, the trial court read the following general pattern jury instructions:

Now, having found the defendant guilty of those three offenses, you must now consider the following questions: Do you find from the evidence beyond a reasonable doubt the existence of the following aggravating factor: That factor is the defendant committed the offense and knew or reasonably should have known that a person under the age of 18, who was not involved in the commission of the offense, was in a position to see or hear the offense.

Following deliberation, the jury determined the existence of the aggravating factor beyond a reasonable doubt and returned the verdict form indicating they believed “[t]he defendant committed an offense and knew or reasonably should have known that a person under the age of 18 who was not involved in the commission of the

offense was in a position to see or hear the offense.” In conformity with the jury’s finding, the trial court completed an aggravating factor form, but only listed the assault conviction as the relevant offense.

Thereafter, the trial court issued two judgments, and applied the aggravating factor to both. In the attempted first-degree murder judgment, the trial court sentenced defendant to a term of 264–329 months of imprisonment. In the other judgment, the trial court consolidated the offenses of assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a felon, and sentenced defendant to 120–156 months of imprisonment to run concurrent with the sentence in the attempted first-degree murder judgment. On 14 September 2022, defendant gave oral notice of appeal.

II. Jurisdiction

This Court has jurisdiction to hear defendant’s appeal pursuant to N.C. Gen. Stat. §§ 7A-27 and 15A-1444 (2023).

III. Analysis

Defendant raises the following issues on appeal: (1) whether the trial court committed plain error when instructing the jury during the sentencing phase of the trial, and (2) whether the aggravating factor form contains a clerical error.

A. Jury Instructions

Defendant failed to object to the jury instructions during the sentencing hearing conducted under N.C. Gen. Stat. § 15A-1340.16 (2023). As a consequence,

we are only permitted to review defendant's proffered issue for plain error. N.C. R. App. P. 10(a)(4). "Plain error with respect to jury instructions requires the error be so fundamental that (i) absent the error, the jury probably would have reached a different verdict; or (ii) the error would constitute a miscarriage of justice if not corrected." *State v. Tollison*, 190 N.C. App. 552, 560, 660 S.E.2d 647, 652–53 (2008) (citations omitted). When reviewing for plain error, our Court "must examine the entire record and determine if the instructional error had a probable impact on the jury's finding of guilt." *Id.* at 560, 660 S.E.2d at 653 (citations omitted).

Defendant argues the trial court committed a fundamental error by failing to distinguish among offenses in its jury instructions and verdict sheet. At the contested phase concerning sentencing enhancement, the trial court instructed the jury they "must now consider whether an aggravating factor exists" and reminded the jury of the presumption that the factor does not exist and the State shall prove it beyond a reasonable doubt. Then, the trial court noted that "having found the defendant guilty of [the] three offenses," the jury should consider if "defendant committed the offense and knew or reasonably should have known that a person under the age of 18, who was not involved in the commission of the offense, was in a position to see or hear the offense." The instructions given by the trial court are a verbatim recitation of the North Carolina Pattern Jury Instruction for the relevant aggravating factor. N.C.P.I. – Crim. 204.25. Moreover, aside from beginning with "[t]he defendant committed an offense[.]" the language in the verdict form otherwise replicates the trial court's

instruction and sample verdict sheet provided by the pattern jury instructions. *See Tollison*, 190 N.C. App. at 557, 660 S.E.2d at 653.

Defendant contends the lack of specificity created confusing instructions and an unclear verdict form. He references dicta from our Supreme Court's decision in *State v. Long* that it "strongly disapprove[s] of the indiscriminate use of factors present in one offense to aggravate other offenses" and "[c]are must be taken to see that all aggravating factors are relevant to the offenses to which they are applied." 316 N.C. 60, 66, 340 S.E.2d 392, 396 (1986). However, in *State v. Long*, the Court evaluated the finding of a different aggravating factor which, under the circumstances, required a greater showing by the State. *Id.* at 65–66, 340 S.E.2d at 396. And, "[w]hile no appellate court in this State has ever held that the same factor may not be used to aggravate more than one conviction, the facts used to enhance a sentence must be supported by sufficient evidence in the record." *State v. Spellman*, 167 N.C. App. 374, 393, 605 S.E.2d 696, 708 (2004) (internal quotation marks and citations omitted).

Defendant argues "there is nothing in the record that conclusively identifies when the assault took place and when the attempted murder took place." He proffers the jury could have "based its assault verdict on the first shot and its attempted murder verdict on the other shots, as suggested by the [S]tate in its closing . . .; based its assault verdict on the first series of shots and its attempted murder verdict on the final series of shots; based its verdict on some other division of the shots; or made no

division of the shots at all when reaching its verdict.” Nonetheless, the record leads us to conclude that, regardless of how the trial court or the jury assigned the particular shots to the specific crimes, the evidence supports the jury’s finding that Coletrane’s very young daughter was present to see or hear both crimes.

Based on the testimony presented at trial, evidence demonstrated that the first series of gunshots occurred while Coletrane’s daughter was nearby to hear or see the offenses addressed by each judgment. In *State v. Allen*, our Court outlined the elements of attempted first-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury:

The elements of attempted first-degree murder are: (1) specific intent to kill another; (2) an overt act calculated to carry out that intent, which goes beyond mere preparation; (3) malice, premeditation, and deliberation accompanying the act; and (4) failure to complete the intended killing. The elements of assault with a deadly weapon with intent to kill inflicting serious injury are: (1) an assault, (2) with the use of a deadly weapon, (3) with an intent to kill, and (4) inflicting serious injury, not resulting in death. The requisite “intent to kill” may be inferred from the nature of the assault, the manner in which it was made, the conduct of the parties, and other relevant circumstances.

233 N.C. App. 507, 512, 756 S.E.2d 852, 858 (2014) (internal citations and quotation marks omitted).

The testimony surrounding the first encounter—before Coletrane’s daughter was relocated by his mother and sister—provided that defendant fired a number of gunshots at Coletrane causing bullet wounds. At trial, Coletrane testified as follows:

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He shot me in the groin, then he proceeded to get out the driver's door and came out around the side of the car and then he shot me in the left thigh twice and then proceeded to shoot me in the stomach eight more times. But then after that I fell to the ground, my daughter was crying.

The evidence showed that defendant acted with the intent to kill and seriously injure Coletrane when defendant verbally engaged Coletrane and fired the first gunshot. Furthermore, after the first gunshot, defendant continued to shoot Coletrane while he was already on the ground. “Where the State’s evidence showed the accused fired multiple gunshots, then premeditation, deliberation, and specific intent to kill may be inferred.” *State v. Legrand*, 281 N.C. App. 572, 891 S.E.2d 1, 5 (2023) (citing *State v. Chapman*, 359 N.C. 328, 377, 611 S.E.2d 794, 829 (2005)).

For these events underlying the elements of both offenses, Coletrane testified that his daughter was walking “beside” him and began “crying” when defendant “shot [him] in the left thigh twice and then proceeded to shoot [him] in the stomach eight more times.” Here, we cannot say that the trial court committed an error, let alone one so fundamental that absent the error, the jury probably would have reached a different verdict; or the error would constitute a miscarriage of justice if not corrected. *Tollison*, 190 N.C. App. at 560, 660 S.E.2d at 652–53. Therefore, we hold defendant has failed to demonstrate error, let alone plain error in the trial court’s instructions to the jury.

B. Clerical Error in Aggravating Factor Form

Next, defendant contends the trial court's aggravating factor form contains a clerical error. A clerical error is "an error resulting from a minor mistake or inadvertence, [especially] in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Taylor*, 156 N.C. App. 172, 177, 576 S.E.2d 114, 117–18 (2003) (internal quotation marks and citation omitted). If this Court discovers a clerical error in a trial court's judgment, "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, 696–97 (2008) (internal quotation marks and citations omitted).

The record shows the "Felony Judgment Findings of Aggravating and Mitigating Factors" form ("form AOC-CR-605") only lists a single file number as the relevant offense—21CRS209114—which represents the conviction for assault with a deadly weapon with intent to kill inflicting serious injury. However, the attempted first-degree murder judgment was based on the existence of an aggravating factor and references the aggravating factor form. Accordingly, it appears that the trial court inadvertently failed to list the offense and file number for the attempted first-degree murder conviction on the form. For this reason, we remand this matter to the trial court with instructions to amend form AOC-CR-605 to include the attempted first-degree murder conviction.

IV. Conclusion

We hold that the trial court did not commit plain error in its instructions to the jury during the sentencing phase of the trial. Furthermore, we remand the trial court's judgment, but only for the purpose of correcting the clerical error.

NO ERROR IN PART; REMANDED IN PART.

Judges STROUD and THOMPSON concur.

Report per Rule 30(e).