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NO. COA01-791

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

Gaston County  
No. 99 CRS 23208

MAURICE GARVIN

Appeal by defendant from judgment dated 15 November 2000 by Judge Marcus L. Johnson in Superior Court, Gaston County. Heard in the Court of Appeals 17 April 2002.

*Attorney General Roy Cooper, by Assistant Attorney General W. Wallace Finlator, Jr., for the State.*

*Miles and Montgomery, by Lisa Miles, for defendant.*

McGEE, Judge.

Maurice Garvin (defendant) was indicted on 6 July 1999 for assault with a deadly weapon with intent to kill inflicting serious injury in violation of N.C. Gen. Stat. § 14-32(a). Defendant pled not guilty and was tried before a jury. At the close of the evidence and before closing arguments, the trial court learned from a probation officer that one of the jurors, Mr. Sanders (Sanders), was on probation for misdemeanor employment security fraud.

Over defendant's objection, the trial court permitted the State and defendant to question Sanders. Upon questioning by the State, Sanders stated that he had been on probation for one year,

had "a couple more months" left on probation, and was currently making restitution pursuant to a court order. Defendant asked Sanders whether he felt he "could be fair and impartial, continue to be fair and impartial in the trial of these cases?" Sanders responded, "Yes."

The trial court stated:

Mr. Sanders, I will excuse you on that. It's a misdemeanor that doesn't automatically disqualify you, but as long as that probation matter is pending, then that means that you are involved in a case whereby the State is your adversary. So that's the reason why you would have to be excused. It is not that it would automatically disqualify you from service. If it had been a civil case, it wouldn't have mattered, but since the State is a party in this case then that would mean you are involved in a litigation. You are a juror in a case where one of your adversaries is in litigation. So therefore I will excuse you but thank you.

The trial court substituted an alternate juror for Sanders and charged the jury. The jury found defendant guilty of assault with a deadly weapon with intent to kill inflicting serious injury. Defendant was sentenced to 132 months to 168 months in prison. From this judgment, defendant appeals.

Defendant raised eleven assignments of error on appeal; however, in his brief to our Court, he only argues one assignment of error. The remaining assignments of error, therefore, are deemed abandoned. N.C.R. App. P. 28(a) ("Questions raised by assignments of error in appeals from trial tribunals but not then presented and discussed in a party's brief, are deemed abandoned.").

Defendant argues the trial court committed reversible error in excusing Sanders for cause at the close of the evidence. Specifically, defendant contends there was no indication that Sanders would be unable to render a fair and impartial verdict in defendant's case. Defendant also argues that the trial court improperly abdicated its judicial discretion in excusing Sanders. Further, defendant contends Sanders' excusal from the jury prejudiced defendant because "[p]rejudice can be demonstrated by the very fact of the defendant's conviction following the removal of a juror whom the defendant wanted but the State did not."

"While there is no statutory provision covering the situation when a party seeks to challenge a juror after impanelment, N.C.G.S. § 15A-1215(a) allows the trial court to replace a juror with an alternate juror should the original one become disqualified or be discharged for some reason." *State v. Richardson*, 341 N.C. 658, 672-73, 462 S.E.2d 492, 502 (1995) (internal citation omitted). The trial court "may excuse a juror without challenge by any party if [it] determines that grounds for challenge for cause are present." N.C. Gen. Stat. § 15A-1211(d) (1999). "A challenge for cause to an individual juror may be made by any party on the ground that the juror . . . is unable to render a fair and impartial verdict." N.C. Gen. Stat. § 15A-1212(9) (1999).

A ruling by the trial court on whether to excuse a juror for cause is solely within the discretion of the trial court, and the trial court's decision will only be overturned on appeal if an abuse of discretion is shown. *State v. Reed*, 355 N.C. 150, 155,

558 S.E.2d 167, 171 (2002). "An 'abuse of discretion' occurs where the trial judge's determination is '"manifestly unsupported by reason"' and is '"so arbitrary that it could not have been the result of a reasoned decision."' " *Id.* (quoting *State v. T.D.R.*, 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998) (quoting *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 832 (1985))). We note that "a prospective juror's bias may not always be 'provable with unmistakable clarity [and,] [i]n such cases, reviewing courts must defer to the trial court's judgment concerning whether the prospective juror would be able to follow the law impartially.'" *State v. Brogden*, 334 N.C. 39, 43, 430 S.E.2d 905, 908 (1993) (quoting *State v. Davis*, 325 N.C. 607, 624, 386 S.E.2d 418, 426 (1989), *cert. denied*, 496 U.S. 905, 110 L. Ed. 2d 268 (1990)).

We disagree with defendant that the trial court abdicated its discretion in excusing Sanders. Rather, we find the trial court properly exercised its discretion in dismissing Sanders for cause and this decision is supported by the record before us. The trial court conducted an inquiry of Sanders and, although Sanders indicated he could be fair and impartial, he also confirmed his probationary status based upon a conviction for misdemeanor employment security fraud. The trial court explained that, although conviction of a misdemeanor would not automatically disqualify Sanders as a juror, because defendant's case was a criminal one, Sanders' probationary status meant he was a juror in a case where his own adversary, the State, was a party. "It is well established that a trial judge has the power to regulate and

supervise the selection of a jury so that the defendant and the State have the benefit of trial by an impartial jury." *State v. McLamb*, 313 N.C. 572, 575, 330 S.E.2d 476, 478 (1985) (citing *State v. Harris*, 283 N.C. 46, 194 S.E.2d 796, cert. denied, 414 U.S. 850, 38 L. Ed. 2d 99 (1973)). In the present case, the trial court properly exercised its discretion in removing Sanders.

Furthermore, although defendant argues he was prejudiced by Sanders' excusal, he has failed to show that the trial court's decision was manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision. We find no abuse of discretion in the trial court's decision.

No error.

Judges WALKER and CAMPBELL concur.

Report per Rule 30(e).