IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1061

Filed: 21 July 2020

Nash County, Nos. 17 CRS 1197, 1286, 1287, 1288, 50956, 50959

STATE OF NORTH CAROLINA

v.

ANTONIO RAYNAL HUNTER GRAY

Appeal by defendant from judgments entered 30 May 2019 by Judge J. Carlton Cole in Nash County Superior Court. Heard in the Court of Appeals 10 June 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Jonathan J. Evans, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for defendant.

ARROWOOD, Judge.

Antonio Raynal Hunter Gray ("defendant") appeals from judgments entered upon his convictions for second-degree murder, two counts of felony hit-and-run, two counts of felony infliction of serious injury by vehicle, felony death by vehicle, driving

while intoxicated, driving while license revoked, and reckless driving. For the following reasons, we hold that defendant received a trial free of error.

I. Background

This case involves a fatal automobile collision in Nash County. On the morning of 5 March 2019, several motorists reported seeing a silver or grey Infiniti driving erratically, weaving through northbound traffic on Interstate 95 at excessive speeds. The Infiniti eventually collided with the rear bumper of another vehicle. The other vehicle went airborne and flipped several times before coming to a stop. The Infiniti was able to regain control and continued north on Interstate 95.

Several motorists stopped to render assistance to the passengers of the flipped car. One such motorist decided to pursue the Infiniti, which he found minutes later crashed into the median guardrail. As he called 911, the motorist observed two black males beside the vehicle, one taller and one short and stocky. He observed that both looked intoxicated. As he approached the Infiniti, the shorter man asked him for a ride, which he refused. The short individual then retrieved an item from the Infiniti's glove box and left the scene. The taller individual, later identified as defendant, stayed at the scene and insisted that he was not driving.

State Highway Patrol Trooper Fred Demuth soon arrived at the scene. He observed that defendant was barely able to stand, leaned against the car for stability, and could not walk without assistance. Defendant smelled strongly of alcohol and

appeared intoxicated. Due to his impairment, defendant was assessed by EMS at the scene. Defendant did not respond to questions asked by EMS personnel, who left without rendering any treatment to defendant.

Trooper Demuth arrested defendant for DWI and drove him to the Nashville Police Department for further investigation. Trooper Demuth had to assist in walking defendant into an interview room at the police station. Once situated in the interview room, he read defendant his *Miranda* rights and his intoxilyzer rights, to which defendant indicated his understanding verbally or by nodding his head. Defendant then wrote, signed, and dated a statement in his own hand on a piece of notebook paper. This statement read "I was the driver of the car tonights fulling responsible of all acting this that happen tonight I am Tony Gray Jr. for all acting that happen tonight." Defendant subsequently refused to submit to an intoxilyzer test. A warrant was obtained for a search of his blood, which revealed a BAC of 0.19.

On 10 April 2017 defendant was charged with murder, felony death by vehicle, reckless driving, driving while license revoked, driving while impaired, attaining habitual felon status, and two counts each of felony serious injury by vehicle and felony hit-and-run causing serious injury. Before trial, defendant filed a Motion to Suppress the statement he made to Trooper Demuth while in custody, arguing that his level of intoxication rendered the statement involuntary. The trial court heard defendant's motion on 17 April 2019.

The trial court denied defendant's motion by written order entered 13 May 2019. The case then proceeded to the evidentiary phase of trial, the events of which are not at issue on appeal. The evidence presented at trial paralleled that which was adduced at the hearing on defendant's motion.

After defendant rested his case, the trial court instructed the jury on the relevant law and the jury commenced their deliberations. After two hours of deliberation on the afternoon of 29 May 2019, the jury indicated to the trial court that it was eleven-to-one in favor of conviction. The trial court provided the jury the option to either continue deliberations or reconvene for further deliberation in the morning. The jury elected to reconvene the following morning. After thirty minutes of deliberation the next morning, the jury sent the trial court a note indicating that its votes remained the same. In the note, the foreperson offered that the "[j]uror for no doesn't want to vote without eyewitness account of Defendant being the driver." Over defendant's objection, the court responded to this note by repeating its prior instruction on circumstantial evidence. Defendant was convicted on all counts and sentenced by the trial court. Defendant timely noted his appeal.

II. Discussion

On appeal, defendant argues that the trial court: (a) plainly erred in denying his motion to suppress the statement he made while in police custody; (b) erred by reinstructing the jury on circumstantial evidence in response to the jury's note

indicating that the jury was eleven-to-one in favor of conviction; (c) erred in accepting ACIS printouts as proof of two prior convictions to establish defendant's status as a habitual felon; and (d) erred in sentencing defendant upon his second-degree murder conviction by assigning him an extra sentencing point for being on probation at the time of the offense. We address each argument in turn.

A. Order Denying Motion to Suppress

Defendant first argues that the trial court erred in denying his motion to suppress his written statement made at the police station because he was so intoxicated as to render this statement involuntary. As defendant concedes, we review this challenge for plain error because defendant failed to subsequently object to the admission of this statement at trial. *State v. Williams*, 248 N.C. App. 112, 117-19, 786 S.E.2d 419, 424-25 (2016).

> A defendant's inculpatory statement is admissible when it was given voluntarily and understandingly. A confession may be involuntary when circumstances precluding understanding or the free exercise of will were present. While intoxication is a circumstance critical to the issue of voluntariness, intoxication at the time of a confession does not necessarily render it involuntary. It is simply a factor to be considered in [the totality of the circumstances when] determining voluntariness. An inculpatory statement is admissible unless the defendant is so intoxicated that he is unconscious of the meaning of his words.

State v. Phillips, 365 N.C. 103, 114, 711 S.E.2d 122, 133 (2011) (internal quotation marks and citations omitted), *cert. denied*, 565 U.S. 1204, 182 L. Ed. 2d 176 (2012).

"[W]here the evidence is merely in conflict on the question as to whether or not a confession was voluntary, the ruling of the court is conclusive on appeal." *State v. Hammond*, 229 N.C. 108, 111, 47 S.E.2d 704, 706 (1948) (citation omitted).

Defendant argues that the trial court misinterpreted the applicable legal standard in its order, denying his motion to suppress upon a belief that involuntariness by intoxication required defendant to be "unconscious" in a cognitive sense, rather than unaware of the effect and import of his words. Defendant's argument rests upon the trial court's finding that "[d]efendant was not unconscious and not subject to fits of mania."

Even assuming *arguendo* defendant's contention that the court misinterpreted the applicable standard, "[t]he question for review is whether the ruling of the trial court was correct and not whether the reason given therefor is sound or tenable. The crucial inquiry for this Court is admissibility and whether the ultimate ruling was supported by the evidence." *State v. Hester*, 254 N.C. App. 506, 515, 803 S.E.2d 8, 15 (2017) (emphasis, internal quotation marks, and citation omitted). "[A] correct decision of a lower court will not be disturbed because a wrong or insufficient or superfluous reason is assigned." *Id.* at 515, 803 S.E.2d at 15-16 (internal quotation marks and citation omitted). Defendant's argument nonetheless fails, because competent evidence and the order's unchallenged findings of fact support the trial court's ultimate ruling that defendant's statement was voluntary and admissible.

Defendant does not challenge any of the order's findings of fact. They are therefore binding on appeal. *State v. Evans*, 251 N.C. App. 610, 613, 795 S.E.2d 444, 448 (2017). The trial court's binding, unchallenged findings of fact include the following:

> Trooper Demuth set up the intoxilyzer equipment and read Defendant his rights pursuant to N.C. Gen. Stat. § 20-16.2(a). After each of the five rights, Trooper Demuth asked Defendant if he understood and Defendant nodded his head in the affirmative. Trooper Demuth testified that Defendant gave no indication that he did not understand what was being explained to him. Trooper Demuth then proceeded to read Defendant his Miranda rights. In keeping with his standard practice, Trooper Demuth paused after each Miranda right and asked Defendant whether he understood, to which Defendant either nodded his head in the affirmative or said "Yes." Defendant then began telling Trooper Demuth what happened on Interstate 95 to which Trooper Demuth asked Defendant to write it down on a piece of notepad paper. Defendant then proceeded to write [his statement] in his own handwriting, signed said statement and dated said statement. At the time Defendant wrote said statement, Trooper Demuth found Defendant to be very cooperative and Defendant wrote said statement without being threatened or coerced and without any assistance from Trooper Demuth.
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> . . . .
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> Based on what Defendant's Certified Driving Record shows, [t]he Court . . . finds that he was familiar with law enforcement officers and law enforcement investigations and proceedings specifically involving the offense of Driving While Impaired.
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> . . . .

> Defendant was able to understand his rights and was able to write [his] statement in his own hand . . . .

These findings support the trial court's conclusion of law that defendant made his written statement voluntarily in spite of his intoxication. Defendant was familiar with law enforcement procedures for investigating suspected instances of Driving While Intoxicated. Defendant had the wherewithal to understand his rights under *Miranda* and N.C. Gen. Stat. § 20-16.2(a) (2019) and communicate this understanding to Trooper Demuth. He subsequently wrote, signed, and dated his statement in his own hand, in a manner that is predominantly legible and coherent. Trooper Demuth's testimony that defendant dated his statement without being informed of the date further supports the trial court's finding that defendant was not so intoxicated as to be unconscious of the meaning of his words. Therefore, the trial court did not plainly err in denying defendant's motion to suppress.

B. Jury Instruction

Defendant next argues that the trial court erred in repeating its prior instruction on circumstantial evidence in response to the jury's note indicating that it was eleven-to-one in favor of conviction, with the one being opposed to conviction without an eyewitness identification of defendant as the driver. We disagree.

Article I, Section 24 of the North Carolina Constitution guarantees a defendant the right to a unanimous jury verdict. *State v. Wilson*, 363 N.C. 478, 482-83, 681

S.E.2d 325, 329 (2009). "Where the [trial court's] error [in instructing the jury] violates a defendant's right to a unanimous jury verdict under Article I, Section 24, we review the record for harmless error. The State bears the burden of showing that the error was harmless beyond a reasonable doubt." *Id.* at 487, 681 S.E.2d at 331 (internal citations omitted).

> It is well settled that a trial judge has no right to coerce a verdict, and a charge which might reasonably be construed by a juror as requiring him to surrender his well-founded convictions or judgment to the views of the majority is erroneous. It has long been the rule in this State that in deciding whether a court's instructions force a verdict or merely serve as a catalyst for further deliberations, an appellate court must consider the circumstances under which the instructions were made and the probable impact of the instructions on the jury. Thus, in determining whether the trial court's actions are coercive, we must look to the totality of the circumstances.

State v. Lee, 218 N.C. App. 42, 55, 720 S.E.2d 884, 893-94 (2012) (alterations, internal quotation marks, and citations omitted).

The cases defendant cites in support of his invocation of the right to an uncoerced jury verdict are inapposite to the trial court's reinstruction in the instant case. In the cases cited by defendant, the trial court's further instructions could be inferred to express its frustration with the jury's inability to reach a unanimous guilty verdict, and: (a) imply that it would require the jury to deliberate for an unreasonably extended period until it reached a verdict, or (b) express an opinion on the defendant's guilt or innocence. *See, e.g.*, *State v. Beaver*, 322 N.C. 462, 463-65, 368 S.E.2d 607,

608-609 (1988); *State v. Dexter*, 151 N.C. App. 430, 433-34, 566 S.E.2d 493, 495-96, *aff'd*, 356 N.C. 604, 572 S.E.2d 782 (2002); *State v. Sutton*, 31 N.C. App. 697, 701-703, 230 S.E.2d 572, 574-75 (1976).

In the instant case, the trial court made no untoward remarks to the jury of this kind. Rather, it reinstructed the jury on an issue of evidentiary law raised by the jury's note. *See State v. Crane*, 11 N.C. App. 721, 722, 182 S.E.2d 225, 226 (1971) (reviewing additional instruction addressing evidentiary issue raised in jury note for abuse of discretion). Defendant argues that the court's failure to repeat the instructions in N.C. Gen. Stat. § 15A-1235(b) (2019) in conjunction with its instruction on circumstantial evidence would lead the holdout juror to reasonably interpret the additional instruction to require that he or she abandon his or her conscientious convictions and join the other jurors in their verdict of guilty. We find no merit in this argument. *See State v. Prevette*, 317 N.C. 148, 164, 345 S.E.2d 159, 169 (1986) ("[T]he trial court is in the best position to determine whether further additional instruction will aid or confuse the jury in its deliberations, or if further instruction will prevent or cause in itself an undue emphasis being placed on a particular portion of the court's instructions."); *State v. Sanders*, 81 N.C. App. 438, 442, 344 S.E.2d 592, 594 (1986) ("Mere failure to follow the form instructions of [N.C. Gen. Stat. §] 15A-1235 is not in itself reversible error.").

The record shows that the trial court delivered its instruction to all members of the jury. The court did not opine on whether the holdout juror should abandon his or her inclination not to convict without an eyewitness identification. The trial court merely gave a general instruction for the jury to consider all the evidence, and that any circumstantial evidence relevant to a fact in issue could be given the same weight as direct evidence. Considering the totality of the circumstances, we hold that this instruction did not violate defendant's right to a unanimous jury verdict.

C. Proof of Prior Convictions

Defendant's third argument on appeal is that the trial court erred in accepting ACIS printouts as proof of two prior convictions to establish defendant's status as a habitual felon. For the reasons stated in our opinion in *State v. Waycaster*, this argument is without merit. 260 N.C. App. 684, 691, 818 S.E.2d 189, 195 (2018) (holding ACIS printouts "sufficient evidentiary proof" of defendant's prior convictions for conviction under the Habitual Felon Act, where clerk of court "testified that the printout was a certified true copy of the information in ACIS regarding [prior] judgment[s,] . . . was the same as [a] judgment and . . . is a different way of recording what's on a judgment"), *disc. rev. allowed*, 372 N.C. 56, 822 S.E.2d 618 (2019). In the instant case, the testimony of the employee for the Edgecombe County Clerk of Court regarding the ACIS printouts for defendant paralleled the foundational testimony provided in *Waycaster* in all material respects. We are therefore compelled to follow

Waycaster and hold that the State sufficiently proved defendant's status as a habitual felon by introducing the ACIS printouts of his prior convictions. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989).

D. Prior Record Level Determination

In his final argument, defendant argues that the trial court erroneously added one extra point to his prior record level in its sentencing on the second-degree murder conviction. *See* N.C. Gen. Stat. § 15A-1340.14(b)(7) (2019) (adding extra point on prior record level if defendant was on probation at time of offense). Defendant maintains that the court could not do so because the State failed to prove, and he did not stipulate, that he was on probation at the time of the offense.

"The State must provide a defendant with written notice of its intent to prove the existence of . . . a prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. A defendant may waive the right to receive such notice." N.C. Gen. Stat. § 15A-1340.16(a6) (2019). Evidence that a defendant was on probation at the time of his commission of an offense must be submitted for the jury's determination. N.C. Gen. Stat. § 15A-1340.16(a5). Here, the State failed to provide defendant the prescribed notice. Defendant did not waive the State's failure to provide proper notice, nor did he stipulate to being on probation at the time of the offense. Therefore, the trial court erred in assigning an extra point to defendant's prior record level.

However, as defendant acknowledges in his Reply Brief, this error was harmless because it did not enhance his prior record level. He nonetheless requests remand of his second-degree murder judgment for the limited purpose of fixing this clerical error. *See State v. Everette*, 237 N.C. App. 35, 44, 764 S.E.2d 634, 640 (2014) (citation omitted) (treating miscalculation of prior record level points as clerical error and remanding for limited purpose of fixing error in judgment). Finding merit in his request, we remand for correction of the clerical error.

III. Conclusion

For the foregoing reasons, we find no error in defendant's trial and remand for the limited purpose of fixing the aforementioned clerical error in the judgment sentencing defendant upon his second-degree murder conviction.

NO ERROR; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges DILLON and YOUNG concur.

Report per Rule 30(e).