NO. COA06-894

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v. Catawba County
Nos. 05CRS006885-86

CEDRIC CARVETTE ARNOLD

Appeal by defendant from judgment entered 25 January 2006 by Judge David S. Cayer in Catawba County Superior Court. Heard in the Court of Appeals 2 April 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Laura J. Gendy, for the State.

Thorsen Law Office, by Haakon Thorsen, for defendant-appellant.

HUNTER, Judge.

Defendant appeals from a judgment entered on jury convictions of uttering a forged instrument, obtaining property by false pretense, and habitual felon status.

The State presented evidence tending to show that on 4 May 2004, Michael Brannock returned to his apartment in Hickory where he stayed during weekends and found the door to the apartment open. He also observed that the contents of a file cabinet were strewn all over the kitchen area. Among the items in the file cabinet were blank checks on the bank account of Brannock Masonry, a

business he closed in the early 1990's. He had also closed the company's bank accounts.

On 3 May 2004, a man came into La Milagrosa, a grocery store in Hickory, and asked to cash a check. Manfredo Montano, who was working as a cashier in the store at the time, asked the man, whom he identified as defendant, for identification. Defendant produced a social security card. Montano made a photocopy of the card and check and cashed the check. Montano kept the photocopy.

The court admitted the photocopy into evidence. The check, written on the account of Brannock Masonry, was made payable to "Cedric Arnold." The social security card was issued to "Cedric Carvette Arnold." Brannock identified the check as one of the checks that had been in the file cabinet. He did not write the check, did not sign it, and did not authorize anyone else to sign it. Although the surname of the signature was his, the first name was not.

Upon learning the check was dishonored by the bank, Montano called the telephone number of the "owner of the check" listed on the check. Brannock answered and explained that someone had broken into his apartment and stolen checks.

On 18 May 2004 Officer Casey McClelland and another officer of the Hickory Police Department interviewed defendant at the police station concerning several break-ins of apartments in the area, as well as the forgery of the check cashed at La Milagrosa. Defendant objected to the admission of evidence obtained during the interview. After conducting a *voir dire*, the court overruled the

objection. Among other things, defendant provided the officers with a social security card as identification. Defendant stated to them that the card had never been stolen or out of his possession. The officers matched the card presented to them to the card that was presented to Montano.

Defendant did not present any evidence.

Defendant brings forward four assignments of error. All are without merit.

First, defendant contends the court erred by denying his motion to suppress evidence obtained from defendant during the interview at the police station. He argues the evidence should have been excluded as the product of a custodial interrogation without *Miranda* warnings having been given.

Warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444, 16 L. Ed. 2d 694, 706 (1966), are required only when a defendant is subjected to custodial interrogation. *State v. Gaines*, 345 N.C. 647, 661, 483 S.E.2d 396, 404, *cert. denied*, 522 U.S. 900, 139 L. Ed. 2d 177 (1997). As defined in *Miranda*, custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444, 16 L. Ed. 2d at 706 (footnote omitted). The determination of whether a custodial interrogation occurred is a question of law that this Court fully reviews. *State v. Patterson*, 146 N.C. App. 113, 121, 552 S.E.2d 246, 253 (2001). The test we must apply is

"whether a reasonable person in the suspect's position would feel free to leave." *Gaines*, 345 N.C. at 662, 483 S.E.2d at 405.

In denying the motion in the case at bar, the trial court found that upon arriving at the police station, defendant was told that he was not under arrest. Officer McClelland left the interview room to make a copy of the social security card. When Officer McClelland returned, defendant had left the interview room and walked into the lobby. Officer McClelland asked defendant whether the card had ever been lost or stolen. Defendant responded that it had not. At that point defendant left the police department. All of these events occurred within a time span of fifteen minutes. Based upon these findings, the trial court concluded that the evidence was not obtained as a result of a custodial interrogation.

We agree with the trial court's conclusion. Defendant was not under arrest. He was free to walk about the police station and to leave, which he did.

Second, defendant contends the court erred by denying his motion for a mistrial made after the court called to the parties' attention a statement made to him by a juror during a recess. The judge related that as he was headed back to chambers, one of the jurors stated to him: "'Sir, God bless you, I pray for our court system every day[.]'" Defendant "for the record" moved for a mistrial and stated "other than that I don't think there's much else that we can say about it."

"[A] motion for mistrial must be granted if there occurs an incident of such a nature that it would render a fair and impartial trial impossible under the law." *State v. McCraw*, 300 N.C. 610, 620, 268 S.E.2d 173, 179 (1980). However, "[a] mistrial should be granted only when there are improprieties in the trial so serious that they substantially and irreparably prejudice the defendant's case and make it impossible for the defendant to receive a fair and impartial verdict." *State v. Laws*, 325 N.C. 81, 105, 381 S.E.2d 609, 623 (1989), *judgment vacated on other grounds*, 494 U.S. 1022, 108 L. Ed. 2d 603 (1990). "In the event of some contact with a juror it is the duty of the trial judge to determine whether such contact resulted in substantial and irreparable prejudice to the defendant. It is within the discretion of the trial judge as to what inquiry to make." *State v. Willis*, 332 N.C. 151, 173, 420 S.E.2d 158, 168 (1992). "The determination of the existence and effect of jury misconduct is primarily for the trial court whose decision will be given great weight on appeal." *State v. Bonney*, 329 N.C. 61, 83, 405 S.E.2d 145, 158 (1991).

The decision whether or not to declare a mistrial is addressed to the discretion of the trial court. *State v. Upchurch*, 332 N.C. 439, 453, 421 S.E.2d 577, 585 (1992). "A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision." *State v. Wilson*, 313 N.C. 516, 538, 330 S.E.2d 450, 465 (1985).

In denying the motion, the judge stated that he did not see the remark being made in the presence of other jurors. He also noted that "[i]t was a totally neutral comment in the sense that it didn't say anything about this case or show any predisposition or bias on the part of this case to say that she prays for the court system every day and so I will deny the motion for mistrial." We find no abuse of discretion.

Third, defendant contends he was denied effective assistance of counsel because counsel failed to request examination of the juror who made the statement to the judge. To prevail on a claim of ineffective assistance of counsel, a defendant must show (1) counsel's performance was seriously deficient, and (2) his defense was so prejudiced by counsel's deficient performance that it is reasonably probable that had the errors not been made, the outcome of the proceeding would have been different. *State v. Braswell*, 312 N.C. 553, 562-63, 324 S.E.2d 241, 248-49 (1985). Defendant did not make this showing. The juror's statement failed to suggest any bias or expression of opinion as to defendant's guilt or innocence. The evidence of defendant's guilt is also overwhelming. This assignment of error is overruled.

Finally, defendant contends the court erred by denying his motion to dismiss the habitual felon indictment because it failed to allege the name of the state against whom the prior felony offenses were committed. He argues the present indictment never mentions the offenses were committed against the State of North Carolina or in violation of North Carolina statutes. He

acknowledges, however, that the indictment does contain references to "NC" and "NCGS."

N.C. Gen. Stat. § 14-7.3 (2005) provides in pertinent part that "[a]n indictment which charges a person with being an habitual felon must set forth . . . the name of the state or other sovereign against whom said felony offenses were committed . . . ." *Id.* Strict compliance with this requirement has not been mandated by the appellate courts because the purpose of the habitual felon indictment "is simply to provide notice to the defendant that he will be tried as a recidivist." *State v. Montford*, 137 N.C. App. 495, 500, 529 S.E.2d 247, 251, *cert. denied*, 353 N.C. 275, 546 S.E.2d 386 (2000). We have stated "the name of the state need not be expressly stated if the indictment sufficiently indicates the state against whom the felonies were committed." *State v. Mason*, 126 N.C. App. 318, 323, 484 S.E.2d 818, 821 (1997), *cert. denied*, 354 N.C. 72, 553 S.E.2d 208 (2001). We have also held that an habitual felon indictment which charges each underlying conviction as a violation of an enumerated North Carolina General Statute "is a sufficient statement of the name of the state or sovereign against whom the felonies were committed to comport with the requirements of [N.C. Gen. Stat.] § 14-7.3[.]" *State v. Williams*, 99 N.C. App. 333, 335, 393 S.E.2d 156, 157 (1990).

A representative allegation in the indictment at bar charges that "[o]n or about DECEMBER 14, 1988[,] the above named defendant did commit the felony of BREAKING AND ENTERING, in violation of NCGS 14-54, and that on or about FEBRUARY 15, 1989[,] the above

named defendant was convicted of the felony of BREAKING AND ENTERING in the Superior Court of MECKLENBURG County, NC[.]" We conclude the usage of generally accepted and understood abbreviations to refer to North Carolina and the North Carolina General Statutes is sufficient to comply with the requirements of N.C. Gen. Stat. § 14-7.3.

We hold defendant received a fair trial, free of prejudicial error.

No error.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).