NO. COA12-310
NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2012

STATE OF NORTH CAROLINA

v. Halifax County
Nos. 10 CRS 1215, 051997

ANTWAAN DEON CLANTON,
Defendant.

Appeal by defendant from judgments entered 28 September 2011 and 25 October 2011 by Judge Alma L. Hinton in Halifax County Superior Court. Heard in the Court of Appeals 8 October 2012.

*Roy Cooper, Attorney General, by Charles G. Whitehead, Assistant Attorney General, for the State.*

*Glover & Petersen, P.A., by Ann B. Petersen and James R. Glover, for defendant-appellant.*

MARTIN, Chief Judge.

Defendant Antwaan Deon Clanton was indicted by a grand jury that alleged, between 7 October and 15 October 2009, defendant committed the following offenses: felonious breaking or entering in violation of N.C.G.S. § 14-54(a); felonious larceny after breaking or entering in violation of N.C.G.S.

§ 14-72(b)(2); willful and wanton injury to real property in violation of N.C.G.S. § 14-127; and being a habitual felon in violation of N.C.G.S. § 14-7.1. In one of the bills of indictment, defendant was charged with breaking a window in order to gain entry into the residence of Mr. James Parrish in Weldon, North Carolina. Investigators with the Halifax County Sheriff's Office collected samples of blood found near the broken window inside Mr. Parrish's residence, as well as on the wall of a bedroom located in the rear of the residence. A forensic DNA analyst with North Carolina's State Bureau of Investigation identified the genetic profile of each of the blood samples collected from Mr. Parrish's residence and determined that the blood found near the window and on the bedroom wall came from the same individual. The genetic profile isolated from the blood samples at the scene was then compared with genetic profiles stored in the Combined DNA Index System ("CODIS"), which resulted in a "hit" or match to the genetic profile of defendant. Mr. Parrish testified that he did not know defendant and that he never gave defendant permission to enter his residence on any occasion.

On 28 September 2011, a jury found defendant guilty of felonious breaking or entering, felonious larceny, and injury to real property. After the jury returned its verdicts, defense

counsel requested that the jury be polled. While polling the jury——specifically, while the clerk was polling Juror Number 4——defendant's mother, who was sitting in the audience, "became disruptive." In the midst of his mother's disruptive outburst, defendant himself "became disruptive and shouted obscenities during the course of his disruption." Before defendant could be subdued by law enforcement officers, defendant overturned counsel's table and assaulted the officers who attempted to restrain him. As a result of defendant's disruption, the court released the jury for lunch. After reconvening in another courtroom, the court resumed the polling of the jury, with defendant and his counsel observing the proceedings from the Halifax County jail by video transmission. After the polling was completed, and all jurors having indicated their assent to the verdicts, the court then released the jury from its service and continued defendant's sentencing until 24 October 2011, at which time the court convened another jury to consider whether defendant was a habitual felon. After the second jury returned a guilty verdict on the habitual felon allegation, the trial court sentenced defendant to two consecutive terms of 168 to 211 months imprisonment. Defendant appeals.

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Defendant first contends the trial court erred by releasing

the jury for lunch before the clerk had completed polling each individual member of the jury.

N.C.G.S. § 15A-1238 provides in relevant part that, "[u]pon the motion of any party made after a verdict has been returned *and before the jury has dispersed*, the jury must be polled." N.C. Gen. Stat. § 15A-1238 (2011) (emphasis added); *State v. Dow*, 246 N.C. 644, 646, 99 S.E.2d 860, 862 (1957) (per curiam) ("When requested in apt time, a party is entitled to have the jury polled; that is, an inquiry directed to each juror in order to ascertain his assent to the announced verdict."). "The purpose of polling the jury is to ensure that the jurors unanimously agree with and consent to the verdict at the time it is rendered." *State v. Black*, 328 N.C. 191, 198, 400 S.E.2d 398, 402 (1991) (citing *Lipscomb v. Cox*, 195 N.C. 502, 505, 142 S.E. 779, 781 (1928)). "The rationale behind requiring that any polling of the jury be *before dispersal* is to ensure that nothing extraneous to the jury's deliberations can cause any of the jurors to change their minds," and to keep the jurors from being "affected by improper outside influences" before the court can ascertain whether each juror assents to the announced verdicts. *Id.* at 198, 400 S.E.2d at 402–03 (emphasis added) (citing *Lipscomb*, 195 N.C. at 505, 142 S.E. at 781); *Dow*, 246 N.C. at 646, 99 S.E.2d at 862.

In the present case, after the jury rendered its unanimous verdicts finding defendant guilty of each of the charged offenses, defendant timely moved the court to poll the jury. The record reflects that, at 11:18 a.m., when the clerk was in the process of polling the fourth of the twelve jurors, defendant launched into an obscenity-laden outburst, after which defendant overturned his counsel's table, assaulted the law enforcement officers who attempted to restrain and subdue him, and was removed from the courtroom to the Halifax County jail. While law enforcement officers were attempting to restrain defendant, "the Court asked the jurors to remove themselves from the courtroom," "then entered the jury room with the jurors, explained to them that the disruption had been curtailed, and released them to go to lunch." Thus, based on our review of the record, it appears that the trial court was compelled to delay the polling of the remaining jurors as a result of defendant's physically and verbally disruptive outburst——in which defendant assaulted several law enforcement officers——until the officers could return defendant to the Halifax County jail and the court could ensure that defendant would not disrupt the proceedings any further. The court also needed additional time to reconvene the jurors in another courtroom, one which was equipped to allow defendant and his counsel to observe the proceedings from the

jail by video transmission. According to the record, the proceedings resumed at 2:06 p.m.

Defendant argues that, by sending the jurors to lunch before requiring the clerk to poll the remaining jurors, the trial court effectively "dispersed" the jurors in contravention of N.C.G.S. § 15A-1238, because there was an almost two-hour period during which the jurors could, theoretically, have been "exposed to influences extraneous to the deliberations of the entire jury as a body." *See Black*, 328 N.C. at 198, 400 S.E.2d at 403. We recognize that, "once the jury is dispersed after rendering its verdict and later called back, it is not the same jury that rendered the verdict." *Id.* However, by defendant's own admission, "[t]he circumstances which led the trial judge to delay the jury poll in this case arose out of an attempt to deal with an outburst in the courtroom by [defendant's] mother which led to a further outburst by [defendant] when the bailiffs tried to restrain [him]." Thus, defendant concedes that he caused the court to dismiss the jurors before concluding the polling of the jury. Because defendant caused the court to commit this error, if any, defendant "is not in a position to repudiate his action and assign it as ground for a new trial." *See State v. Payne*, 280 N.C. 170, 171, 185 S.E.2d 101, 102 (1971). Accordingly, since "[i]nvited error is not ground for a new trial," *id.*; *see*

*also* N.C. Gen. Stat. § 15A-1443(c) (2011) ("A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct."), we overrule this issue on appeal.

Defendant next contends he is entitled to a new trial because the transcript "does not affirmatively show that each of the twelve jurors assented to verdicts finding [defendant] guilty" of felonious breaking or entering, felonious larceny, and injury to real property. However, on 15 June 2012, this Court allowed the State's motion to amend the record on appeal with a supplemental transcript, which affirmatively shows that each juror did assent to each of the verdicts. After the State filed its motion, defense counsel sent correspondence to this Court acknowledging that, as a result of the contents of the supplemental transcript, defendant's "second issue is no longer a viable issue [on appeal]." We agree and decline to address this issue further.

No error.

Judges STEELMAN and ERVIN concur.

Report per Rule 30(e).