IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-110

Filed: 4 February 2020

Wake County, No. 15 CRS 228062

STATE OF NORTH CAROLINA

v.

TIMOTHY WINSTON HALL

Appeal by defendant from judgment entered 3 May 2018 by Judge Vinston Miller Rozier in Wake County Superior Court. Heard in the Court of Appeals 31 October 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Alesia Balshakova, for the State.

Patterson Harkavy LLP, by Paul E. Smith, for defendant.

DIETZ, Judge.

Defendant Timothy Winston Hall appeals his larceny conviction for stealing cologne from a department store.

Hall first challenges the trial court's determination that he forfeited his right to counsel through a pattern of serious misconduct. The trial court made that forfeiture determination after Hall's sixth lawyer was forced to withdraw as a result

of Hall's abusive behavior. Because the record supports the trial court's findings, and because the trial court properly applied the forfeiture factors established by this Court's precedent, we uphold the trial court's forfeiture determination.

Hall also challenges the State's use of his criminal history to impeach his credibility. Hall took the stand in his own defense and testified. Admittedly, his testimony was unusual because he was representing himself. But under the Rules of Evidence, the State properly could impeach that testimony with appropriate evidence of Hall's prior criminal record. That is what occurred here. Accordingly, we find no error in the trial court's judgment.

Facts and Procedural History

On 26 December 2015, two loss prevention associates at a Belk store observed Defendant Timothy Winston Hall stealing cologne from the men's fragrance counter and removing the sensor tag attached to the bottle. When the employees confronted Hall, he attempted to punch one of them and run away. Law enforcement soon arrived. Hall remained physically combative and refused instructions from the officers. Officers arrested Hall and charged him with felonious larceny, resisting a public officer, assault, and attaining habitual felon status.

In the two and a half years leading up to Hall's trial, he had six different attorneys. Many of these attorneys were forced to withdraw either because of Hall's

abusive conduct toward them or because Hall insisted that the attorneys should assert frivolous legal arguments.

On 27 April 2018, the trial court granted Hall's sixth attorney's request to withdraw but ordered that she remain as standby counsel. Several days later, as the trial was set to begin, Hall asked for a new court-appointed attorney. The trial court held a hearing, heard evidence about Hall's past abusive behavior toward his attorneys, and ultimately found Hall had forfeited his right to counsel through a pattern of serious misconduct.

Hall then represented himself at trial. The jury found Hall guilty of felonious larceny and not guilty of simple assault. Hall pleaded guilty to attaining habitual felon status in an agreement with the State that preserved his right to appeal his underlying conviction. The trial court sentenced Hall to 89 to 119 months in prison. Hall appealed.

Analysis

I. Right to Counsel

Hall first argues that the trial court violated his Sixth Amendment right to counsel by requiring him to represent himself. We review this constitutional question *de novo*. *State v. Blakeney*, 245 N.C. App. 452, 459, 782 S.E.2d 88, 93 (2016).

The Sixth Amendment to the United States Constitution and a corresponding provision of our State Constitution guarantee criminal defendants the right to

counsel in serious criminal cases. *State v. Hyatt*, 132 N.C. App. 697, 702, 513 S.E.2d 90, 94 (1999). But our Courts have long held that this right can be lost in two distinct circumstances—through a knowing and voluntary waiver of the right, or through forfeiture of the right because of misconduct. *Blakeney*, 245 N.C. App. at 459–60, 782 S.E.2d at 93–94.

"Unlike waiver, which requires a knowing and intentional relinquishment of a known right, forfeiture results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right." *State v. Montgomery*, 138 N.C. App. 521, 524, 530 S.E.2d 66, 69 (2000).

This Court recently reviewed our State's appellate precedent concerning forfeiture and described the general circumstances that amount to severe misconduct warranting forfeiture. *Blakeney*, 245 N.C. App. at 461–62, 782 S.E.2d at 94. We observed that there is no "bright-line definition of the degree of misconduct that would justify forfeiture of a defendant's right to counsel." *Id.* at 461, 782 S.E.2d at 94. But we held that forfeiture may be justified where "the defendant engaged in one or more of the following: (1) flagrant or extended delaying tactics, such as repeatedly firing a series of attorneys; (2) offensive or abusive behavior, such as threatening counsel, cursing, spitting, or disrupting proceedings in court; or (3) refusal to acknowledge the trial court's jurisdiction or participate in the judicial process, or

insistence on nonsensical and nonexistent legal 'rights.'" *Id.* at 461–62, 782 S.E.2d at 94.

Here, the trial court found Hall had "at least" six previous attorneys in this criminal matter and that Hall "has exhibited a history of being abusive to his two most recent attorneys." For example, the record indicates that, in his final, private interactions with his most recent counsel, Hall stood and shouted profanities so loudly that law enforcement officers gathered by the door of the consultation room, concerned for counsel's safety.

Next, the trial court found that Hall "was previously found in contempt for his abusive language" and that Hall insisted on asserting "nonsensical or nonexistent" legal and jurisdictional theories and "exaggerated conspiratorial beliefs" about his prosecution, none of which ethically could be asserted by his court-appointed counsel. The record indicates that Hall's disagreements with many of his previous court-appointed attorneys stemmed from his attorneys' unwillingness to advance these frivolous arguments, which Hall insisted should be part of his defense.

Finally, the court found that Hall's request for yet another court-appointed attorney—after his previous counsel withdrew because of Hall's abusive behavior—"would result in additional delay" in a case already delayed because of Hall's past improper behavior.

Based on these findings, the trial court determined that Hall forfeited his right to counsel through a pattern of serious misconduct. All of these findings are supported by the record and they satisfy the key factors identified by this Court in *Blakeney* as permitting a trial court to find forfeiture of counsel. Accordingly, we reject Hall's argument and find no error in the trial court's forfeiture determination.

II. Prior convictions for impeachment purposes

Hall next argues that the trial court abused its discretion by allowing the State to impeach his testimony using evidence of his past crimes. Specifically, Hall contends that, although he took the stand under oath, his rambling, argumentative statements were not actually "testimony" that could be subject to impeachment. We reject this argument.

Under Rule 404(b) of the Rules of Evidence, evidence of past crimes may not be offered to show that a person acted in conformity with that past act. N.C. Gen. Stat. § 8C-1, Rule 404(b). But evidence of past convictions may be used to challenge the credibility of a testifying witness. *Id.* § 8C-1, Rule 609.

Hall argues that Rule 609 was inapplicable because, although he took the stand under oath, he never testified. This argument is meritless. To be sure, Hall's testimony was atypical—largely because he was representing himself. Most of what Hall said was argumentative, and not particularly helpful to his case. For example, Hall admitted that he took the bottle of cologne: "It's not so much that I did not agree

of taking the bottle of cologne. I can state, you know, it shoplifting." He asserted that he regretted his actions: "I really regret that day, actually. I regret that day." And he expressed surprise at the situation he found himself in: "[I]t's heartbreaking because I did not expect this to go this far. No way. No way in the world."

Still, Hall testified. Most notably, Hall asserted that he took the bottle of cologne but that he did not remove the anti-theft device as the State alleged. The Rules of Evidence permit the State to introduce evidence of his prior convictions to challenge the credibility of this testimony.

Hall next argues that the trial court should have excluded this impeachment evidence under Rule 403 because the probative value of this evidence was substantially outweighed by its prejudicial effect. *See Id.* § 8C-1, Rule 403. Even if we assume that Hall timely asserted a Rule 403 objection to this impeachment evidence and thus preserved this argument (he did not), the trial court's determination that this evidence was admissible under Rule 403 was within the court's sound discretion and certainly not "so arbitrary that it could not have been the result of a reasoned decision." *State v. Ferguson*, 105 N.C. App. 692, 695, 414 S.E.2d 769, 771 (1992).

Finally, Hall argues that the trial court should have granted his "motion to strike" his own testimony. After realizing that his testimony opened the door for the State's impeachment evidence, Hall asked the trial court: "How about we just scratch this from this part here and we go to the end of closing?"

Again, the trial court's decision not to strike Hall's testimony was well within the court's sound discretion. The trial court repeatedly informed Hall that, if he chose to testify, the State could seek to impeach his credibility, including through his prior criminal record. Hall ignored those warnings and testified in his own defense. The trial court's decision not to strike that testimony after the fact was a reasoned decision and not an abuse of discretion. *State v. Bost*, 33 N.C. App. 673, 678, 236 S.E.2d 296, 299 (1977).

Conclusion

We find no error in the trial court's judgment.

NO ERROR.

Judges DILLON and YOUNG concur.

Report per Rule 30(e).