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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-329

No. COA20-543

Filed 6 July 2021

Mecklenburg County, Nos. 17 CRS 206110, 206111, 206113

STATE OF NORTH CAROLINA

v.

ROGER TIMOTHY BEST

Appeal by Defendant from Judgments entered 10 February 2020 by Judge Louis A. Trosch, Jr., in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 June 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sonya Calloway-Durham, for the State.

Michael E. Casterline for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Roger Timothy Best (Defendant) appeals from Judgments entered 10 February 2020 after a jury found him guilty of First-Degree Murder, Attempted Robbery with a Dangerous Weapon, and Possession of a Firearm by a Felon. The Record before us, including evidence presented at trial, tends to reflect the following:

¶ 2 On 15 February 2017, police responded to reports of gunfire and found Walter Scott (Mr. Scott) with multiple gunshot wounds lying on the ground outside of a convenience store. Officers also encountered Defendant, who flagged the officers down for help, as he was suffering from a single gunshot wound to his stomach. Eventually, law enforcement was able to tie Defendant to Mr. Scott's shooting through a combination of photos of the scene, surveillance video in the area, still shots of a vehicle larceny that occurred on 11 February 2017, and officer body cam footage, all of which were published to the jury. Officers were also able to ascertain a projectile removed from Defendant's body was fired from the same weapon Mr. Scott carried, which was found near Mr. Scott's body. Additionally, Defendant's DNA was found on a batting glove and twelve discharged cartridge casings, all of which were collected from the scene of Mr. Scott's shooting.

¶ 3 On 27 February 2017, Defendant was indicted for Mr. Scott's murder. On the same date, he was also indicted for Attempted Robbery with a Dangerous Weapon and Possession of a Firearm by a Felon. Defendant's trial began on 27 January 2020.

¶ 4 On the ninth day of trial, during the State's case-in-chief, the trial court received a note from one of the alternate jurors, stating there was "potentially . . . an inappropriate comment that was made . . . by one of the jurors." The trial court conducted a voir dire and read the note into the Record:

Honorable Judge

STATE V. BEST

2021-NCCOA-329

Opinion of the Court

It is with a heavy heart that I send this letter to you. We were charged by the DA under oath that we would report any bias we hear or deem inappropriate.

After the testimony of the “First DNA” person we were sent back to the Jury room until you cleared up a point of law. At that point we were all in the Jury room and Juror 11 stated: “If we had that testimony/technology on OJ Simpson things would’ve been different”, or words to that affect [sic].

I feel Juror 11 had a made up mind already and the jury hadn’t even deliberated. What more alarming though is the effect [s]he [p]ossible [sic] had on other Jurors who are swayed already from that comment. I know you want us to be “fair and impartial” and I feel that Juror 11 has compromised that and possibly some of the others as well especially the “[y]ounger” [j]urors.

I wrestled even bringing this to your attention, but my conscience would not allow me to at the very least let you deem if it was appropriate for this kind of case presented before us. I don’t feel good about this at all, but I know it is the right thing for me to do.

Respectfully Submitted,
[Signature of Alternate Juror 1]

¶ 5

After reading the note, the trial court allowed both Defendant and the State to be heard, but neither wished to be heard at that point. Alternate Juror 1 was then questioned about the circumstances of the comment made by Juror 11. Alternate Juror 1 stated he overheard the comment while in the jury room. When asked what the jurors had been talking about in the jury room when the comment was made, the alternate juror replied:

ALT. JUROR [] (1): Not about the case. They didn't talk about the case, your Honor.

Someone made a comment about the glove. I don't know what it was. But her comment came directly after that. And that's how it came about.

. . . .

ALT. JUROR [] (1): Your Honor, they didn't talk about the case at all. They were talking about things in general. They were saying how things have changed . . . not changed in terms of the case itself[.]

Through further questioning, the alternate juror testified there was not any other conversation about the DNA or the gloves; rather, the comment was made by Juror 11 "out of the blue[.]" and there was no response to the comment from any other members of the jury.

¶ 6 The trial court asked Alternate Juror 1 why he believed the comment had impacted the other jurors, and he replied:

ALT. JUROR [] (1): Because, you know, your Honor, when you bring up the name of O.J., that's a subject that really everybody has got a different opinion about. That's just my opinion because it seems like everybody's back and forth with that situation.

THE COURT: What did you take her comment to mean?

ALT. JUROR [] (1): I took her comment to mean that she had already made up her mind.

¶ 7 After placing Alternate Juror 1 in a separate room—away from other members of the jury—the trial court conducted a voir dire examination of Juror 11, the juror

alleged to have made the comment in question. Juror 11 recalled making a comment about the O.J. Simpson case in the jury room but stated she “wasn’t referring to this case.” When asked what was meant by the comment, Juror 11 responded, “Well, that’s just a well-known case that everybody knows about. And I think everybody always had questions on . . . that case. It doesn’t really pertain to this case.” The trial court then asked Juror 11 whether she intended the comment to be a remark on what should have happened in the O.J. Simpson case, and Juror 11 stated she had never “watched” the O.J. Simpson case and did not know the details of the case. Moreover, Juror 11 testified the comment was solely related to the advances in DNA analysis, and she had not formed an opinion as to Defendant’s guilt or innocence in this case.

¶ 8

Next, the trial court questioned each of the remaining jurors individually. First, the trial court asked whether there had been any conversation among the jurors about evidence in the case. Second, it asked whether each juror had heard any comment that personally caused them to have prejudice for or against any party in the case. Each juror confirmed they had not been prejudiced by any comment and no one had commented on the evidence. Additionally, the trial court confirmed each juror understood: (1) they were not to have any conversations among themselves or with anyone about any matter connected with this trial; and (2) they were not to form or express any opinion about the guilt or innocence of Defendant. After each juror

was individually questioned, defense counsel stated, “I believe that the [c]ourt did a thorough inquiry of the jurors.”

¶ 9 The trial court then re-instructed the jury not to talk to or communicate with one another or anyone else about any matter connected to the case or allow anyone to discuss it in their presence. The trial court also instructed the jury not to conduct any investigation into the case, including receiving any reports or information from any source.

¶ 10 Following the trial court’s voir dire of the jurors, Defendant made a Motion for a Mistrial, contending Juror 11 “infused an outside influence, arguably racial bias, into the jury[.]” Defendant asked the trial court to find Juror 11 had engaged in juror misconduct, resulting in a mistrial, or, in the alternative, to excuse Juror 11 from the proceedings. The trial court denied Defendant’s Motion, determining no juror misconduct had occurred. In its oral ruling, the trial court stated:

[A]fter conducting a thorough inquiry, because, [defense counsel], I shared your concern that we need to investigate this and make sure that our jury is going to make a decision based on the evidence as presented in this matter and the law that they’re instructed upon rather than other improper information or comments made by anyone or any extraneous information from any source or any bias or prejudice from any source. And because of that concern, I conducted a thorough inquiry and am now, based on the responses to the jurors, convinced that this comment, though inartful, was a comment, an innocuous comment regarding DNA generally, DNA evidence generally, and not an attempt to express an opinion about the guilt or innocence of this Defendant nor was it even intended to express an opinion

with respect to the guilt or innocence in the O.J. Simpson case 30 years ago.

¶ 11 At the close of the State’s evidence, Defendant moved to dismiss the charges of First-Degree Murder and Attempted Robbery with a Dangerous Weapon, but the trial court denied the Motion. Defendant declined to present evidence in his own defense and renewed his Motion to Dismiss, which was again denied.

¶ 12 On 10 February 2020, the jury returned verdicts finding Defendant guilty of all charges. The same day, the trial court sentenced Defendant to life imprisonment without parole for First-Degree Murder on the basis of premeditation and ordered consecutive sentences of 84-113 months for Attempted Robbery with a Dangerous Weapon and 17-33 months for Possession of a Firearm by a Felon. Defendant gave timely, oral Notice of Appeal in open court.

Issue

¶ 13 The dispositive issue on appeal is whether the trial court erred in denying Defendant’s Motion for a Mistrial following receipt of a note from one of the alternate jurors, speculating another juror engaged in juror misconduct.

Analysis

¶ 14 “[A] judge must declare a mistrial upon the defendant’s motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant’s

case.” N.C. Gen. Stat. § 15A-1061 (2019). However, “[i]t is within the trial court’s discretion to determine whether to grant a mistrial, and the trial court’s decision is to be given great deference because the trial court is in the best position to determine whether the degree of influence on the jury was irreparable.” *State v. Hill*, 347 N.C. 275, 297, 493 S.E.2d 264, 276 (1997) (citation omitted). As such, “[o]ur standard of review when examining a trial court’s denial of a motion for mistrial is abuse of discretion.” *State v. Dye*, 207 N.C. App. 473, 482, 700 S.E.2d 135, 140 (2010) (citation and quotation marks omitted). “An abuse of discretion occurs ‘only upon a showing that the judge’s ruling was so arbitrary that it could not have been the result of a reasoned decision.’” *State v. Salentine*, 237 N.C. App. 76, 81, 763 S.E.2d 800, 804 (2014) (quoting *State v. Dial*, 122 N.C. App. 298, 308, 470 S.E.2d 84, 91, *disc. review denied*, 343 N.C. 754, 473 S.E.2d 620 (1996)).

¶ 15 “When juror misconduct is alleged, it is the trial court’s responsibility to make such investigations as may be appropriate, including examination of jurors when warranted, to determine whether misconduct has occurred and, if so, whether such conduct has resulted in prejudice to the defendant.” *Id.* (citation and quotation marks omitted). “Misconduct is determined by the facts and circumstances in each case, and this Court has held that [not] every violation of a trial court’s instruction to jurors is such prejudicial misconduct as to require a mistrial.” *Id.* (citations and quotation marks omitted) (alteration in original).

¶ 16 In the case *sub judice*, Defendant argues the trial court abused its discretion in denying his Motion for a Mistrial on the basis the comment made by Juror 11, as reflected in Alternate Juror 1's note, to the effect of, "[i]f we had that testimony/technology on OJ Simpson things would've been different[,]” constituted juror misconduct and indicated possible racial bias requiring a mistrial.

¶ 17 Upon receipt of this note, however, the trial court exercised its discretion by individually questioning each of the jurors, including both Alternate Juror 1 and Juror 11. In doing so, “[t]he trial court conducted a thorough inquiry into the circumstances in question and determined from the evidence . . . no juror ha[d] been improperly influenced” *State v. Spinks*, ___ N.C. App. ___, 2021-NCCOA-218, ¶ 46 (alterations in original) (quoting *State v. Bonney*, 329 N.C. 61, 74, 405 S.E.2d 145, 152 (1991)). Each juror confirmed they had not been prejudiced by any comment and no one had commented on the evidence. The trial court also re-instructed each juror individually on their duties as a member of the jury. The trial court had the opportunity to assess each juror's credibility and based on its observations and sound judgment, was able to determine whether each juror could be fair and impartial. *See State v. Dickens*, 346 N.C. 26, 42, 484 S.E.2d 553, 561 (1997) (“The trial court has the opportunity to see and hear a juror and has the discretion, based on its observations and sound judgment, to determine whether a juror can be fair and impartial.” (citation omitted)). Thus, given the trial court's extensive and thorough investigation

and its ability to assess the jurors' credibility as to their ability to remain impartial, the trial court's decision to deny Defendant's Motion for a Mistrial was the result of a reasoned decision. Therefore, the trial court did not abuse its discretion by denying Defendant's Motion for a Mistrial. Consequently, we affirm the trial court's ruling.

Conclusion

¶ 18 Accordingly, for the foregoing reasons, we conclude there was no error at trial.

NO ERROR.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).