IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-684

No. COA21-5

Filed 7 December 2021

Nash County, Nos. 18 CRS 53101-02

STATE OF NORTH CAROLINA

v.

SHERROD JOYNER

Appeal by defendant from judgment entered 14 February 2020 by Judge James E. Hardin, Jr., in Nash County Superior Court. Heard in the Court of Appeals 3 November 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Kenzie M. Rakes, for the State.

Rudolf Widenhouse, by M. Gordon Widenhouse, Jr., for defendant-appellant.

ARROWOOD, Judge.

¶ 1 Sherrod Joyner ("defendant") appeals from his convictions of first-degree murder and robbery with a dangerous weapon. Defendant contends the trial court erred by "effectively closing the courtroom from a supporter of defendant" and by overruling objections to a police officer's testimony. For the following reasons, we conclude defendant received a fair trial free from error.

I. Background

¶ 2 On 14 January 2019, a Nash County Grand Jury indicted defendant on charges of robbery with a dangerous weapon and first-degree murder.

¶ 3 The matter came on for trial on 10 February 2020, Judge Hardin presiding. The evidence presented at trial tended to show as follows.

¶ 4 Courtney Ramos ("Ramos") testified that he and Brian Barnes ("Barnes") planned to rob card players at a poker game on 30 June 2018. Barnes and Ramos recruited defendant and another man, "Jay," to assist with the robbery. The plan was for Barnes to enter the game as a decoy and allow Ramos and defendant to hold him hostage while Ramos and defendant collected money from the other card players.

¶ 5 On the day of the robbery, Barnes was dropped off at the poker game while Ramos and defendant went to hide nearby. Defendant left his cell phone with Jay so they could communicate with him. While waiting for Barnes to exit the building, Ramos and defendant saw two other men, Antwon Chisley ("Chisley") and Curtis McCowan ("McCowan") exit the building. Defendant decided to use Chisley and McCowan as hostages instead of Barnes. Ramos grabbed McCowan and defendant attempted to grab Chisley, who started running. Defendant shot Chisley twice, and, in the commotion, Ramos shot himself in the pinky finger. Ramos yelled that they needed to leave the scene, and defendant called Jay, who came to pick them up. Chisley died from his wounds.

¶ 6 Ramos was arrested on 6 July 2018 in a separate incident. Ramos testified that he did not initially tell the truth because he was worried about what could happen to his family due to his gang involvement. Ramos eventually told the police about the plan to rob the poker game and provided defendant's name. Ramos made a later statement providing full details of the robbery.

¶ 7 Prior to Ramos's testimony, the State raised an issue regarding the presence of Tyrone Foreman ("Foreman") in the courtroom. The State informed the trial court that Foreman was present in the courtroom the previous day and that the Rocky Mount Police Department was familiar with Foreman "as a high-ranking member of the Blood gang in Rocky Mount." The State was concerned that Foreman was present to intimidate Ramos, as Ramos had asked, unsolicited, whether Foreman was incarcerated after Ramos informed "the State that Mr. Foreman had him jumped due to his agreement to testify." Defendant's trial counsel stated that Foreman was related by blood to defendant and that Foreman did not cause any trouble in the courtroom during earlier proceedings. The trial court suggested that Foreman sit in an adjacent room with a two-way mirror to allow Foreman to "see everything that's going on in the courtroom." Defendant's trial counsel inspected the room and said that as long as Foreman could hear the court proceedings from the room, "there's no problem with it at all." The trial court concluded the inquiry by taking the matter under advisement to be addressed if Foreman entered the courtroom, but that there

was "no need to take any action if he's not here."

¶ 8 Detective Cameron Joyner ("Detective Joyner") testified about cell phone information obtained from Sprint and Verizon. The State had previously admitted exhibits containing cell phone data from both companies. Detective Joyner testified that "the target number" for Sprint was associated with defendant, and the Verizon number was associated with Ramos. Detective Joyner noted calls between the two numbers beginning at 11:04 p.m. on 29 June 2018 and continuing until 1:33 a.m. on 30 June 2018.

¶ 9 Detective Joyner testified that he used the data obtained from Sprint, which provided the location of the cell phone towers used to make the calls, to map the locations of the calls. When Detective Joyner began to describe the Cast Viz program he used for mapping, defendant's trial counsel objected. The State began to tender Detective Joyner as an expert in cellular analysis and in the use of Cast Viz, but the trial court ultimately sustained defendant's objection to Detective Joyner testifying as an expert in cellular analysis. The trial court stated that Detective Joyner would be permitted to testify "about what he personally did to verify the locations of the cell towers that are identified in the records from Sprint and Verizon, which have been previously received and admitted without objection from the defendant."

¶ 10 Detective Joyner next described information from the Sprint and Verizon records he used to determine which sector of a cell tower was used when a phone call

was made. Detective Joyner began describing which switches and sectors were in use at the time of relevant calls, to which defendant's trial counsel objected. Defendant's trial counsel argued that testimony "as to which direction parts of the tower are facing . . . would require more foundational support" before being introduced. The State responded that representatives from Sprint and Verizon "testified to the towers having a specific location and a switch in a sector," and that Detective Joyner would be testifying "that the antennas in the switch determine[] the direction."

¶ 11 On *voir dire* examination, Detective Joyner described how the numbers on State's Exhibit 24 identified different sectors and that the basis of his testimony was information "provided by the cell provider in the raw data, and is just being depicted on a map." Detective Joyner also testified that he was "well aware that the majority of the cell towers across the country are three sectors, but there are some certain towers that have six sectors, and there are also certain towers that are omnidirectional, but that is not the case in this situation." When asked how he determined that the cell towers in this case had three sectors "and not four, five, or six[,]" Detective Joyner stated that "it's notated on the tower list as provided by the phone company[,]" which "gives a list of each sector of each tower."

¶ 12 Defendant's trial counsel argued that Detective Joyner's testimony was "beyond a layperson's knowledge[,]" to which the trial court replied that it "didn't hear any opinion offered by this witness[] that would fall within the realm of an expert as

they might testify." Defendant's trial counsel argued that in the absence of "evidence of where these parts of this tower are[,]" the State "would need some basis of training . . . to introduce this type of evidence." The State responded that defendant's argument "would go to weight, not admissibility." The trial court noted that the information underlying Detective Joyner's testimony had been admitted in State's Exhibit 24 and overruled defendant's objection.

¶ 13 Based on State's Exhibit 24, Detective Joyner testified that the calls "at the target time" were in "sector 1." The State introduced a map created by Detective Joyner as State's Exhibit 32; Detective Joyner stated that he cross-referenced the map, which included the GPS coordinates for the relevant cell phone towers, with the sector information provided by State's Exhibit 24. Detective Joyner also testified that after comparing the records from Sprint and Verizon, he determined that both cell phones were "in the same area, the same cell grid."

¶ 14 At the conclusion of trial on 14 February 2020, the jury convicted defendant of first-degree murder and robbery with a firearm. The trial court consolidated the two convictions for judgment and sentenced defendant to life imprisonment without the possibility of parole.

¶ 15 Defendant gave oral notice of appeal in open court.

II. Discussion

¶ 16 Defendant contends the trial court erred by "effectively closing the courtroom

from a supporter of defendant" and by overruling objections to Detective Joyner's testimony.

A. Closing the Courtroom

¶ 17 "This Court reviews alleged constitutional violations *de novo*." *State v. Rollins*, 221 N.C. App. 572, 576, 729 S.E.2d 73, 76 (2012) (citation omitted). Defendants are entitled to a public trial pursuant to the Sixth Amendment of the United States Constitution. U.S. Const. amend. VI. "The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned," and to encourage jurors to embrace the "sense of their responsibility and . . . the importance of their functions. . . ." *Rollins*, 221 N.C. App. at 576, 729 S.E.2d at 77 (ellipses in original) (quoting *In re Oliver*, 333 U.S. 257, 270 n.25, 92 L. Ed. 682, 693 n.25 (1948)). "In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages perjury." *Id.* (citation and quotation marks omitted). "The violation of the constitutional right to a public trial is a structural error, not subject to harmless error analysis." *Id.* (citations and quotation marks omitted).

¶ 18 The United States Supreme Court has held that "the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Waller v. Georgia*, 467 U.S. 39, 45, 81 L. Ed. 2d 31, 38 (1984). "Such

circumstances will be rare, however, and the balance of interests must be struck with special care." *Id.* Additionally, in North Carolina "[t]he presiding judge may impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of courtroom proceedings or the safety of persons present." N.C. Gen. Stat. § 15A-1034(a) (2019).

¶ 19 In this case, although the State did raise the issue of Foreman's presence to the trial court, the trial court never issued a ruling excluding Foreman from the courtroom. The trial court instead took the matter under advisement, to be addressed if and when Foreman entered the courtroom. Additionally, the trial court suggested that Foreman sit in an adjoining room with a two-way mirror, which defendant's trial counsel inspected and agreed was sufficient for Foreman to observe the proceedings.

¶ 20 Defendant points to the trial court's statements that it had discretion to exclude Foreman and that the prosecutor's assertions were "very serious," as well as defendant's trial counsel's statement that he would "encourage that [Foreman] not come." These statements, however, do not amount to preventing defendant from having an open courtroom and public trial. The transcript reflects that Foreman did not attempt to enter the courtroom at any point after the issue was raised and that the trial court did not actually exclude Foreman from the courtroom. Accordingly, we reject defendant's contention that the courtroom was closed at any stage of the proceeding.

B. Detective Joyner's Testimony

¶ 21 This Court reviews "the admission of opinion testimony by expert and lay witnesses under an abuse of discretion standard." *State v. Faulkner*, 180 N.C. App. 499, 512, 638 S.E.2d 18, 27 (2006) (citations omitted). A trial court may only be reversed for abuse of discretion "upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision." *State v. Barker*, 257 N.C. App. 173, 177, 809 S.E.2d 171, 174 (2017) (citation and quotation marks omitted).

¶ 22 Expert testimony is governed by Rule 702:

> If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:
>
> (1) The testimony is based upon sufficient facts or data.
>
> (2) The testimony is the product of reliable principles and methods.
>
> (3) The witness has applied the principles and methods reliably to the facts of the case.

N.C. Gen. Stat. § 8C-1, Rule 702(a) (2019).

¶ 23 Defendant argues that the State engaged in a "back-door attempt to introduce non-expert testimony" through a witness not properly qualified as an expert. Defendant objected "to the police officer's testimony about the workings of cell phone

towers and the meaning of information gathered from them[,]" which was "initially sustained" but later overruled. Although defendant characterizes both objections as "grounded in the police officer's lack of proper qualifications[,]" the transcript reflects that the two objections and the trial court's subsequent rulings concerned different issues.

¶ 24 The trial court initially sustained an objection to Detective Joyner's testimony regarding the Cast Viz program he used to map the location of the calls, reasoning that the trial court did not "understand how [Cast Viz] works," and that the State had not "met the Daubert Standard under Rule 702 . . . ." Defendant's later objection was directed at Detective Joyner's testimony regarding the cell towers themselves, as well as cell phone data contained within State's Exhibit 24 among others. The cell phone data included a legend used to interpret the data provided, which Detective Joyner relied on in his testimony. The transcript reflects that Detective Joyner's testimony was limited to illustrating and interpreting information previously admitted into evidence, without objection from defendant. Defendant's argument that Detective Joyner's testimony was a "back-door attempt to introduce non-expert testimony" is misplaced, as the testimony did not require the use of "scientific, technical, or other specialized knowledge . . . ." N.C. Gen. Stat. § 8C-1, Rule 702(a).

¶ 25 Defendant has failed to show that the trial court abused its discretion in admitting Detective Joyner's testimony. Accordingly, the trial court did not err in

admitting Detective Joyner's lay testimony regarding the previously admitted cell phone data.

III. Conclusion

¶ 26 For the foregoing reasons, we hold that defendant received a fair trial free from error.

NO ERROR.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).