IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-169

Filed 7 May 2024

Guilford County, Nos. 20 CRS 26090-92

STATE OF NORTH CAROLINA

v.

KA'LERE ANDERSON, Defendant.

Appeal by Defendant from judgment entered 12 May 2022 by Judge William A. Wood II in Guilford County Superior Court. Heard in the Court of Appeals 4 October 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Caden W. Hayes, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Franke, for the Defendant-Appellant.

STADING, Judge.

Defendant Ka'lere Raymond Anderson appeals from a judgment entered upon a jury verdict finding him guilty of first-degree murder and discharging a weapon into a residential structure. For the reasons below, we hold that the trial court did not commit prejudicial error.

I. Background

On 30 October 2019, the State filed four juvenile delinquency petitions against Defendant that charged him with murder in the first degree, assault with a deadly weapon with the intent to kill and inflicting serious injury, two counts of assault with a deadly weapon with the intent to kill, and discharging a firearm into an occupied dwelling. Following a finding of probable cause, the case was transferred from district to superior court to try Defendant as an adult. Defendant was then indicted for the above offenses. One of the victims alleged that Defendant's associate, Zyicoren Little, participated in the shooting as a co-conspirator. In any event, the State declined to prosecute Little, concluding there was insufficient evidence to do so.

Defendant's trial began on 2 May 2022, and, on 11 May 2022, the jury found him guilty of murder in the first degree and discharging a weapon into an occupied dwelling. The jury found Defendant not guilty of assault with a deadly weapon. The trial court then sentenced Defendant to life in prison with the possibility of parole. The night before the jury verdict, a juror helped her son get ready for bed while she left her television on in the background of an adjacent room. The television channel broadcasted a news report of a "shooting at [a] Walmart" resulting in the arrest of someone named "Little." The juror did not remember or consider anything more about the news report until leaving deliberations the next day. After deliberations and the jury verdict, while walking out of the deliberation room, the juror mentioned in passing to the bailiff, "I seen the news, and it clicked."

On the next day, the parties returned to court for sentencing. Defendant's attorney moved for "a directed verdict . . . or in the alternative either a mistrial or a new trial. . . ." The bailiff informed the parties that the juror reported hearing a news report about a shooting. Defendant's attorney argued that the juror's exposure to the news report compromised his client's right to a fair trial. At a post-verdict hearing on Defendant's motion, neither the juror nor the bailiff established any sort of context for the meaning of "it clicked." The trial court examined the bailiff who reported that he asked the juror if "she [had] seen the news" in reference to shootings generally in the "Piedmont Triad area." Upon questioning the juror, she recounted the conversation just like the bailiff, and denies considering the news report in reaching her verdict. The trial court then denied the motion and entered a written order containing findings of fact and conclusions of law. Defendant gave notice of appeal in open court. After careful review, we hold the trial court did not err.

II. Jurisdiction

This Court has jurisdiction to consider Defendant's appeal of the trial court's denial of his motion for a new trial under N.C. Gen. Stat. §§ 7A-27(b)(3) and 15A-1444(a) (2023).

III. Analysis

Defendant contends that the trial court erred by denying his motions for a mistrial or a new trial when the juror commented on the news report about an unindicted coconspirator. Although Defendant's trial counsel and the trial court

labeled the motion as for a "mistrial" or "new trial," we review this as a motion for appropriate relief. *See State v. Handy*, 326 N.C. 532, 535, 391 S.E.2d 159, 160-61 (1990) (citations omitted) ("A motion for appropriate relief is a *post-verdict* motion (or a post-sentencing motion where there is no verdict) made to correct errors occurring prior to, during, and after a criminal trial.").

"When considering rulings on motions for appropriate relief, we review the trial court's order to determine whether the findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, and whether the conclusions of law support the order entered by the trial court." *State v. Frogge*, 359 N.C. 228, 240, 607 S.E.2d 627, 634 (2005) (internal quotation marks and citation omitted). "When a trial court's findings on a motion for appropriate relief are reviewed, these findings are binding if they are supported by competent evidence and may be disturbed only upon a showing of manifest abuse of discretion. However, the trial court's conclusions are fully reviewable on appeal." *State v. Wilkins*, 131 N.C. App. 220, 223, 506 S.E.2d 274, 276 (1998) (citations omitted). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

A. The Juror's Nonconfrontation

First, Defendant argues that the juror's exposure to the news report violated his constitutional right to confront evidence of its extraneous impact on the juror.

Both the federal and North Carolina Confrontation Clauses guarantee a criminal defendant's constitutional right to confront any witnesses or evidence brought to bear against him at trial. U.S. Const. amend. VI, cl. 5; *accord* N.C. Const. art. I, § 23, cl. 1. These Confrontation Clauses "ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversar[ial] proceeding before the trier of fact." *State v. Nobles*, 357 N.C. 433, 435, 584 S.E.2d 765, 768 (1989) (citation omitted).

North Carolina has long recognized "that once a verdict is rendered, jurors may not impeach it" through the use of extraneous information or evidence. *State v. Heatwole*, 344 N.C. 1, 473 S.E.2d 310 (1996) (citation omitted). "Substantial policy considerations" undergird this longstanding principle, including "freedom of deliberation, stability and finality of verdicts, and protection of jurors from harassment and embarrassment." *State v. Lyles*, 94 N.C. App. 240, 244, 380 S.E.2d 390, 393 (1989) (citing N.C. R. Evid. 606 advisory committee's note to subdiv. (b)). Under Rule 606, juror information becomes "extraneous" when it "reaches a juror without being introduced into evidence and that deals specifically with the defendant or the case being tried." *Heatwole*, 344 N.C. at 12, 473 S.E.2d at 315 (citing *State v. Rosier*, 322 N.C. 826, 832, 370 S.E.2d 359, 363 (1988)). One of the narrow statutory exceptions to this principle includes juror testimony about "[m]atters not in evidence" that arose "under circumstances [that] violate the defendant's constitutional right to confront" evidence or witnesses against him. N.C. Gen. Stat. § 15A-1240(c)(1) (2023).

This Court must "strictly construe[ ]" § 15A-1240(c)(1) because it "derogat[es] . . . the common law." *State v. Froneberger*, 55 N.C. App. 148, 157, 285 S.E.2d 119, 124 (1981).

Here, neither Confrontation Clause has any bearing on evidence irrelevant or favorable to Defendant because § 15A-1240(c)(1) contemplates only extraneous evidence "against" him. *See Rosier*, 322 N.C. at 832, 370 S.E.2d at 363 ("[M]atters [that] . . . d[o] not deal with the defendant or with the evidence introduced in th[e] case" fall outside the scope of § 15A-1240). Defendant cannot establish that the news report at issue was *against* him to the degree necessary to implicate his confrontation right. The juror absorbed little or no substantive information from the news report. She had it on in the background while she focused on getting her son ready for bed. The juror merely overheard—but did not see—a news story about "a shooting in Walmart" by someone named "Little." She did not know of any other details or investigate them further. Evidence that someone named Little was arrested for a different shooting crime was not "against" Defendant.

Furthermore, Defendant himself admitted to "no actual evidence[ ] that Mr. Little was the shooter in this case;" indeed, neither party introduced any substantive evidence at trial placing Little at the crime scene. *See State v. Hall*, 187 N.C. App. 308, 320, 653 S.E.2d 200, 209 (2007) (holding inadmissible prior inconsistent statements as substantive evidence). Defendant's case had no factually relevant connection to the news report. *Cf. Rosier*, 322 N.C. at 832, 370 S.E.2d at 363 (holding

lack of relief available because evidence did not "deal with the defendant or with the evidence introduced in this case"). Thus, there was competent evidence supports trial court's findings and the findings support the conclusion that a news report that someone named Little had been arrested for another shooting that a juror heard in passing did not violate Defendant's confrontation rights.

B. The Bailiff's Inadmissible Testimony

Second, Defendant argues that the trial court erred in holding the bailiff's testimony about the juror's actions and statements regarding the news report to be inadmissible hearsay. The N.C. Rules of Evidence codify black-letter hearsay as "a statement, *other than one made by the declarant* while testifying . . . , offered in evidence to prove the truth of the matter asserted." N.C. R. Evid. 801(c) (emphasis added). Our courts have long recognized that a defendant cannot maneuver around established hearsay principles to introduce evidence of a juror's verdict impeachment. *See, e.g.*, *Baker v. Winslow*, 184 N.C. 1, 9, 113 S.E. 570, 574 (1922) ("If the jurors could not impeach their own verdict directly, it could [not] be done indirectly [by another].") (ellipses omitted); *Craig v. Calloway*, 68 N.C. App. 143, 150, 314 S.E.2d 823, 827 (1984) ("[T]estimony from plaintiff's counsel . . . as to what a juror [said] is inadmissible hearsay."). The testimony at issue here—the bailiff on the juror's possible deliberation rationale—was likewise inadmissible, leaving this purported evidence unreviewable on appeal. We affirm trial court's conclusion of law to that effect.

C. Harmless Beyond Reasonable Doubt

Third, Defendant argues that the trial court committed prejudicial error in concluding that the jury's verdicts would remain unchanged absent the juror's exposure to the news report. As noted above, the Confrontation Clauses preserve a defendant's right to confront witnesses and evidence brought against him. U.S. Const. amend. VI, cl. 5; *accord* N.C. Const. art. I, § 23, cl. 1. But this right is not absolute; a trial court's error violates it only if so substantial "that a different result would have likely" occurred otherwise. *In re R.S.H.*, 383 N.C. 334, 339, 881 S.E.2d 480, 484 (2022) (quotation omitted).

Even assuming *arguendo* the trial court erred in its determination, we assess the objective harm of a juror's exposure to extraneous evidence by determining "whether . . . '[a] reasonable possibility'" exists that "'an average juror' could have been affected" by that exposure. *State v. Heavner*, 227 N.C. App. 139, 148, 741 S.E.2d 897, 904 (2013) (quoting *Lyles*, 94 N.C. App. 240, 249, 380 S.E.2d at 396). *Lyles* outlines five factors to consider in determining the error's impact on the "average juror": (1) the "nature of the extrinsic information," (2) the juror's circumstantial exposure to that information, (3) the "nature of the State's case," (4) the "defense presented at trial," and (5) the "connection between the extraneous information" and the alleged error. *Lyles*, 94 N.C. App. at 249, 380 S.E.2d at 396.

Here, the juror unintentionally overheard a news report about a shooting involving a person with the last name of "Little." There is also evidence in this case

that Zyicoren Little was an unindicted co-conspirator in the present case. The juror never viewed the news report or Little himself because she focused on preparing her son for bed that night. It is also unclear that the Little mentioned in the report was Zyicoren Little. Even if the juror had directly observed the news report, it still only tangentially addressed State's core argument that Defendant acted in concert to shoot *this victim*. Even more tenuous a connection is an unrelated shooting allegedly committed by someone even Defendant's investigating officer thought too untenable to charge. Finally, at no point could either the State or Defendant establish any context relevant to Defendant for the juror's remark that the news report "clicked" for her. Considering the foregoing, and given our longstanding reluctance to countermand a trial court's reasonable findings of fact, we decline to do so now. This news report would have only tangentially affected an average juror's interest in Defendant's case. Thus, any potential error was harmless beyond a reasonable doubt.

IV. Conclusion

The trial court did not violate Defendant's constitutional rights to due process, to an impartial jury of his peers, or to confront evidence brought against him by refusing impeachment of the jury verdict under N.C. Gen. Stat. § 15A-1414 (2023). Furthermore, even assuming *arguendo* error occurred, it was harmless beyond a reasonable doubt.

NO ERROR.

Chief Judge DILLON and Judge ARROWOOD concur.

Report per Rule 30(e).