IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-681

Filed 19 March 2024

Anson County, Nos. 21 CRS 50581–82

STATE OF NORTH CAROLINA

v.

HENRY WALKER

Appeal by defendant from judgment entered 22 July 2022 by Judge Dawn McDonald Layton in Anson County Superior Court. Heard in the Court of Appeals 9 January 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General J. Blake Norman, for the State.

William D. Spence for defendant-appellant.

ZACHARY, Judge.

Defendant Henry Walker appeals from the judgment entered upon a jury's verdicts finding him guilty of attempted first-degree murder, robbery with a dangerous weapon, assault with a deadly weapon with intent to kill inflicting serious injury, and possession of a firearm by a felon. Defendant argues that the trial court erred 1) by allowing Defendant to represent himself at trial without first conducting

the colloquy required under N.C. Gen. Stat. § 15A-1242; and 2) by failing to declare a mistrial *sua sponte* after the victim referred, during cross-examination, to an online reference that Defendant had previously robbed a bank. After careful review, we conclude that Defendant received a fair trial, free from error.

BACKGROUND

In June 2021, Defendant pawned two chains to 74-year-old Henry Colson. A few weeks later, on 13 July 2021, Defendant called Colson several times asking for the return of the chains. Colson and a girlfriend were traveling back from the beach; when they arrived at Colson's Wadesboro home, Defendant was waiting. As Colson's girlfriend slept in his truck, Defendant followed Colson into the house demanding the return of the chains. Colson started toward his bedroom to get the chains: "[W]hen I got to the door, [Defendant] shot me. When he shot me, I tried to close the door on him, and that's when he shot through the door again and he pushed it. And I grabbed the gun [and we] struggl[ed] with the gun." Defendant shot Colson twice in the back with a 9-millimeter handgun. While Colson was on his knees, seriously injured, Defendant emptied Colson's pockets. Defendant took Colson's wallet, watch, and $1,500.00 in cash and fled from the scene.

As Colson crawled to the front porch to summon help, someone called the police. Medics arrived and transported Colson to the airport, from which he was airlifted to Carolinas Medical Center in Charlotte. Colson underwent multiple

surgeries, was hospitalized for two months, and suffered permanent injuries including a bullet that remains lodged behind his lungs.

On 1 November 2021, an Anson County grand jury indicted Defendant for attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, robbery with a dangerous weapon, and possession of a firearm by a felon. At a preliminary hearing on 1 December 2021, Defendant demanded to represent himself at trial, and he executed a waiver of counsel. The trial court accepted the written waiver and appointed an attorney to serve as standby counsel at trial.

At a bond hearing on 8 February 2022, the trial court engaged in a colloquy with Defendant regarding his desire to waive his right to counsel and represent himself at trial. The trial court also advised Defendant of the range of sentences he faced if convicted of the charges against him. When asked whether Defendant understood all this, Defendant responded, "Clearly. Yes, ma'am." After confirming three additional times that Defendant wished to represent himself, the trial court asked:

> THE COURT: Do you now waive your right to the assistance of a lawyer and voluntarily and intelligently decide to represent yourself in this case, specifically in your trial?
>
> [DEFENDANT]: Yes, I do.

On 18 July 2022, the matter came on for trial. The trial court again addressed Defendant regarding his decision to waive his right to appointed counsel and to represent himself, and Defendant confirmed: "Yes, ma'am, it's still my desire to move forward representing myself."

On 21 July 2022, the jury returned verdicts finding Defendant guilty of attempted first-degree murder, robbery with a dangerous weapon, assault with a deadly weapon with intent to kill inflicting serious injury, and possession of a firearm by a felon. The trial court consolidated the convictions and entered judgment, sentencing Defendant to 238 to 298 months in the custody of the North Carolina Division of Adult Correction with credit for 351 days in confinement prior to the date of the judgment as a result of these charges. Defendant gave oral notice of appeal in open court.

DISCUSSION

Defendant argues that 1) the trial court erred by allowing him to waive his right to counsel and represent himself at trial without first conducting the colloquy required under N.C. Gen. Stat. § 15A-1242; and 2) the trial court abused its discretion by failing to declare a mistrial *sua sponte* after Colson referred during cross-examination to an online reference that Defendant had previously robbed a bank.

I. Defendant's Election to Proceed Pro Se

On appeal, Defendant contends that "the trial court erred in allowing [him] to represent himself at trial for the reason that the trial court failed to comply with N.C. G[en]. S[tat]. § 15A-1242." We disagree.

A. Standard of Review

"We review a trial court's decision to permit a defendant to represent himself *de novo*." *State v. Faulkner*, 250 N.C. App. 412, 414, 792 S.E.2d 836, 838 (2016) (citation omitted).

B. Waiver of the Right to Counsel: Legal Principles

"It is well established that the right to counsel provided by the Sixth Amendment to the United States Constitution also provides the right to self-representation." *Id.* (cleaned up). "A criminal defendant . . . has a right to handle his own case without interference by, or the assistance of, counsel forced upon him against his wishes." *State v. Lindsey*, 271 N.C. App. 118, 126, 843 S.E.2d 322, 328 (2020) (cleaned up).

"Before allowing a defendant to waive in-court representation by counsel, however, the trial court must [e]nsure that constitutional and statutory standards are satisfied." *Faulkner*, 250 N.C. App. at 414, 792 S.E.2d at 838 (citation omitted). Thus, "[o]nce a defendant clearly and unequivocally states that he wants to proceed *pro se*, the trial court must determine whether the defendant knowingly, intelligently, and voluntarily waives the right to representation by counsel." *Id.* (cleaned up).

Our General Assembly has also addressed a defendant's election to represent himself at trial. N.C. Gen. Stat. § 15A-1242 provides that a defendant may elect to proceed without the assistance of counsel "after the trial judge makes thorough inquiry and is satisfied that the defendant":

> (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
>
> (2) Understands and appreciates the consequences of this decision; and
>
> (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242(1)–(3) (2023). The North Carolina Supreme Court has held that "the inquiry required by N.C.G.S. § 15A-1242 satisfies constitutional requirements." *State v. Thomas*, 331 N.C. 671, 674, 417 S.E.2d 473, 476 (1992).

It is error for a trial court to allow a defendant to proceed *pro se* unless, "[f]irst, waiver of the right to counsel and election to proceed *pro se* is expressed clearly and unequivocally," *id.* at 673, 417 S.E.2d at 475, and secondly, the court determines that "the defendant knowingly, intelligently, and voluntarily waives the right to in-court representation by counsel," *id.* at 674, 417 S.E.2d at 476. "[W]hen a trial court acts contrary to [section 15A-1242] and a defendant is prejudiced thereby, the right to appeal the court's action is preserved, notwithstanding the defendant's failure to object at trial." *Lindsey*, 271 N.C. App. at 125, 843 S.E.2d at 328 (cleaned up).

C. Analysis

Defendant argues that the trial court erred by permitting him to proceed *pro se* without first conducting the colloquy required by N.C. Gen. Stat. § 15A-1242.

"Analysis of this issue is best understood by reviewing" the colloquies between the trial court and Defendant. *Faulkner*, 250 N.C. App. at 415, 792 S.E.2d at 839. On 1 December 2021, Defendant first informed the trial court: "I wish to represent myself. I wish not to have court-appointed attorneys." Defendant then executed the Administrative Office of the Courts waiver of counsel form, and the trial court appointed standby counsel.

At some point after the preliminary hearing—apparently after the clerk's office refused to accept motions filed by Defendant, rather than standby counsel—Defendant wrote a letter to the judge. In this letter, Defendant evidences his understanding of the judge's instructions, stating that "I AM REPRESENTING MYSELF AS I WAS INSTRUCTED BY YOU: IT WAS MY RESPONSIBILITY TO WRITE ANY MOTIONS THAT I NEED TO PRESENT TO YOUR HONORABLE COURT. . . . I ONLY WANT TO GET ON THE DOCKET FOR APRIL TO REVIEW MY BAIL REQUEST."

Thereafter, at the 8 February 2022 bond hearing, the trial court again addressed Defendant's desire to proceed pro se:

> [THE COURT:] All right, Mr. Walker. You've previously signed a waiver indicating you are going to represent yourself in this matter. [Your court-appointed attorney's] representation was limited to this bond hearing.

> [DEFENDANT]: Right.
>
> THE COURT: So at this time, what is it you wish to do about an attorney in your matter?
>
> [DEFENDANT]: I'll continue as I have it.
>
> THE COURT: Are you going to—you're continuing to represent yourself?
>
> . . . .
>
> [DEFENDANT]: . . . I will represent myself. Yes.
>
> THE COURT: All right. [Y]ou understand that, if you represent yourself, you will be required to follow the rules of law and evidence as any practicing or licensed attorney here in North Carolina.
>
> [DEFENDANT]: Yes, ma'am.
>
> THE COURT: And you understand also that the Court will not be able to give you any leg[a]l advice . . . [d]uring your motions, during jury selection.
>
> [DEFENDANT]: Yes, ma'am.

The trial court informed Defendant of the range of permissible punishments that he faced if convicted of the charges against him. In addition, the trial court warned Defendant that the range of punishments she reported were "not in the aggravated range[,] if the State gives notice of aggravating factors." The trial court asked Defendant whether he understood, to which Defendant responded: "Clearly. Yes, ma'am."

Defendant subsequently confirmed three additional times that he wished to represent himself. The trial court reaffirmed that Defendant would "be held to that same standard as if [he] had gone to four years of college, graduated from law school, and passed the bar." The trial court finally asked:

> THE COURT: [D]o you have any questions about what I've just told you?
>
> [DEFENDANT]: No. I don't have any questions.
>
> THE COURT: Do you now waive your right to the assistance of a lawyer and voluntarily and intelligently decide to represent yourself in this case, specifically in your trial?
>
> [DEFENDANT]: Yes, I do.

When Defendant's case came on for pretrial motions on 18 July 2022, the trial court again questioned Defendant regarding his decision to proceed pro se, and Defendant once again confirmed: "Yes, ma'am, it's still my desire to move forward representing myself." The trial court then repeated its warning "that (1) if [Defendant] represented himself, the trial court would not serve as a legal adviser to [Defendant]; [and] (2) if [he] proceeded *pro se* he would be expected to know and follow the rules and procedures of court[.]" *Faulkner*, 250 N.C. App. at 418, 792 S.E.2d at 840. "Defendant indicated that he understood each of these warnings regarding the consequences of representing himself." *Id.*

Here, Defendant "clearly and unequivocally" stated seven times that it was his intention to waive the right to counsel and to represent himself. *Id.* (citation omitted).

Defendant's written waiver, his letter to the court, and the above colloquies indicate that Defendant's waiver was "knowing[ ], intelligent[ ], and voluntary[.]" *Id.* at 414, 792 S.E.2d at 838. We therefore conclude that the trial court's inquiry satisfied "the standard set out in N.C. Gen. Stat. § 15A-1242 and that the trial court did not err by allowing [Defendant] to proceed *pro se*." *Id.* at 418, 792 S.E.2d at 840; *see also Lindsey*, 271 N.C. App. at 126, 843 S.E.2d at 328.

II. Trial Court's Failure to Declare a Mistrial *Sua Sponte*

Defendant next contends that the trial court erred by failing to declare a mistrial *sua sponte* after Colson testified during his cross-examination by Defendant that Colson's daughter "went on the phone and pulled [Defendant] up, . . . [a]nd it showed where [Defendant] had robbed a bank down in—[.]" We conclude that the trial court did not abuse its discretion by failing, *sua sponte*, to declare a mistrial.

A. Standard of Review

"It is well settled that a motion for a mistrial and the determination of whether a defendant's case has been irreparably and substantially prejudiced is within the trial court's sound discretion." *State v. Shore*, 258 N.C. App. 660, 678, 814 S.E.2d 464, 475 (2018) (citation omitted) (concluding that the trial court did not abuse its discretion by failing to declare a mistrial *sua sponte*). "An abuse of discretion occurs when a ruling is manifestly unsupported by reason, which is to say it is so arbitrary that it could not have been the result of a reasoned decision." *State v. Taylor*, 362 N.C.

514, 538, 669 S.E.2d 239, 260 (2008) (citation omitted), *cert. denied*, 558 U.S. 851, 175 L. Ed. 2d 84 (2009).

B. Analysis

N.C. Gen. Stat. § 15A-1063 provides that, "[u]pon motion of a party or upon his own motion, a judge may declare a mistrial if . . . [i]t is impossible for the trial to proceed in conformity with law[.]" N.C. Gen. Stat. § 15A-1063(1). "This statute allows a judge . . . to grant a mistrial where he could reasonably conclude that the trial will not be fair and impartial." *State v. Lyons*, 77 N.C. App. 565, 566, 335 S.E.2d 532, 533 (1985). Nonetheless, "[m]istrial is a drastic remedy, warranted only for such serious improprieties as would make it impossible to attain a fair and impartial verdict." *Taylor*, 362 N.C. at 538, 669 S.E.2d at 260 (citation omitted). "[T]he decision as to whether substantial and irreparable prejudice has occurred lies within the sound discretion of the trial judge and . . . his decision will not be disturbed on appeal absent a showing of abuse of discretion." *State v. Williamson*, 333 N.C. 128, 138, 423 S.E.2d 766, 772 (1992).

In addition, "where [a] defendant objects to the admission of incompetent evidence and the trial judge promptly instructs the jury not to consider it, the prejudicial impact of the evidence is ordinarily erased and no error entitling [the] defendant to a new trial has occurred." *State v. Parton*, 303 N.C. 55, 73, 277 S.E.2d 410, 422 (1981), *overruled on other grounds*, 314 N.C. 432, 438, 333 S.E.2d 743, 747 (1985).

In *Shore*, the defendant contended that the trial court erred by failing to declare a mistrial *sua sponte*, which the court must where "there occurs during the trial an error or legal defect in the proceedings . . . resulting in substantial and irreparable prejudice to the defendant's case." *Shore*, 258 N.C. App. at 677, 814 S.E.2d at 475 (citation omitted). However, we noted that "[t]he record demonstrate[d] that the trial judge took immediate measures to address" the issue of which the defendant complained, namely, the behavior of a particular witness. *Id.* at 680, 814 S.E.2d at 476. Moreover, the defendant "did not request additional action by the trial court, move for a mistrial, or object to the trial court's method of handling the alleged misconduct in the courtroom." *Id*. Thus, we concluded that "[i]n light of the immediate and reasonable steps taken by the trial court to address [the witness's] behavior, and the totality of the facts and circumstances of the case, . . . the trial court did not abuse its discretion when it did not *sua sponte* declare a mistrial." *Id*.

The case at bar offers similar facts. During Defendant's cross-examination of Colson, Defendant asked how he "first discovered [Defendant's] name[,]" to which Colson responded, "My daughter went on the phone and pulled you up, and it showed where they had got you and the charges you had. And it showed where you had robbed a bank down in—[.]" The trial court sustained its own objection (and Defendant's following objection) and immediately instructed the jury to disregard this statement. As in *Shore*, Defendant "did not request additional action by the trial court, move for

a mistrial, or object to the trial court's method of handling the alleged misconduct in the courtroom." *Id*.

The trial court was in the best position to assess the prejudicial impact on the jury of this statement and had the best means with which to remedy that impact. *See id.* The court alerted Defendant to the objectionable nature of the statement, sustained the objection, and immediately instructed the jury that it was not to consider the statement.

As our Supreme Court has explained, "[i]t is assumed that jurors are individuals of sufficient character and intelligence to fully understand and comply with the court's instructions, and it is presumed that they have done so." *Parton*, 303 N.C. at 73, 277 S.E.2d at 422. Thus, "[w]hen the trial court withdraws incompetent evidence and instructs the jury not to consider it, any prejudice is ordinarily cured." *State v. Black*, 328 N.C. 191, 200, 400 S.E.2d 398, 404 (1991).

Accordingly, "the trial court did not abuse its discretion when it did not *sua sponte* declare a mistrial." *Shore*, 258 N.C. App. at 680, 814 S.E.2d at 476. Defendant's argument is overruled.

CONCLUSION

For the reasons set forth above, we conclude that Defendant received a fair trial, free from error.

NO ERROR.

Judges STROUD and TYSON concur.

Report per Rule 30(e).