An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-458

Filed: 6 February 2018

Guilford County, No. 15 CRS 72384

STATE OF NORTH CAROLINA

v.

JERMAINE JACKSON GOINS

Appeal by defendant from judgment entered 3 August 2016 by Judge Richard L. Doughton in Guilford County Superior Court. Heard in the Court of Appeals 2 January 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Rebecca E. Lem, for the State.

Cooley Law Office, by Craig M. Cooley, for defendant-appellant.

BRYANT, Judge.

Where defendant cannot show an abuse of discretion in the trial court's failure to declare a mistrial *sua sponte* and where defendant is unable to sustain a claim of ineffective assistance of counsel, we conclude defendant received a fair trial free from prejudicial error.

On 2 April 2015, Marquis Coleman was arrested by Greensboro police officers and charged with trafficking in cocaine and several related offenses. Mr. Coleman agreed to cooperate with police to assist in their investigation of the person who provided Mr. Coleman with the drugs. Mr. Coleman identified defendant, Jermaine Jackson Goins, whom Mr. Coleman referred to as "J-Rock," as his supplier. Detectives Brad Jeter and Maurice McPhatter led the investigation and with Mr. Coleman arranged a drug sale with defendant.

Mr. Coleman phoned defendant to set up a drug deal, and the two eventually agreed to meet on 6 April 2015 at First Choice Auto Repair in Greensboro. The officers provided Mr. Coleman cash to purchase 500 grams of cocaine from defendant. Officers performed a search of Mr. Coleman's vehicle and person, and his vehicle was outfitted with an audio transmitter so the police could listen to the conversation inside the vehicle. At 6:30 p.m. on 6 April 2015, Mr. Coleman received a call from defendant informing him that he was at First Choice Auto Repair.

Mr. Coleman pulled into the parking lot of First Choice Auto Repair and parked his car. Defendant, who was already in the parking lot, walked around to the front passenger side of his vehicle, leaned inside the passenger area, and then adjusted the waistband of his pants. Defendant then walked over to Mr. Coleman's vehicle and sat in the front passenger seat. Mr. Coleman testified that defendant pulled the cocaine out of the crotch part of his pants. During the conversation

between defendant and Mr. Coleman, officers moved in to arrest the pair. Officers seized a plastic grocery bag containing a white powdery substance from the passenger side of the vehicle. A forensic scientist testified that the substance seized consisted of 473.01 grams of cocaine hydrochloride, a Schedule II controlled substance.

On 8 February 2016, defendant was indicted on two counts of trafficking in cocaine and one count of possession with intent to sell and deliver cocaine. Defendant was tried at the 18 July 2016 criminal session of Guilford County Superior Court and, on 21 July, was found guilty of two counts of trafficking in cocaine. Defendant gave oral notice of appeal in open court.

Defendant contends he received ineffective assistance of counsel ("IAC") when his trial counsel failed to move for a mistrial after Detective Jeter informed the jury that he was familiar with defendant's street name and phone number because they had surfaced in another investigation. Defendant points to the following testimony as having impermissibly prejudiced the jury against defendant:

> [PROSECUTOR]: Can you tell me, at least with regard to Mr. Coleman's participation, when did this investigation that resulted in Mr. Goins' arrest, when did it start?
>
> [DETECTIVE JETER]: It actually started before Mr. Coleman on an unrelated case, a subject that was arrested ---
>
> [DEFENSE COUNSEL]: Objection.

> THE COURT: Basis?
>
> [DEFENSE COUNSEL]: An unrelated case.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: Well, let me -- let me ask -- let me ask, in -- in that regard just very generally: You were familiar, in the course of your investigation, with the Defendant, Mr. Goins, before you came into contact with Mr. Coleman?
>
> [DETECTIVE JETER]: That's correct.
>
> [PROSECUTOR]: Okay. What ---
>
> [DETECTIVE JETER]: The -- I'm sorry, not him personally, just the street name J-Rock.

When the prosecutor later asked about what information Mr. Coleman had provided following his arrest, Detective Jeter responded: "One source that he mentioned was the -- the name J-Rock, which I had already heard in another investigation and I had already been provided with a phone number for J-Rock." Defense counsel objected following this testimony. The trial court sustained the objection and struck Officer Jeter's testimony, instructing the jury: "disregard that statement about he had already been provided with a phone number for J-Rock. That's stricken -- the entire answer is stricken from the record. . . . Totally disregard about what he had been told." The prosecutor then continued his questioning:

> [PROSECUTOR]: Detective Jeter, with regard to Mr. Coleman, you say he provided you with a number?
>
> [DETECTIVE JETER]: Correct. He provided me with a

> number that I was familiar with.
>
> [PROSECUTOR]: Did you -- did you, Detective Jeter, reduce to writing, at some point, what that number was?
>
> [DETECTIVE JETER]: 919-. . . .

Defendant contends that his trial counsel rendered ineffective assistance for failing to object to this last line of questioning and for failing to move for a mistrial based on Officer Jeter's testimony regarding his familiarity with "J-Rock" and his phone number. We disagree.

"To substantiate a claim for ineffective assistance of counsel, a defendant must show that his counsel's representation was deficient and there is a reasonable possibility that, but for the inadequate representation, there would have been a different result." *State v. Maney*, 151 N.C. App. 486, 490, 565 S.E.2d 743, 746 (2002). "If this Court 'can determine at the outset that there is no reasonable probability that in the absence of counsel's alleged errors the result of the proceeding would have been different,' we do not determine if counsel's performance was actually deficient." *State v. Frazier*, 142 N.C. App. 361, 368, 542 S.E.2d 682, 687 (2001) (quoting *State v. Braswell*, 312 N.C. 553, 563, 324 S.E.2d 241, 249 (1985)). In order to prove IAC, it is not enough for defendant to show that the trial court would have declared a mistrial had counsel moved for it; rather, defendant must show a reasonable probability that another verdict would have been reached had counsel moved for a mistrial. *See State v. Ramirez*, 156 N.C. App. 249, 254, 576 S.E.2d 714, 718 (2003) (concluding that

defense counsel's failure to object and move for a mistrial did not constitute ineffective assistance where there was "no reasonable possibility that but for defense counsel's alleged errors another verdict would have been reached").

Even assuming that counsel's representation was deficient for failing to object to the challenged testimony and move for a mistrial, we conclude there was ample evidence introduced at trial to support the conviction. After Mr. Coleman was arrested on drug-related crimes, he identified "J-Rock" as the source of his drugs and provided a phone number. At the behest of police, Mr. Coleman called J-Rock, identified at trial as defendant, to purchase cocaine from him. Defendant told Mr. Coleman he would contact him when he got the cocaine, and later called to arrange the details of the sale. After speaking with defendant, Mr. Coleman told police when and where the sale would occur. Prior to that sale taking place, police thoroughly searched Mr. Coleman's vehicle and person to ensure he was not carrying drugs to the arranged sale. Mr. Coleman was monitored by police after he was searched until the arranged sale took place to verify that Mr. Coleman did not bring any drugs into his vehicle prior to meeting defendant. Defendant was at the First Choice Auto Repair at the arranged time. Defendant exited his car while appearing to shove something into his pants, then approached and entered Mr. Coleman's vehicle on the front-passenger side. Mr. Coleman testified that after defendant entered the vehicle, he pulled from the crotch part of his pants a bag that appeared to contain half a

kilogram of cocaine. Police came up shortly thereafter to arrest the men, and a large amount of cocaine was recovered in the front-passenger area of the vehicle. While defendant highlights ways in which the evidence against him could have been stronger, he does not demonstrate that the result at trial would likely have been different had defense counsel moved for a mistrial after Detective Jeter testified that Mr. Coleman gave him defendant's number and that he was familiar with defendant's street name and phone number. Defendant is not entitled to relief on the basis of his claim of IAC.

Defendant next contends that the trial court plainly erred in failing to declare a mistrial *sua sponte* after Detective Jeter testified to being familiar with defendant's street name and phone number. Again, we disagree.

"[U]pon 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) (2015). "This statute allows a judge . . . to grant a mistrial where he could reasonably conclude that the trial will not be fair and impartial." *Ramirez*, 156 N.C. App. at 253, 576 S.E.2d at 718 (alteration in original) (quoting *State v. Lyons*, 77 N.C. App. 565, 566, 335 S.E.2d 532, 533 (1985)). "It is appropriate for a trial court to declare a mistrial only when there are such serious improprieties as would make it impossible to attain a fair and impartial verdict under the law." *State v. Bowman*, 349 N.C. 459, 472, 509 S.E.2d 428, 436 (1998) (citation omitted). The decision "to grant a motion

for mistrial is within the sound discretion of the trial court and its ruling will not be disturbed on appeal unless it is so clearly erroneous as to amount to a manifest abuse of discretion." *State v. Sanders*, 347 N.C. 587, 595, 496 S.E.2d 568, 573 (1998) (quoting *State v. McCarver*, 341 N.C. 364, 383, 462 S.E.2d 25, 35 (1995)).

In the present case, after reviewing the record and trial transcript, we cannot say the trial court abused its discretion by not declaring a mistrial. Detective Jeter's testimony regarding his previous familiarity with defendant's street name and phone number did not "amount[ ] to such serious impropriety that it was impossible for defendant to obtain a fair trial." *Bowman*, 349 N.C. at 472, 509 S.E.2d at 436 (citation omitted). As a result, we conclude that defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges HUNTER, JR., and INMAN concur.

Report per Rule 30(e).