IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-578

Filed: 16 April 2019

Martin County, Nos. 16 CRS 357, 359

STATE OF NORTH CAROLINA

v.

LAMARQUIS LETRON SMALLWOOD

Appeal by defendant from judgment entered 25 October 2017 by Judge Marvin K. Blount, III, in Martin County Superior Court. Heard in the Court of Appeals 8 April 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Lewis W. Lamar, Jr., for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

ARROWOOD, Judge.

Lamarquis Letron Smallwood ("defendant") appeals from his convictions for robbery with a dangerous weapon and attaining the status of an habitual felon. For the following reasons, we dismiss the appeal.

I. Background

On 15 August 2016, a grand jury indicted defendant on two counts of robbery with a dangerous weapon, two counts of second degree kidnapping, and one count of attaining the status of an habitual felon. Defendant's matter came on for trial on 24 October 2017. The State's evidence at trial tended to show the following.

On 6 September 2015, Vassie Raynor ("Raynor"), Raymond Cooper ("Cooper"), and defendant decided to rob a store in order to obtain money to buy more cocaine. The men decided that defendant would be the driver, Cooper would be the lookout, and Raynor would rob the store.

Around 11:00 p.m. that evening, defendant drove Raynor and Cooper to the Murphy Express convenience store located in Williamston, North Carolina, in a vehicle owned by defendant's girlfriend, and parked on the left-hand side of the parking lot. At that time, Kadesia Jones ("Ms. Jones") was stocking cigarettes behind the register during her shift at the Murphy Express. Ms. Jones was familiar with Raynor as a regular customer of the store.

Raynor entered the store and went directly to the men's restroom. Cooper entered the store shortly after and also went straight to the men's restroom. A few seconds later, Ms. Jones heard a door open and looked over the counter to see Raynor approaching her with a shotgun. Raynor pointed the gun at Ms. Jones and demanded she "[g]ive [him] all the money in the register." Ms. Jones emptied the contents of

the register into a bag. Raynor then demanded four cartons of Newport 100s brand cigarettes.

While Ms. Jones was putting the cigarettes in the bag, Maher Muhammad ("Mr. Muhammad") walked into the store. Mr. Muhammad was counting his money and initially did not see what was happening at the counter. When Mr. Muhammad saw Raynor near the counter, he became startled and knocked over a soda display. Mr. Muhammad recognized Raynor as a regular customer of the store where Mr. Muhammad worked. Raynor demanded Mr. Muhammad's money, and Mr. Muhammad handed it to him. Raynor grabbed the bag and quickly left the store. Raynor and Cooper got back into defendant's vehicle and fled the scene.

Once the men had left the store, Ms. Jones locked the front door and called 911. Law enforcement officers arrived at the Murphy Express a few minutes later. Both Ms. Jones and Mr. Muhammad identified Raynor by name to the officers as the man who robbed the store.

Defendant drove Raynor and Cooper to a nearby house located behind a Burger King. Once there, the men split the money and cigarettes. A short time later, a woman arrived to pick up defendant. Defendant told Raynor and Cooper to drive the car back to his girlfriend's home in Willow Acres and left with the woman.

Cooper drove the vehicle while Raynor sat in the front passenger seat. While en route to Willow Acres, Cooper observed a law enforcement vehicle pass them on

the road, turn around, and turn on its high beams. Thereafter, Cooper pulled into a group home, stopped the car, and fled on foot. Raynor, who was wearing a medical boot on his foot, could not run and was apprehended by law enforcement near the vehicle. The officers transported Raynor back to the Murphy Express, where both Ms. Jones and Mr. Muhammad identified him as the man who robbed the store.

A few days after Raynor's arrest, he gave a statement to law enforcement implicating defendant in the robbery. In a search of the vehicle taken into evidence at the time Raynor was apprehended, officers located three packs of Newport 100s brand cigarettes inside the vehicle and a 12 gauge shotgun in the trunk. The vehicle was identified as belonging to a woman who officers established was in a romantic relationship with defendant.

At the close of the State's evidence, defendant moved to dismiss the charges. The trial court allowed defendant's motion as to the two kidnapping charges, but denied it as to the two robbery with a dangerous weapon charges. Defendant did not present any evidence and renewed his motion to dismiss, which the trial court denied. The jury found defendant guilty of robbery with a dangerous weapon of Ms. Jones, but not guilty of the robbery of Mr. Muhammad. Defendant then pled guilty to attaining the status of an habitual felon. The court consolidated the convictions for judgment and sentenced defendant to a term of 115 to 150 months of imprisonment. Defendant gave oral notice of appeal.

II. Discussion

Defendant's sole argument on appeal is that the trial court committed plain error by not declaring a mistrial *sua sponte* when Raynor testified that defendant had been "locked up" a majority of his life. Defendant argues this statement prejudiced the jury against him because the knowledge that defendant had spent most of his life incarcerated undermined defendant's presumption of innocence in the minds of the jurors.

During Raynor's testimony, the following exchange occurred:

> [THE STATE:] How long have you known Mr. Smallwood?
>
> [RAYNOR:] He's, actually, my cousin. I've been knowing him -- he been locked up a majority of his life so –
>
> [DEFENSE COUNSEL]: Objection.

The trial court sustained defendant's objection to the statement and, on its own motion, struck the statement from the record and instructed the jury to disregard the statement in their deliberations. Defendant did not move for a mistrial.

Although defendant did not make a motion for a mistrial, he asserts that it was plain error for the trial court not to grant a mistrial *sua sponte*. However, it is well established that plain error review is limited to errors regarding a trial court's jury instructions or rulings on the admissibility of evidence. *See State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996). Further, our Supreme Court has refused to apply the plain error standard of review "to issues which fall within the realm of the

trial court's discretion[.]" *State v. Steen,* 352 N.C. 227, 256, 536 S.E.2d 1, 18 (2000), *cert. denied,* 531 U.S. 1167, 148 L. Ed. 2d 997 (2001); *see also State v. Allen*, 141 N.C. App. 610, 617, 541 S.E.2d 490, 496 (2000) ("Whether a motion for mistrial should be granted is a matter which rests in the sound discretion of the trial judge."), *appeal dismissed, disc. review denied*, 353 N.C. 382, 547 S.E.2d 816 (2001).

Therefore, plain error review of a trial court's failure to *sua sponte* declare a mistrial is unavailable. *See State v. McCall*, 162 N.C. App. 64, 70, 589 S.E.2d 896, 900 (2004) (holding that plain error review is unavailable to appellants contending that the trial court failed to declare a mistrial because "the North Carolina Supreme Court has restricted review for plain error to issues involving either errors in the trial judge's instructions to the jury or rulings on the admissibility of evidence" (internal quotation marks omitted)).

In *State v. Shore*, ___ N.C. App. ___, 804 S.E.2d 606 (2017), *review granted, cause remanded,* 370 N.C. 568, 809 S.E.2d 501 (2018), the defendant argued the trial court failed to declare a mistrial *sua sponte* after a witness "engaged in a 'pattern of abusive and prejudicial behavior' " during trial. *Id.* at ___, 804 S.E.2d at 616. Citing *McCall*, this Court held that the defendant failed to preserve the argument for appeal when he "did not request additional action by the trial court, . . . did not move for a mistrial, and . . . did not object to the trial court's method of handling the alleged misconduct in the courtroom." *Id.* at ___, 804 S.E.2d at 618. The defendant petitioned

our Supreme Court for review, arguing that this Court applied the wrong standard of review because he did not allege plain error as the defendant did in *McCall*, but argued under an abuse of discretion standard. Our Supreme Court allowed the petition for discretionary review "for the limited purpose of remanding [the] case to the Court of Appeals for consideration of the merits of the Defendant's argument concerning the issue of mistrial." *State v. Shore*, 370 N.C. 568, 809 S.E.2d 501 (2018). On remand, this Court reviewed the issue for abuse of discretion, and found no error. *State v. Shore*, ___ N.C. App. ___, ___, 814 S.E.2d 464, 475-76 (2018).

In this case, defendant does not argue this Court should review the issue under an abuse of discretion standard. Rather, defendant specifically alleges the trial court committed plain error by failing to *sua sponte* declare a mistrial. Because defendant argues only plain error, defendant has not presented any issues which this Court can substantively address. *See First Charter Bank v. Am. Children's Home*, 203 N.C. App. 574, 580, 692 S.E.2d 457, 463 (2010) ("It is not the role of the appellate courts . . . to create an appeal for an appellant, nor is it the duty of the appellate courts to supplement an appellant's brief with legal authority or arguments not contained therein." (internal citation and quotations omitted)). Therefore, this issue is dismissed. As defendant did not raise any additional arguments on appeal, we dismiss his appeal.

DISMISSED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).