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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-5

Filed: 3 December 2019

Wayne County, No. 15 CRS 52352

STATE OF NORTH CAROLINA

v.

YQUAN DASHAY HOLLOMAN

Appeal by Defendant from Judgments entered 19 July 2017 by Judge William W. Bland in Wayne County Superior Court. Heard in the Court of Appeals 8 August 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General John H. Schaeffer, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Yquan Dashay Holloman (Defendant) appeals from his convictions for First-Degree Murder and Discharging a Weapon into an Occupied Vehicle in Operation Inflicting Serious Bodily Injury (Discharging a Weapon). The Record before us, including evidence presented at trial, tends to show the following:

In June 2015, Defendant was a nineteen-year-old male who lived in an apartment on Holly Street in Goldsboro, and Diamond Sampson (Sampson) was a twenty-two-year-old male who lived with his mother in the Jefferson Court Apartments in Goldsboro. At the time, Sampson was dating Samantha Cross (Cross), and Defendant was dating Savannah Parker (Parker). Both couples were friends with each other, although Cross described Defendant and Sampson as having "a whole bunch of animosity between the two of them."

On 6 June 2015, after finishing her shift at work around 10:00 p.m., Cross picked up Sampson and two other individuals, and they proceeded to drive around town smoking marijuana. Cross eventually drove to a friend's apartment, and Sampson went inside. When Sampson returned to Cross's car, he got in the driver's seat and had a bag of marijuana with him. Defendant, who was also at the friend's apartment, followed Sampson to Cross's car and told Sampson that he better not leave or Defendant was "going to send a couple shots [his] way." Ignoring this warning, Sampson drove off, and Cross testified she heard four or five shots being fired, although none of them hit her car.

Thereafter, Defendant left the friend's apartment and went to his apartment on Holly Street. Parker, who was at Defendant's apartment when he arrived, testified Defendant "was very mad and upset" when he returned and that he began filling up a magazine with bullets. Defendant told Parker that "[Sampson] is going

to be on the back of everybody's T-shirt before the end of the night[.]" Defendant then left his apartment with a handgun.

After driving around town for a little while, Sampson, who was still driving Cross's car, returned to the Jefferson Court Apartments and parked next to a car occupied by Natalie Uzzell (Uzzell) and her boyfriend. Sampson, Cross, and the two other individuals with them remained in Cross's car while Cross began rolling a marijuana blunt. Cross testified she heard Defendant say, "what's up" and that as Sampson opened the driver door and began to get out, Defendant shot Sampson several times. Uzzell also testified she saw Defendant shoot Sampson several times.

When the shooting stopped, the two individuals with Cross and Sampson fled the scene along with Uzzell and her boyfriend. As Defendant was leaving the parking lot, Cross asked Defendant why he did this and Defendant responded: "if you tell anybody I'm going to kill you too[.]" Cross called 911, and EMS and police officers arrived shortly after. Sampson, however, died at the scene. Later that evening, Cross gave a statement to police officers but did not identify Defendant as the shooter because she was scared of him. Instead, she described the shooter as "a black guy with dreads wearing a black shirt [and] driving a black car." A few days later, Cross gave police officers a second statement, this time identifying Defendant as the shooter.

Police officers arrested Defendant two days later while executing a search warrant at a vacant apartment where Defendant was hiding out. While conducting their search, police recovered a handgun that Defendant had thrown into the woods behind the vacant apartment. During Sampson's autopsy, five bullets were recovered from his body. A forensic firearms examiner testified in his opinion all five bullets were fired from the recovered handgun.

On 6 June 2016, a Wayne County Grand Jury indicted Defendant for First-Degree Murder and Discharging a Weapon. Defendant's trial in Wayne County Superior Court began on 10 July 2017. During jury selection, Defense Counsel was prohibited from asking two lines of questions to the potential jury members. The first set of questions concerned witness credibility:

> [DEFENSE COUNSEL]: Okay. Let me talk to you about some other things. One thing I want to talk about is people that may potentially change their story. I know Mr. Vance, [a potential juror,] you talked about you had an incident, I think probably back in Alaska where you ended up getting in some legal trouble, and was there -- at any point during your lifestyle back then, because you talked about how you just were kind of in a bad way, where you had to interact with people who started changing their story? Did that ever --
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> [STATE]: Objection.
>
> [DEFENSE COUNSEL]: -- happen to you?
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> THE COURT: Sustained, ah . . . re . . . ah . . .

> [DEFENSE COUNSEL]: Well, your Honor, I'm . . . I'm asking these questions to try and help me intelligently exercise my peremptory challenges, if I can.
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> THE COURT: Well, I understand that; I mean it's a question of evaluating credibility of witnesses.
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> [DEFENSE COUNSEL]: That's right.
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> THE COURT: And I think you can ask it along those lines without such . . . any specificity, but rephrase your question.
>
> . . . .
>
> [DEFENSE COUNSEL]: Ever had an interaction with somebody who changed their story?
>
> [STATE]: Objection.
>
> THE COURT: Approach, please.

After conferring with counsel for both parties, the trial court sustained the State's objection. Shortly after in voir dire, the following exchange occurred:

> [DEFENSE COUNSEL]: Thank you, your Honor. All right. In this case there are likely going to be one, maybe two or more expert witnesses that will testify. And experts come before a jury to help give opinions about things that perhaps are not within the common realm of knowledge, and they come and testify as experts based on their experience and skills, and the judge eventually, if we have experts testify in this case, will tell you that you are still free to believe some, all, or none of what that expert witness says, because you guys are the sole determining people of the credibility of the witnesses and what the truth is in a case. Now, if we have experts testify, is everyone comfortable with just hearing an opinion, or would you want to hear the information they based their opinion on?
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> [STATE]: Objection.

> THE COURT: I didn't quite understand that question. Expert testimony may be presented and they'll consider that.
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> [DEFENSE COUNSEL]: Yes, your Honor.
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> THE COURT: And we'll have an instruction as to expert witnesses.
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> [DEFENSE COUNSEL]: Yes, your Honor.
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> THE COURT: I didn't, I didn't follow -- specifically restate your question; I have to confess I didn't understand it.
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> [DEFENSE COUNSEL]: Yes, your Honor, my question is --
>
> THE COURT: Um.
>
> [DEFENSE COUNSEL]: -- if they testify as to an opinion, would they want to also hear the underlying methods and data that went into formulating that opinion?
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> THE COURT: Well, the evidence will be presented . . . there are certain qualifications to declare -- to have someone be an expert and that will be presented sufficient to the Court if they are recognized as an expert, and that will be sufficient evidence of that fact. It's not the jury's determination as to what additional evidence is presented or not presented.
>
> [DEFENSE COUNSEL]: Your Honor, may I be heard outside the presence of the jury?

The trial court conferred with both parties at the bench and sustained the State's objection to this line of questions. Although the two bench conferences were not recorded, following the second bench conference, Defense Counsel noted, "At the appropriate time I'll need to put all that on the record whenever we get a chance."

Later during a break in voir dire, Defense Counsel was given the opportunity to make his record of the bench conferences.

> THE COURT: All right, the jury has left the courtroom. Any matters before we take our break? I think the Defendant may have some.
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> [DEFENSE COUNSEL]: Yes, your Honor. We had a couple bench conferences during the voir dire, and the questions that I was asking I know [the State] had objected to, I believe he was saying that they were stakeout questions, but I was arguing that I believed it was essential to helping me exercise my peremptory challenges and also for developing for cause challenges to find out what these jurors think about specific issues such as people changing their story, and I think additionally about the issue of selling drugs and people that sell drugs. Ultimately your Honor suggested that I ask more pointed questions that would potentially elicit a yes or no question regarding whether they would listen to the evidence and judge credibility of the witnesses, and I maintained that I would like to ask the questions that I had formulated and ultimately the objection was sustained. I believe there was also one about my questions about expert witnesses and --
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> THE COURT: Right.
>
> [DEFENSE COUNSEL]: -- whether they would want to hear more than just the opinion, and for the same grounds and the same reason it was argued, and then ultimately sustained as to the objection. I believe that captured it, if I missed anything . . .
>
> THE COURT: Okay. They were sustained and you want to note your objection –
>
> [DEFENSE COUNSEL]: Yes, your Honor.

Neither the trial court nor the State objected or disagreed with this recitation or claimed the questions were omitted on any basis other than that the trial court determined them to be improper stake-out questions.

On 19 July 2017, the jury returned verdicts finding Defendant guilty of both charges, and the trial court sentenced Defendant to life without parole for First-Degree Murder and a consecutive sentence of 73 to 100 months for Discharging a Weapon. Defendant gave Notice of Appeal in open court.

Issue

The sole issue on appeal is whether the trial court abused its discretion by preventing Defense Counsel from asking the two lines of questions of potential jurors during voir dire as improper stake-out questions.

Standard of Review

Here, the parties agree our standard of review of this issue is for an abuse of discretion. *See, e.g.*, *State v. Green*, 336 N.C. 142, 164, 443 S.E.2d 14, 27 (1994) ("Regulation of the manner and the extent of inquiries on *voir dire* rests largely in the trial court's discretion." (citations omitted)). However, the parties offer conflicting positions as to whether a defendant must also make a showing of prejudice. We acknowledge North Carolina Supreme Court decisions provide support for both positions. *See State v. Maness*, 363 N.C. 261, 269, 677 S.E.2d 796, 801-02 (2009) ("A defendant claiming that his or her *voir dire* was erroneously restricted must show

both that the restriction was an abuse of discretion *and that he or she was prejudiced thereby*." (emphasis added) (citation omitted)); *but see State v. Wiley*, 355 N.C. 592, 611-12, 565 S.E.2d 22, 37 (2002) ("*Voir dire* that impairs the defendant's ability to exercise his challenges intelligently is grounds for reversal, *irrespective of prejudice*." (emphasis added) (citation omitted)).[1] Because of our decision in this case, however, we do not address whether a showing of prejudice is required.

Analysis

Defendant argues the trial court erred by sustaining objections to certain questions posed by Defense Counsel during the voir dire hearing. Specifically, Defendant contends the trial court abused its discretion by sustaining the State's objections to two different lines of questioning: (1) whether any of the prospective jury members had any prior experience with someone who changed their story; and (2) when hearing an expert witness express an opinion, whether any of the prospective jury members would want to hear additional information about the methods and the underlying data that were the basis for the opinion.

"The primary goal of jury selection is to empanel an impartial and unbiased jury." *State v. Broyhill*, 254 N.C. App. 478, 490, 803 S.E.2d 832, 841 (2017) (citation and quotation marks omitted); *see State v. Gregory*, 340 N.C. 365, 388, 459 S.E.2d

[1] It appears the standard from *Wiley* is limited to a very narrow factual scenario: a defendant's right in a capital case to question the venire "as to whether a particular juror would automatically vote for the death penalty." 355 N.C. at 612, 565 S.E.2d at 37 (citations and quotation marks omitted); *see State v. Garcell*, 363 N.C. 10, 31, 678 S.E.2d 618, 632 (2009) (citation omitted).

638, 651 (1995) ("The *voir dire* of prospective jurors serves a two-fold purpose: (i) to determine whether a basis for challenge for cause exists, and (ii) to enable counsel to intelligently exercise peremptory challenges." (citation omitted)). Because a defendant is entitled to an impartial and unbiased jury, "counsel may question prospective jurors concerning their fitness or competency to serve as jurors to determine whether there is a basis to challenge for cause or whether to exercise a peremptory challenge." *State v. Fullwood*, 343 N.C. 725, 732, 472 S.E.2d 883, 886-87 (1996) (citation omitted).

However, counsel may not ask so-called "stake-out" questions, which "ask[] a juror to pledge himself or herself to a future course of action by asking what verdict the prospective juror would render, or how they would be inclined to vote, under a given state of facts." *Haarhuis v. Cheek*, 255 N.C. App. 471, 476, 805 S.E.2d 720, 725 (2017) (alterations, citation, and quotation marks omitted), *disc. rev. denied*, 371 N.C. 344, 814 S.E.2d 103-04 (2018); *see State v. Jones*, 347 N.C. 193, 202, 491 S.E.2d 641, 647 (1997) ("Counsel may not pose hypothetical questions designed to elicit in advance what the juror's decision will be under a certain state of the evidence or upon a given state of facts." (citations and quotation marks omitted)). Our Supreme Court has explained the rational for this rule:

> In the first place, such questions are confusing to the average juror who at that stage of the trial has heard no evidence and has not been instructed on the applicable law. More importantly, such questions tend to "stake out" the juror and cause him to

> pledge himself to a future course of action. This the law neither contemplates nor permits. The court should not permit counsel to question prospective jurors as to the kind of verdict they would render, or how they would be inclined to vote, under a given state of facts.

Jones, 347 N.C. at 202, 491 S.E.2d at 647 (citations and quotation marks omitted).

In a similar vein, our courts have also prohibited counsel from asking "[q]uestions that seek to indoctrinate prospective jurors regarding potential issues before the evidence has been presented and jurors have been instructed on the law[.]" *State v. Richmond*, 347 N.C. 412, 425, 495 S.E.2d 677, 683-84 (1998) (citation omitted); *see Jones*, 347 N.C. at 202, 491 S.E.2d at 647 ("[H]ypothetical questions so phrased as to be ambiguous and confusing or containing incorrect or inadequate statements of the law are improper and should not be allowed." (citations and quotation marks omitted)). Regarding counsel's questioning during voir dire, our Supreme Court has provided the following additional guidance:

> Counsel should not fish for answers to legal questions before the judge has instructed the juror on applicable legal principles by which the juror should be guided. Counsel should not argue the case in any way while questioning the jurors. Counsel should not engage in efforts to indoctrinate, visit with or establish "rapport" with jurors.

State v. Phillips, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980). "While the law affords counsel wide latitude in the *voir dire* of prospective jurors, the form and extent of the inquiry rests within the sound discretion of the court." *Broyhill*, 254 N.C. App. at 491, 803 S.E.2d at 842 (citation and quotation marks omitted); *see State v.*

Henderson, 155 N.C. App. 719, 725, 574 S.E.2d 700, 705 (2003) ("The trial court has a great deal of discretion in monitoring the propriety of questions asked by counsel during *voir dire*[.]" (citation omitted)).

In *Broyhill*, our Court addressed a set of questions similar to Defendant's first line of questions in the present case. During voir dire, the defendant in *Broyhill* posed several questions to potential jurors concerning witness credibility. For instance, the defendant asked: "People who lie, does that necessarily mean that they lie about everything?" and "If you hear testimony . . . about a person lying, does that diminish all their credibility on everything?" *Broyhill*, 254 N.C. App. at 491, 803 S.E.2d at 842 (alteration in original) (emphasis omitted). The trial court sustained the State's objection to these questions as stake-out questions. *Id.* at 492, 803 S.E.2d at 842. Thereafter, the trial court again sustained the State's objections to the following questions: "Have you ever known people to lie to get attention?"; "Can you consider the possibility that people would lie to get attention, not necessarily people you know?"; and "Is lying to get attention one of the things that you would consider as a juror in evaluating evidence?" *Id.* at 493, 803 S.E.2d at 843 (emphasis omitted).

Our Court held the trial court did not abuse its discretion by restricting these questions. Because the State intended to offer evidence that the defendant had lied on several occasions to get attention, the trial court properly recognized this "line of questioning indicat[ed] an attempt to plant a seed in the minds of prospective jurors—

that is, any lie [the] defendant may have told was to get attention." *Id.* at 494, 803 S.E.2d at 493. Our Court held "the questions posed a distinct risk that jurors would be inclined to view the evidence bearing on credibility through the lens provided by [the] defendant at *voir dire*." *Id.* Because these questions were "improper stakeout questions and questions tending to indoctrinate the jurors[,]" the trial court did not abuse its discretion in prohibiting them. *Id.*

Here, the trial court expressed concerns Defendant's first set of questions were too specific and dealt with evaluating the credibility of witnesses. Given the fact Cross concealed Defendant's identity in her statement on the night of the shooting and then later changed her account as to the shooter's identity, the trial court perceived Defendant's questions as an attempt "to elicit in advance what the juror's decision [would] be under a certain state of the evidence or upon a given state of facts[,]" thereby constituting improper stake-out questions. *Jones*, 347 N.C. at 202, 491 S.E.2d at 647 (citations and quotation marks omitted). Although the trial court gave Defense Counsel the opportunity to reframe his inquiries on both lines of questioning, Defense Counsel stated he declined this opportunity specifically because he wanted "to find out what these jurors think about specific issues[.]" This tends to indicate Defense Counsel was, in fact, trying to ask the sort of stake-out questions the trial court was attempting to prevent. As such, it is apparent the trial court viewed Defendant's questions as creating "a distinct risk that jurors would be inclined

to view the evidence bearing on credibility through the lens provided by [D]efendant at *voir dire*." *Broyhill*, 254 N.C. App. at 494, 803 S.E.2d at 843. Given our deferential standard of review, we conclude the trial court did not abuse its discretion by restricting Defendant's first line of questioning. *See Maness*, 363 N.C. at 269, 677 S.E.2d at 802 ("The trial court has significant discretion in controlling the jury *voir dire*." (citation omitted)).

Defendant's second set of questions disallowed by the trial court dealt with the credibility of expert witness testimony. As the trial court pointed out, "[i]t's not the jury's determination as to what additional evidence is presented or not presented." *See State v. Knox*, 78 N.C. App. 493, 495, 337 S.E.2d 154, 156 (1985) (recognizing the "determination about the admissibility of expert testimony" is for the trial court (citations and quotation marks omitted)). It is apparent the trial court viewed this line of questioning by Defendant as seeking "to indoctrinate prospective jurors regarding potential issues before . . . jurors have been instructed on the law[.]" *Richmond*, 347 N.C. at 425, 495 S.E.2d at 683-84 (citation omitted). In particular, Defendant's questions could be viewed as tending to indicate "an attempt to plant a seed in the minds of prospective jurors" as to how they should view expert testimony before the trial court could instruct the jury on how it is to weigh that evidence, again thereby posing a "risk that jurors would be inclined to view the evidence bearing on [an expert witness's] credibility through the lens provided by [D]efendant at *voir*

dire." *Broyhill*, 254 N.C. App. at 494, 803 S.E.2d at 843. We conclude the trial court did not abuse its discretion in sustaining the State's objection to this line of questioning.

Conclusion

Accordingly, for the foregoing reasons, the trial court did not abuse its discretion by restricting Defendant's voir dire examination of prospective jurors.

NO ERROR.

Judges TYSON and INMAN concur.

Report per Rule 30(e).