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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-744

Filed: 17 December 2019

Orange County, Nos. 14 CRS 306, 51474; 16 CRS 207, 208

STATE OF NORTH CAROLINA

v.

BARTHOLOMEW R. SCOTT

Appeal by defendant from judgment entered 22 May 2017 by Judge A. Graham Shirley in Orange County Superior Court. Heard in the Court of Appeals 24 April 2019.

*Attorney General Joshua H. Stein, by Solicitor General Matthew W. Sawchak and Assistant Solicitor General Kenzie M. Rakes, for the State.*

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

BRYANT, Judge.

Where the trial court acted within its authority and did not abuse its discretion by ordering defendant's attorney to withdraw as counsel, we hold no error.

On 30 May 2014 defendant Bartholomew R. Scott was arrested and charged with the first-degree murder of Lew Han Hood. Defendant was later indicted for first-degree murder and conspiracy with Brandon S. Townsend to commit first-degree

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murder in the death of Hood (hereinafter “the decedent”) and also attempted first-degree murder and assault with a deadly weapon with intent to kill G.M. Riggins.

Attorney Matthew C. Suczynski filed a notice of limited appearance on 2 June 2014 for the purpose of representing defendant in Orange County District Court. On 14 June 2014, Attorney Suczynski filed a notice of general appearance on defendant’s behalf in Orange County Superior Court.

On 30 January 2015, the State filed a motion in limine to consider potential conflicts of interests between defendant and defense counsel. The State asserted that defense counsel, Attorney Suczynski, was being compensated by Scott Campbell. Campbell had reported to law enforcement officers with the Chapel Hill Police Department on 23 May 2014—one week before the homicide—that the decedent had threatened him, broken into Campbell’s property, and committed vandalism. The police reports indicated that the motivation for the decedent’s activity was that Campbell owed the decedent money. On the day that the decedent was killed, within two to three hours of the homicide, defendant notified Campbell via text message that the decedent was dead. Within one hour, Campbell had arranged for and offered to pay defendant’s legal representation. The State contended that Campbell was a “person of interest” in the homicide investigation and that Attorney Suczynski may have a real or potential conflict of interest should Campbell be charged as a potential co-conspirator and/or aider-abettor to the homicide, or be called as a witness.

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A hearing on the matter was conducted in Orange County Superior Court on 18 March 2015, the Honorable R. Allen Baddour, Jr., Judge presiding. On 14 April 2015, the court entered an order in which it found that defendant was willing to waive potential conflicts of interests in order to retain Attorney Suczynski as counsel. However, the court concluded that, although Attorney Suczynski had not violated any ethics rules or compromised his representation of defendant in any way, the potential for a conflict of interest was too great. In its discretion, the court ordered Attorney Suczynski to withdraw as counsel for defendant. Defendant was appointed defense counsel from the Office of Indigent Defense Services.

This matter came on for trial before a jury in Orange County Superior Court during the criminal trial session commencing 8 May 2017, the Honorable A. Graham Shirley, Judge presiding. Following the conclusion of the evidence, the jury returned verdicts only finding defendant guilty of the lesser-included offense of voluntary manslaughter. Following the jury verdicts, defendant pled no contest to two aggravating factors—that he was armed with a deadly weapon at the time of the voluntary manslaughter and that he used a deadly weapon at the time of the crime. Defendant was sentenced to a term of 92 to 123 months. Defendant appeals.

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On appeal, defendant argues that the trial court erred by requiring Attorney Suczynski to withdraw as counsel in violation of defendant's constitutional right to

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be represented by counsel of his choice. More specifically, defendant challenges the trial court's conclusion "that the . . . potential conflicts, and/or appearance of conflict outweigh . . . defendant's Sixth Amendment right to counsel of his choice." We disagree.

[A] trial court must be given substantial latitude in granting or denying a motion for attorney disqualification. To that end, the findings of the trial court are binding upon appeal if they are supported by any competent evidence, and the court's ruling may be disturbed only where there is a manifest abuse of discretion or if it is based on an error of law.

*State v. Taylor*, 155 N.C. App. 251, 255, 574 S.E.2d 58, 62 (2002) (citations omitted).

Pursuant to the Sixth Amendment to the Constitution of the United States, "[i]n all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence." U.S. Const. amend. VI. "An accused's right to counsel in a criminal prosecution is guaranteed by the Sixth Amendment of the United States Constitution and is applicable to the states through the Fourteenth Amendment, Sections 19 and 23 of the North Carolina Constitution." *State v. Shores*, 102 N.C. App. 473, 474, 402 S.E.2d 162, 163 (1991) (citations omitted). "The accused's right to counsel includes the right to select and retain an attorney of his choice." *State v. Yelton*, 87 N.C. App. 554, 559, 361 S.E.2d 753, 757 (1987) (citing *State v. Morris*, 275 N.C. 50, 165 S.E.2d 245 (1969)).

The [trial] [c]ourt must recognize a presumption in favor of petitioner's counsel of choice, but that presumption may be

overcome not only by a demonstration of actual conflict but *by a showing of a serious potential for conflict*. The evaluation of the facts and circumstances of each case under this standard must be left primarily to the informed judgment of the trial court.

*Wheat v. United States*, 486 U.S. 153, 164, 100 L. Ed. 2d 140, 152 (1988); *see also Shores*, 102 N.C. App. 473, 402 S.E.2d 162. “[W]hile the right to select . . . one’s preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.” *Wheat*, 486 U.S. at 159, 100 L. Ed. 2d at 148 (citations omitted).

“[C]ourts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.” [*Wheat*, 486 U.S. at 160, 100 L.Ed.2d 140]. Therefore, where it is shown that an actual conflict or the potential for conflict exists, the presumption in favor of an accused’s counsel of choice will be overcome. *Id.* As there is a necessity of avoiding the appearance of impropriety, it is incumbent upon a court faced with either an actual or potential conflict of interest, regarding attorney representation, to conduct an appropriate inquiry and, if need be, grant the motion for disqualification. The trial court must be given substantial latitude in granting or denying a motion for attorney disqualification. *Id.*

*Shores*, 102 N.C. App. at 475, 402 S.E.2d at 163; *see also State v. Rogers*, 219 N.C. App. 296, 725 S.E.2d 342 (2012); *Taylor*, 155 N.C. App. 251, 574 S.E.2d 58.

Unfortunately for all concerned, a . . . court must pass on the issue whether or not to allow a waiver of a conflict of interest by a criminal defendant not with the wisdom of

hindsight after the trial has taken place, but in the murkier pre-trial context when relationships between parties are seen through a glass, darkly.

*Wheat*, 486 U.S. at 162, 100 L. Ed. 2d at 151; *see also United States v. Urutyan*, 564 F.3d 679, 686–87 (4th Cir. 2009) (“[C]ourts ‘must be allowed substantial latitude in refusing waivers of conflict of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses.’” (quoting *Wheat*, 486 U.S. at 162, 100 L. Ed. 2d at 140)).

On appeal, defendant specifically challenges one finding of fact and several of the trial court’s conclusions of law as set forth in Judge Baddour’s 14 April 2015 order directing Attorney Suczynski to withdraw as counsel for defendant. In the challenged finding of fact, the trial court found that “Scott Campbell’s involvement in this case make[s] it such that he is likely to be called as a witness in this case.” Defendant specifically challenges the following conclusions of law: that Campbell was a potential conspirator and/or aider-abettor; that Attorney Suczynski may be put in a position of a conflict of interest should he have to cross-examine Campbell, who arranged for Suczynski to represent defendant; that Attorney Suczynski could be in a direct conflict of interest should defendant desire to provide the State with evidence against Campbell; that if defendant was convicted it may appear that defendant could have

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mitigated his sentence by providing the State with evidence against Campbell but failed to do so because of Attorney Suczynski's counsel.

In its 14 April 2015 order the court made unchallenged findings based on the forecast of the evidence the State would seek to admit at defendant's trial. *See Taylor*, 155 N.C. App. at 255, 574 S.E.2d at 62 (holding unchallenged findings of fact are binding on appeal). On 23 May 2014—a week prior to the homicide—Campbell had reported a breaking and entering and vandalism of his property—located at 102 S. Christopher Road—as well as threats made against him by the decedent. Reports indicated that the decedent's motivation for conduct against Campbell was money owed the decedent by Campbell. The evidence presented before the trial court indicated that Campbell was a property owner who leased residential properties and that defendant managed Campbell's properties and resided in one located at 102 S. Christopher Road, Chapel Hill. The court found that evidence from defendant's phone would show that in the week prior to the shooting, multiple phone calls had been made between defendant's phone and a contact listed as "Scott Brother 1," Scott Campbell. On 30 May 2014, defendant called 9-1-1 at 11:54 am to report a shooting at the residence in which he lived, 102 S. Christopher Road. There, law enforcement officers with the Chapel Hill Police Department found the decedent's body, which had suffered multiple gunshot wounds from a handgun and a shotgun. A witness to the shooting, Gabriel Riggins, had accompanied the decedent to defendant's residence.

Riggins would testify that while he and the decedent were inside the residence with defendant, a masked gunman descended from the second floor. Riggins ran toward the back of the residence. After hearing several gunshots, Riggins fled through a window. Riggins would testify that he never saw defendant fire a weapon. Between two and three hours after the homicide, text messages on defendant's phone reflect that defendant informed Campbell "some guy name hood is dead," with Campbell responding, "the piece of sh\*t that was threatening me." Campbell and defendant also discussed the issue of defendant's legal representation. Campbell's phone records indicate that he contacted the law office of Attorney Suczynski at 2:44 pm, within three hours of the homicide, and maintained a ten-minute phone call. Within minutes, Campbell informed defendant via text message that Campbell would pay for defendant's legal representation: "[w]hen [the attorney] asks for payment, I'll handle it[.] Have him call me back." Between 30 May 2014 and 14 June 2014—the date Attorney Suczynski filed a notice of general appearance in Orange County Superior Court—Campbell's phone records reflect six calls with Attorney Suczynski. Though Campbell had not been charged, he remained a "person of interest" in law enforcement officers' ongoing homicide investigation.

Based on these unchallenged findings of fact, the court concluded "there exist[ed] an appearance of a conflict and potential conflict of interest in that a potential co-conspirator and/or aider-abettor to th[e] homicide, Scott Campbell,



assisted in arranging for Defendant's attorney." The court forecasted that should the State provide evidence which implicated Campbell in the decedent's homicide, Attorney Suczynski could be placed in real and direct conflict between his client—defendant—and Campbell who was paying for defendant's defense. If Campbell was called as a witness for the State, Attorney Suczynski would be in the position of cross-examining Campbell. If defendant was convicted of the charged offenses, it may appear that defendant "could have mitigated his punishment by turning state's evidence [against Campbell] but failed to do so because his attorney was arranged for by Scott Campbell."

7. The [c]ourt d[id] not find that Mr. Suczynski ha[d] violated any ethics rules or compromised his representation of . . . defendant in any way.

8. [However,] [b]alancing . . . defendant's Sixth Amendment right to counsel of his choice against the tribunal's interest in a fair and unbiased legal proceeding and the Due Process rights of . . . defendant to have an attorney free from conflicted representation, this [c]ourt in its discretion finds that the actual conflicts, potential conflicts, and/or appearance of conflict outweigh . . . defendant's Sixth Amendment right to counsel of his choice.

Thus, the court ordered Attorney Suczynski to withdraw from his representation of defendant and prohibited any member of his firm from representing defendant as well.

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Upon review of the unchallenged findings of fact, we hold that the trial court had sufficient basis to conclude the potential for conflict and/or the appearance of conflict as evidence may develop during trial was substantial. *See Wheat*, 486 U.S. at 162, 100 L. Ed. 2d at 151; *Urutyan*, 564 F.3d at 686–87; *Shores*, 102 N.C. App. at 475, 402 S.E.2d at 163. Therefore, on the issue of whether to order Attorney Sucsynski to withdraw as counsel, the court’s findings and conclusions were sufficient to favor the trial court’s interest in a fair and unbiased legal proceeding, as well as defendant’s due process right, over defendant’s Sixth Amendment right to counsel of his choice. Thus, the trial court acted within its authority and did not abuse its discretion by ordering Attorney Sucsynski to withdraw as defense counsel. *See Wheat*, 486 U.S. 153, 100 L. Ed. 2d 140; *Shores*, 102 N.C. App. 473, 402 S.E.2d 162. Accordingly, we hold

NO ERROR.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).