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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-606

Filed: 4 February 2020

Catawba County, No. 18 CRS 000014

STATE OF NORTH CAROLINA, Plaintiff,

v.

MONTAVIOUS LEMAR MAYFIELD, Defendant.

Appeal by defendant from judgments entered 11 October 2018 by Judge Gregory R. Hayes in Catawba County Superior Court. Heard in the Court of Appeals 7 January 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Taylor H. Crabtree, for the State.

Warren D. Hynson, for defendant-appellant.

YOUNG, Judge.

This appeal arises out of a conviction for robbery with a firearm and conspiracy to commit robbery with a firearm. The trial court did not err in declining to excuse the witness, nor did the trial court err in declining to engage in further *voir dire*. Therefore, we affirm.

I. Factual and Procedural History

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On 29 October 2016, Jennifer Abernathy (“Abernathy”) was working as a cashier at the Ingco Express, sometimes referred to as Jack B Quick in Hickory, North Carolina. Just before 9:00 p.m., two men entered the store with their faces covered. One of the men had on a gray hoodie, was wearing gloves, and was carrying a rifle. He raised the rifle and fired, hitting the cigarette case behind Abernathy. Abernathy handed over the contents from her drawer, including a blue bank bag. The robbery was captured on the store’s surveillance cameras.

Later that evening, officers found the gun, the blue bank bag, and a ten- and twenty-dollar bill on the side of a hill next to the store. The officers found a pair of black long johns and gloves behind a nearby bar. The DNA from the gloves matched Montavious Mayfield (“Defendant”). Defendant was charged with robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon.

On the first day of trial, the Court conducted *voir dire* of the jury. The State listed the names of all witnesses it might call at trial and asked the prospective jurors if they knew any of the individuals. All of the jurors responded in the negative. The trial court followed up with the same questions when new jurors were seated after excusals for cause and based on peremptory strikes.

The State opened by asking the jurors basic biographical information, such as whether the jurors were married, whether they had children, and where they worked and lived. Raquel Cortez (“Cortez”), juror number three, responded, “Yes, I work HBF

on 321, I have three kids, and married, and living in Conover.” When the State asked Cortez what kind of work she did at HBF, she responded, “Sewing.” When asked how long she had been with HBF, she responded, “One year.”

During a break, Cortez informed the clerk that she could understand English, but she spoke very little English. The court inquired about her ability to hear and her ability to understand English well enough to participate in the trial. Cortez responded, “Yes, I understand, but you know, me nervous.” The court reassured Cortez that “everybody may be nervous,” and explained that the court’s goal was to make sure she understood English well enough to participate in the trial. Cortez reiterated that “Yes, I understand, but my nervous, you know. It’s okay English.” When the court inquired again whether she understood the English language well enough to feel comfortable on the jury, she responded yes. Defendant inquired about Cortez’s ability to understand English but did not strike Cortez. Defendant never objected to Cortez or asked the court to strike her for cause.

On the last day of trial, after all evidence had been presented, the State notified the court that there was an issue that needed to be resolved before bringing in the jury. He informed the trial court that one of the jurors had told the clerk’s office that the juror “had overheard that [another juror] saying, apparently that they may know one of the witnesses.” The court asked Defendant’s counsel how he proposed they handle the issue, to which counsel responded, “I think it probably would be wise to

have a very brief colloquy, but not sure how, without hearing from that juror, how they may affect going forward on this trial, whether we need to use the alternate.” The court then questioned the clerk, and the clerk explained that the juror who called the clerk’s office “weren’t sure if they may have misunderstood but thought that they heard juror number four say that he knew one of the witnesses.” The juror “couldn’t say with a hundred percent” that she was correct in what she overheard. The juror who called also did not want to be identified.

The court declined to engage in a colloquy with the juror based solely on the fact that “some known juror who does not want to disclose her identity, said she may have heard juror number four say that he may have known one of the state’s witnesses.” After hearing from the clerk, neither the State nor Defendant raised any objection to the court proceeding without conducting further inquiry into the matter. Immediately after, the State rested its case. The jury found Defendant guilty of both charges. Defendant gave oral notice of appeal.

II. Standard of Review

“In order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.” *State v. Eason*, 328 N.C. 409, 420, 402 S.E.2d 809, 814 (1991); *see also* N.C. R. App. P. 10(a)(1).

“When a trial court acts contrary to a statutory mandate, the defendant’s right to appeal is preserved despite the defendant’s failure to object during trial.” *State v. Braxton*, 352 N.C. 158, 177, 531 S.E.2d 428, 439 (2000) (quoting *State v. Lawrence*, 352 N.C. 1, 13, 530 S.E.2d 807, 815 (2000)), *cert. denied*, 531 U.S. 1130, 148 L. Ed. 2d 797 (2001). “[A]lleged statutory errors are questions of law. . . reviewed *de novo*.” *State v. Reeves*, 218 N.C. App. 570, 576, 721 S.E.2d 317, 322 (2012).

“A trial court may reopen the examination of a juror after the jury is impaneled and this decision is within the sound discretion of the trial court.” *State v. Hammonds*, 218 N.C. App. 158, 165, 720 S.E.2d 820, 825 (2012). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988); *see also White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (“A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [the trial court’s decision] was so arbitrary that it could not have been the result of a reasoned decision.”).

III. Declining to Excuse Juror

Defendant contends that the trial court erred in failing to *sua sponte* excuse Cortez based on her inability to understand English. We disagree.

Defendants generally may not raise errors on appeal to which they did not object at trial. N.C. R. App. P. 10(a)(1). An exception exists, however, when the trial court fails to act in accordance with a statutory mandate, and the defendant is prejudiced by that failure. *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985). Defendant acknowledges that he made no objection at trial but claims that the error is preserved because the trial court failed to comply with a statutory mandate.

Defendant argues that the statutory mandate violated is N.C. Gen. Stat. § 15A-1214(g)(2) (2019). This statute provides that “[i]f the judge determines there is a basis for challenge for cause, he *must* excuse the juror or sustain any challenge for cause that has been made.” N.C. Gen. Stat. § 15A-1214(g)(2) (emphasis added). One of the qualifications for prospective jurors is the ability to “understand the English language.” N.C. Gen. Stat. § 9-3 (2019). However, this statute is not applicable. The exchanges with Cortez took place before Defendant accepted Cortez as a juror. This statute addresses issues that arise after a juror has been accepted by a party.

Furthermore, assuming *arguendo* that N.C. Gen. Stat. § 15A-1214(g)(2) was applicable, it applies *after* the trial court has determined there is a basis for challenge. The trial court made no such determination. The record shows that the trial court took steps to ensure that Cortez understood English before proceeding. This argument is without merit and, therefore, we affirm.

IV. Declining to Reopen Voir Dire

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Defendant contends that the trial court erred in failing to reopen *voir dire* based on an equivocal suggestion that one of the jurors may have overheard another juror remarking that the juror may have known a State witness. We disagree.

On the last day of trial, after all the evidence had been presented, and just before the State rested, the trial court was notified that one of the jurors may have mentioned that he may have known one of the state's witnesses. The trial court questioned the clerk further and ultimately determined that the information was too speculative and vague to warrant reopening *voir dire*. As the trial court put it, "some known juror who does not want to disclose her identity, said she may have heard juror number four say that he may have known one of the state's witnesses, but that's the extent of it."

Although there was no objection, Defendant made a timely request to re-open *voir dire* and the trial court refused to do so. Therefore, this issue is preserved pursuant to N.C. R. App. P. 10(a)(1). It is within the court's discretion whether to reopen the examination of a juror. *Hammonds*, 218 N.C. 165, 720 S.E.2d at 825. Here, the information provided to the clerk was too speculative. There was ambiguity as to whether the statement had been heard correctly, if at all. The trial court's decision to decline reopening *voir dire* was not manifestly unsupported by reason. Therefore, the trial court did not abuse its discretion, and we affirm.

AFFIRMED.

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Judges MCGEE and DIETZ concur.

Report per Rule 30(e).