IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-168

No. COA 20-493

Filed 20 April 2021

Gates County, No. 15 CRS 50322

STATE OF NORTH CAROLINA,

v.

AARON PAUL HOLLAND, Defendant.

Appeal by Defendant from judgment entered 25 January 2020 by Judge J. Carlton Cole in Gates County Superior Court. Heard in the Court of Appeals 23 March 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Jeffrey B. Welty, for the State.

Lisa Miles for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant Aaron Paul Holland ("Defendant") appeals from a judgment sentencing him to life imprisonment without parole after a jury convicted him of first-degree murder. Defendant argues that (1) certain remarks made by the trial judge had an improper tendency to coerce the jury into reaching a verdict, and (2) the testimony of Calvin Bell, III ("Calvin"), was improper victim impact evidence which

should not have been admitted. Upon review, we disagree. First, the trial judge's remarks were not coercive and there was no indication that the jury was deadlocked or otherwise under pressure to reach a verdict. Second, even assuming *arguendo* that Calvin's testimony was impermissible victim impact evidence, Defendant has not met his burden of demonstrating that the jury probably would have reached a different verdict without the testimony. Accordingly, we affirm.

I. Procedural History

¶ 2 Defendant's case was tried from 21 to 25 January 2020 in Gates County Superior Court before the Honorable J. Carlton Cole and a jury. The State introduced evidence tending to show that on 13 June 2015, Calvin Bell, Jr., was fatally shot outside his home in Gates County following an attack by Defendant and two other men. Defendant admitted to a friend that he had shot the victim in his front yard, and Defendant's two co-conspirators testified that Defendant shot the victim twice in the head. Defendant chose to not testify.

¶ 3 On 25 January 2020, the jury unanimously found Defendant guilty of first-degree murder. The trial court entered a judgment and commitment on 25 January 2020, sentencing Defendant to life imprisonment without parole. Defendant gave notice of appeal in open court.

II. Factual Background

¶ 4 We review the facts pertinent to the two issues on appeal.

A. Remarks of the Trial Judge

¶ 5 In declining a juror's request to take notes, the trial judge made the following comments:

> These attorneys have told me that we're going to finish with this trial by Friday, and I'm hoping we will be pretty close to it. I just finished a week and a half last week up in Tarboro and we're going to try to get through it this week as quickly as we can. . . . And for this short period of time, in my discretion, I am not going to allow notetaking.
> . . .
> [L]et the record reflect . . . [that] I would not allow the jurors to take notes for this short trial.

¶ 6 At the beginning of the third day of trial, the trial judge said to the jury that "[w]e are trying to expedite this case as much as we can." At the end of the day, the trial judge said to the jury:

> [W]e have not had in this case . . . a lot of breakdowns, a lot of delays and that type of thing[.] We have just had constant work and you-all have been most attentive. . . . I did a seven week murder trial down [in Pitt County]. But this is not going to approach that in any form or fashion.

¶ 7 After the testimony of the State's last witness, the following exchange occurred between the trial judge and several jurors:

> THE COURT: Don't you-all look at me like that. I have tried to get this trial finished by the end of today and we have not been able to do that. . . . I'm going to bring you-all back tomorrow with the hopes that we can finish. Coming back tomorrow, is it going to be any hardship, any particular hardship out of the ordinary if you can't come back tomorrow?

> JUROR 4: The same time that we have done this week?
>
> THE COURT: We'll make it 10 o'clock tomorrow since it's a Saturday.
>
> JUROR 1: It will be a full day?
>
> THE COURT: I can't say. I'm hoping to finish tomorrow. . . . I started a trial in Tarboro the first week of this month, January 6th, that they told me I would finish Friday and we didn't finish until the following Wednesday this past week. And then I find out I'm getting another murder case over here. It's no fun. But you-all have been troopers. . . . I know it's an inconvenience for you but we need to get it done. We need to get it done. So if you-all want to get angry with someone and be pissed off, let it be me because it rests on my shoulders and I'm prepared to take the weight. Please don't be angry at either one of these attorneys, they're doing their jobs. I'm hoping and trusting and praying that we're going to finish tomorrow. I don't see right now any reason why we should not finish-- well, let me put it this way, I'm hoping that we can finish tomorrow. . . . We have almost completed the evidentiary phase and the State has some exhibits they want to publish to you, and then the [D]efendant is going to have to decide whether he wants to put on any evidence. And if he does we will have to do that. And we have some other things that we need to take care of. We're going to stay here today and work on that so we don't have to do that tomorrow so that whenever they finish tomorrow we will move right into closing arguments and jury instructions and then it will be in your hands.

¶ 8 The trial continued the next day, Saturday, January 25. That afternoon, following the close of evidence, arguments by counsel, and instructions by the trial

court, the jury returned a unanimous verdict finding Defendant guilty.

B. Testimony of Calvin Bell, III

¶ 9 The last witness for the State was Calvin Bell, III. Calvin testified that he was named after his father (the victim, Calvin Bell, Jr.); that he was presently serving in the U.S. Navy and had been serving for about six years; that he spent most of his life in Gates County before entering the military; and that he has an older sister. Calvin then testified that he was on a military deployment when he learned of his father's death, and that he was unable to return home the same day but was able to attend his father's funeral. He testified that his father had likewise served in the Navy and that his father was a disabled veteran at the time of death.

¶ 10 Defense counsel declined to cross-examine Calvin, instead saying, "[s]orry for your loss and thank you, sir, for your service." Defendant did not object at trial to Calvin's testimony.

III. Analysis

¶ 11 On appeal, Defendant argues that (1) the trial judge's remarks concerning the anticipated length of the trial had an improper tendency to coerce the jury into reaching a verdict, and (2) Calvin's testimony was victim impact evidence which should not have been admitted. We disagree and affirm.

A. Remarks of the Trial Judge

¶ 12 Defendant contends that the trial judge's remarks were in violation of both

Article I, § 24 of the North Carolina Constitution and N.C. Gen. Stat. § 15A-1235(c).

¶ 13 Article I, § 24 of the North Carolina Constitution provides in pertinent part:

> No person shall be convicted of any crime but by the unanimous verdict of a jury in open court, except that a person accused of any criminal offense for which the State is not seeking a sentence of death in superior court may, in writing or on the record in the court and with the consent of the trial judge, waive jury trial, subject to procedures prescribed by the General Assembly.

¶ 14 Further, N.C. Gen. Stat. § 15A-1235 provides that a "judge may not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals." N.C. Gen. Stat. § 15A-1235(c) (2019).

1. Preservation

¶ 15 Although Defendant did not object at trial to the trial judge's remarks, the issue is preserved for appeal. An argument that a trial judge coerced a jury into reaching a verdict in violation of the defendant's right to a unanimous jury verdict under Article I, § 24 is preserved for appellate review despite a defendant's failure to raise the issue at trial. *State v. Blackwell*, 228 N.C. App. 439, 441, 747 S.E.2d 137, 140 (2013) (citing *State v. Wilson*, 363 N.C. 478, 484, 681 S.E.2d 325, 330 (2009)).

¶ 16 Additionally, "'[w]hen 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 (2001). By statute, a "judge may not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals." N.C. Gen. Stat. § 15A-1235(c). This portion of the statute appears mandatory,[1] which preserves for appeal an alleged violation of the requirement. *See State v. Williams*, 251 N.C. App. 723, 795 S.E.2d 154, 2017 N.C. App. LEXIS 4 at *5 (2017) (unpublished) (holding that the latter part of subsection (c) appears mandatory and thus appeal is preserved by statute).

2. Standard of Review

¶ 17 This Court applies *de novo* review to the question of whether a trial court violated a statutory mandate, *State v. Rutledge*, 267 N.C. App. 91, 95, 832 S.E.2d 745, 747 (2019) (citation omitted), and to alleged violations of constitutional rights, *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009) (citation omitted), *appeal dismissed and disc. review denied*, 363 N.C. 857, 694 S.E.2d 766 (2010). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation and internal quotation marks omitted).

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[1] Case law holding that subsection (c) is permissive rather than mandatory refers to a different portion of the subsection. *See e.g. State v. Williams*, 315 N.C. 310, 326, 338 S.E.2d 75, 85 (1986) (holding that the language "the judge *may* require the jury to continue its deliberations and *may* give or repeat the instructions" is permissive (quoting N.C. Gen Stat. § 15A-1235(c) (emphasis added))).

3. Application

¶ 18 "In determining whether a trial court's actions are coercive under [Article I, § 24] of our Constitution, we must analyze the trial court's actions in light of the totality of the circumstances facing the trial court at the time it acted." *State v. Patterson*, 332 N.C. 409, 415-16, 420 S.E.2d 98, 101 (1992) (citation omitted). Factors include "whether the trial court conveyed an impression to the jurors that it was irritated with them for not reaching a verdict and whether the trial court intimated to the jurors that it would hold them until they reached a verdict." *State v. Porter*, 340 N.C. 320, 335, 457 S.E.2d 716, 723 (1995) (citation omitted).

¶ 19 Here, the trial judge's remarks were not coercive in light of the totality of the circumstances at the time. The trial was going smoothly, without "breakdowns" or "delay". It was reasonable for the judge to forecast that the trial would not be lengthy. There is no indication from the Record "that the jury was . . . deadlocked in its deliberations, or in any other way open to pressure by the trial judge to 'force' a verdict" at the time the trial judge made these remarks. *State v. Easterling*, 300 N.C. 594, 609, 268 S.E.2d 800, 809 (1980) (finding no prejudice where the record contained no indication that the jury was deadlocked or otherwise open to pressure from the trial judge). The judge's remarks to the effect that he was "hoping to finish [the trial] tomorrow" were explanatory and not threatening. These remarks were made in the context of explaining the trial process to the jury, asking them not to be angry with

the attorneys, and acknowledging that jury duty was an inconvenience to the jury members. At the time, the effect of the judge's remarks "was not so coercive as to impel [D]efendant's trial counsel to object." *See State v. Peek*, 313 N.C. 266, 272, 328 S.E.2d 249, 253 (1985) (finding no prejudice and noting "that the effect of the instructions was not so coercive as to impel defendant's trial counsel to object to the instructions").

¶ 20 In analogous cases, this Court has found no coercion. For example, in *State v. Lee*, 218 N.C. App. 42, 55-56, 720 S.E.2d 884, 894 (2012), a jury had reached unanimous verdicts on two out of four charges. The trial judge allowed a twenty-minute recess but said that "we are going to stay here this evening with a view towards reaching a unanimous verdict on the other two [charges]." *Id.* On appeal, this Court found no coercion because there was no indication in the record that the jury was having trouble reaching a unanimous verdict on any charges, the trial judge did not tell the jury that they were required to stay indefinitely until unanimous verdicts were reached, no juror indicated that staying longer would be a problem, and there was overwhelming evidence against the defendant. *Id.*

¶ 21 Defendant characterizes the jury's decision as a "rushed verdict" reached "[a]fter deliberating just 31 minutes on a late Saturday afternoon." However, the relatively brief time spent on deliberation is not problematic. Our Supreme Court has held that a mere 15 minutes of deliberation did not indicate that a guilty verdict

of first-degree murder was coerced. *State v. Spangler*, 314 N.C. 374, 378, 387-88, 333 S.E.2d 722, 725, 730-31 (1985). "A jury's need for little time to reach a verdict may simply reflect the nature of the evidence." *State v. Whitman*, 179 N.C. App. 657, 672, 635 S.E.2d 906, 916 (2006). Here, the evidence against Defendant was extensive. Moreover, during deliberation the jurors asked the judge for re-instruction on malice, premeditation, deliberation, and felony first-degree murder. This request indicates that they were taking the deliberations seriously and did not feel compelled to rush to a decision without clarification.

¶ 22 In the context of all the circumstances, we conclude that the trial judge's remarks were not coercive.

B. The Admission of Calvin Bell, III's Testimony

¶ 23 Defendant contends that Calvin's testimony was victim impact evidence which should not have been admitted. Victim impact evidence is generally inadmissible at the guilt-innocence phase of trial. *State v. Graham*, 186 N.C. App. 182, 190-91, 650 S.E.2d 639, 645-46 (citing *State v. Maske*, 358 N.C. 40, 50, 591 S.E.2d 521, 527-28 (2004)).

1. Standard of Review

¶ 24 "[W]here a criminal defendant has not objected to the admission of evidence at trial, the proper standard of review is . . . plain error." *State v. Gary*, 348 N.C. 510, 518, 501 S.E.2d 57, 63 (1998). Defendant did not object at trial to the admission of

Calvin's testimony. On appeal, Defendant has specifically and distinctly alleged that this admission was plain error. *See* N.C. R. App. P. 10(a)(4) (requiring appellant to "specifically and distinctly contend[]" that the judicial action was plain error).

¶ 25 Plain error arises when the error is "so basic, so prejudicial, so lacking in its elements that justice cannot have been done[.]" *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (internal quotation marks omitted) (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982), *cert. denied*, 459 U.S. 1018 (1982)). "Under the plain error rule, [a] defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (citation omitted).

2. Application

¶ 26 Assuming *arguendo* that the testimony was impermissible victim impact evidence, we do not see a likelihood that the jury would have acquitted Defendant if the court had excluded Calvin's testimony. Moreover, any error was not one "so basic, so prejudicial, so lacking in its elements that justice cannot have been done[.]" *Odom*, 307 N.C. at 660, 300 S.E.2d at 378 (citation and internal quotation marks omitted) (defining plain error).

¶ 27 Here, the record contained extensive evidence from which an inference of Defendant's guilt could be drawn. *See State v. Charleston*, 248 N.C. App. 671, 679-

81, 789 S.E.2d 513, 518-19 (2016) (holding no plain error in improperly admitting victim impact evidence where the State presented extensive other evidence of the defendant's guilt). Testimony from two witnesses linked the vehicle used by the shooter to Defendant's vehicle. Kristin Mercades Fogle, a friend of Defendant whom he attempted to use as an alibi, testified that Defendant told her that he shot the victim in his front yard, and that she saw Defendant with a pistol grip shotgun in his truck. Krystal Atkins, also a friend of Defendant, testified that she saw Defendant with a shotgun on the night before the murder. "Geezy" Bass and Matt Hundley, the two other men involved in attacking the victim, testified that Defendant shot the victim in the head. *See State v. Lawrence*, 365 N.C. 506, 519, 723 S.E.2d 326, 334-35 (2012) (finding no plain error where "[t]he evidence, including the testimony of two co-conspirators, clearly establishe[d] that [the] defendant and the rest of the group attempted to [commit the crime]").

¶ 28 Calvin's testimony was brief and not inflammatory. In a transcript totaling 768 pages, Calvin's testimony comprised less than four full pages, and the prosecutor did not refer to Calvin's testimony in closing argument. Calvin apparently was calm while testifying; there is no indication that he became emotional. *See State v. Lanier*, 270 N.C. App. 821, 840 S.E.2d 537, 2020 N.C. App. LEXIS 283 at *13 (2020) (unpublished) (finding no plain error and noting that the alleged victim impact testimony was not "emotional or inflammatory"). The nature of Calvin's testimony

further decreases the likelihood that its exclusion would have caused the jury to acquit Defendant.

¶ 29 We find no plain error in the admission of testimony from Calvin Bell, III.

IV. Conclusion

¶ 30 For the foregoing reasons, we affirm.

AFFIRMED.

Judges INMAN and WOOD concur.

Report per Rule 30(e).