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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-336

No. COA20-53

Filed 6 July 2021

Durham County, No. 16 CRS 2168-71

STATE OF NORTH CAROLINA

v.

TIMOTHY LEON MOORE

Appeal by defendant from judgment entered 9 October 2018 by Judge James E. Hardin, Jr. in Durham County Superior Court. Heard in the Court of Appeals 9 June 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Teresa M. Postell, for the State.*

*Dylan J.C. Buffum for defendant-appellant.*

TYSON, Judge.

¶ 1 Timothy Leon Moore ("Defendant") appeals from a judgment entered upon a jury's verdict. We find no error.

## I. Background

¶ 2 Defendant, Thomas Clayton, Hope Farley, and Rakeem Best were in Best's apartment on the evening of 18 April 2013. The four individuals decided to rob

someone who had currency and drugs, specifically marijuana. The group believed such a victim would be unlikely to report the theft of illegal drugs to police.

¶ 3 The four individuals decided to conduct an ambush at a BP gas station located on Hillsborough Road in Durham. Clayton borrowed his girlfriend's, Breyanna Newman, Isuzu Trooper sport utility vehicle. Clayton possessed a handgun.

¶ 4 Defendant and Best were seated in the backseat, each wearing a bandana covering their face. Farley rode in the front passenger seat and planned to use "decoy" currency to purchase the drugs. The unnamed seller-victim cancelled the purchase before arriving at the BP station.

¶ 5 The group travelled to an adjacent McDonald's restaurant to eat, to "come up with another plan," and to "find somebody else to rob." Farley suggested the group rob Jejuan Taylor. Farley had considered Taylor a friend, but she was angry with him. When Farley had moved, Taylor had allowed her to store some of her belongings at his house. When Farley went to retrieve her belongings, she believed some of her shoes and articles of clothing were missing.

¶ 6 Farley's iPhone did not have cellular service. While inside the McDonald's, Farley contacted Taylor via text message on her iPhone by using the McDonald's Wi-Fi internet connection. The group left McDonald's and went across the street to a CookOut restaurant to set up the robbery of Taylor. Farley used Best's cellphone to speak with Taylor. While waiting for Taylor to arrive, the four moved the location of

the robbery to the adjacent Duke Manor Apartments at Defendant's urging, due to them being a more "closed in" and secluded area. Farley called Taylor to inform him of this change of location.

¶ 7 While they waited, Farley spoke with Taylor on Best's cellphone and heard a second male voice with Taylor over the phone. As Taylor was not coming alone, Clayton loaded the handgun and handed it to Best.

¶ 8 Clayton remained inside Newman's SUV in the second to last parking lot in the apartment complex. Defendant, Best, and Farley exited the vehicle and walked to the last parking lot.

¶ 9 Farley sat and waited on an exposed stairway so Taylor would see her when he arrived. Defendant and Best hid behind a parked car with their bandanas covering their faces. While they waited, Defendant asked Best for the weapon stating, "DOA on his brother, I got this." They waited for nearly an hour.

¶ 10 Taylor was driving a silver two door Mercedes-Benz. Inside the car with Taylor were Daron Jones and Maria Rendon Martinez.

¶ 11 When Taylor's vehicle entered the Duke Manor Apartments, Farley directed him to the rear of the complex. Taylor backed his car into a parking space in the back parking lot. Taylor left the engine running and lowered the driver's window two or three inches as Farley approached the car.

¶ 12 Taylor reached for a cassette case containing the marijuana and passed the

case through the cracked window. Farley counted the money she had brought for the purchase, while trying to prevent Martinez from getting a good look at her.

¶ 13 Martinez noticed two sets of feet coming towards the vehicle, tapped Taylor on the shoulder, and said "they're coming." Martinez continued to repeat "they're coming, they're coming." Jones also saw two sets of feet coming towards the car from behind the other parked vehicles in the parking lot.

¶ 14 Defendant and Best approached Taylor's car with their faces hidden by their bandanas. Best pushed Farley out of the way and Defendant pointed the gun on Taylor and demanded, "give me the money." Defendant used one hand to force the window down and used his other hand to stick the gun inside the car. Taylor reached over to Martinez and pushed her into the floorboard.

¶ 15 Taylor unsuccessfully tried to put his car into drive to get away. Martinez tried to help Taylor from her concealed position to put the car into drive. Taylor's car moved forward approximately two or three yards. As the car moved forward Defendant tried to hold himself up with one hand and used the other hand, to fire the weapon. Defendant fired the weapon at least twice inside of the car.

¶ 16 Defendant shot Taylor in the left side of his nose. The bullet passed through the inside of his face and jaw and exited through his right cheek. Defendant also shot Taylor in the left rear side of his head. The bullet passed through Taylor's brain and became lodged inside his skull.

¶ 17 Best and Farley ran to the adjacent parking lot where Clayton was waiting in Newman's SUV. The three fled in the vehicle from Duke Manor Apartments.

¶ 18 Defendant freed himself from the car and ran towards the adjacent parking lot. Defendant yelled for Newman's SUV to wait for him, but it continued and left the area without him. Martinez called 911, while Jones tried to stop Taylor's bleeding. Taylor died before medical assistance could arrive.

¶ 19 Farley's foster mother contacted Durham Police, who arrested Farley and interviewed her. Farley identified Clayton by name. Farley did not know Best's real name, but showed police his apartment and identified him in a photographic lineup as "King" or "Keem."

¶ 20 Farley did not know Defendant's real name, but identified him as "Little Mark" and "Quake." Farley identified Defendant in a photographic lineup and again at trial. Defendant identified himself as "Quake" on the recorded phone calls. Forensic experts matched Defendant's palm print to a palm print recovered from the driver's door of Taylor's vehicle.

¶ 21 Defendant was indicted for first-degree murder, two counts of discharging a firearm into an occupied vehicle in operation, one count of possession of a firearm by a felon, robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon.

¶ 22 Defendant was convicted by a jury on all offenses and was sentenced to life

without parole for the first-degree murder conviction to be served consecutively to sentences of 38 to 58 months for conspiracy to commit robbery and 19 to 32 months for possession of a firearm by a felon. The trial court arrested judgment on the jury's convictions for discharging a firearm into an occupied vehicle in operation and attempted robbery. Defendant gave oral notice of appeal.

## II. Jurisdiction

¶ 23 This Court possesses jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2019).

## III. Issues

¶ 24 Defendant argues the trial court erred (1) by denying him a right to a public trial; and, (2) by allowing the State to present expert testimony which was not the product of reliable methods applied to the facts of this case.

## IV. Public Trial

¶ 25 Defendant argues the trial court deprived him of his right to a public trial pursuant to the Sixth Amendment of the Constitution of the United States and Article I, § 18 of the North Carolina Constitution.

### A. Standard of Review

¶ 26 "The standard of review for alleged violations of constitutional rights is *de novo*." *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009) (citations omitted). Our Supreme Court has held: "Structural error is a rare form of

constitutional error resulting from structural defects in the constitution of the trial mechanism which are so serious that a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *State v. Garcia*, 358 N.C. 382, 409, 597 S.E.2d 724, 744 (2004) (internal citations and quotation marks omitted).

¶ 27 Structural "error[] is reversible *per se*." *Id.* The Supreme Court of the United States has distinguished between structural errors, which require automatic reversal, and all other constitutional errors, which are subject to a harmless error beyond a reasonable doubt analysis. *Arnold v. Evatt*, 113 F.3d 1352, 1360 (4th Cir. 1997). The Supreme Court of the United States and the North Carolina Supreme Court both "emphasize[] a strong presumption against structural error." *State v. Polke*, 361 N.C. 65, 74, 638 S.E.2d 189, 195 (2006) (citing *Rose v. Clark*, 478 U.S. 570, 579, 92 L. Ed. 2d 460, 471 (1986)).

**B. Analysis**

¶ 28 Defendant argues the trial court committed structural error by denying him his Sixth Amendment of the Constitution of the United States and Article I, § 18 of the North Carolina Constitution right to a public trial. The trial court informed visitors in the gallery they were welcome to stay but the trial court did not want individuals coming in and out of the courtroom during closing arguments when there was a calendar call in the adjacent courtroom. The bailiff was asked to "keep folks

from coming in and out" during the closing arguments.

¶ 29 Under our appellate rules, "In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1).

¶ 30 Defendant did not immediately object to the trial court's directives to "keep folks from coming in and out." The trial court inquired if Defendant was ready to proceed. Defendant agreed to proceed without objection. The trial court brought in the jury, informed the jury of the proceedings to occur, and the State began its closing argument. Defendant registered no objection until the State's closing argument.

¶ 31 Presuming without deciding, Defendant had timely preserved his objection to the instruction, he would not be entitled to any relief. Here, as in *State v. Clark*, 324 N.C. 146, 377 S.E.2d 54 (1989), the trial judge informed those in the courtroom they would not be able to leave or re-enter the courtroom during closing arguments. *Id.* at 167, 377 S.E.2d at 66. In *Clark*, the defendant asserted this action violated his right to a public trial in violation of the Sixth Amendment of the Constitution of the United States and Article I, § 18 of the North Carolina Constitution. *Id.*

¶ 32 Our Supreme Court held: "The trial judge warned the spectators of his intention to restrict public egress for a limited period of time. He did not vacate the courtroom nor bar the courtroom door without due warning to those within and

without." *Id.* Our Supreme Court concluded no error occurred and reasoned, "The presiding judge is authorized by statute to 'impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of courtroom proceedings.'" *Id.* (citing N.C. Gen. Stat. § 15A-1034(a) (1988)).

¶ 33 We are bound by our Supreme Court's opinion in *Clark*. *See Nunn v. Allen*, 154 N.C. App. 523, 530, 574 S.E.2d 35, 40 (2002) ("This Court has no authority to overrule decisions of the North Carolina Supreme Court." (citations omitted)). The trial court did not violate Defendant's right to a public trial in violation of the Sixth Amendment of the Constitution of the United States and Article I, § 18 of the North Carolina Constitution. Presuming this issue was even preserved, Defendant's argument is overruled.

## V. Expert Testimony

¶ 34 Defendant argues the trial court abused its discretion by admitting the expert testimony of four fingerprint experts.

### A. Standard of Review

¶ 35 "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (citation omitted).

¶ 36 "[W]here [the defendant] contends the trial court's decision is based on an

incorrect reading and interpretation of the rule governing admissibility of expert testimony, the standard of review on appeal is *de novo*." *State v. Parks*, 265 N.C. App. 555, 563, 828 S.E.2d 719, 725 (2019) (citation omitted) (emphasis original).

**B. Analysis**

¶ 37 The Supreme Court of North Carolina has interpreted Rule of Evidence 702(a) and examined leading cases interpreting Rule 702(a) by the Supreme Court of the United States. N.C. Gen. Stat. § 8C-1, Rule 702(a) (2019); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 125 L. Ed. 2d 469 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136, 139 L. Ed. 2d 508 (1997); and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 143 L. Ed. 2d 238 (1999).

¶ 38 Our Supreme Court held:

> the witness must be qualified as an expert by knowledge, skill, experience, training, or education. This portion of the rule focuses on the witness's competence to testify as an expert in the field of his or her proposed testimony. Expertise can come from practical experience as much as from academic training. Whatever the source of the witness's knowledge, the question remains the same: Does the witness have enough expertise to be in a better position than the trier of fact to have an opinion on the subject? The rule does not mandate that the witness always have a particular degree or certification, or practice a particular profession. But this does not mean that the trial court cannot screen the evidence based on the expert's qualifications. In some cases, degrees or certifications may play a role in determining the witness's qualifications, depending on the content of the witness's testimony and the field of the witness's purported expertise. As is true

> with respect to other aspects of Rule 702(a), the trial court has the discretion to determine whether the witness is sufficiently qualified to testify in that field.

*State v. McGrady*, 368 N.C. 880, 889-90, 787 S.E.2d 1, 9 (2016) (citations and quotation marks omitted).

¶ 39 The State presented the testimony of four finger and handprint experts who identified Defendant as the likely contributor of the palm print recovered from the door of Taylor's car. Defendant contends the deviation from protocols and the experts' opinions were not based on a reliable application of established methodology. Defendant asserts subsequent examiners, who evaluated the evidence, violated protocols by being aware of the results and opinions of the prior examiners.

¶ 40 This Court addressed this issue in an unpublished opinion, *State v. Hudson*, 218 N.C. App. 457, 721 S.E.2d 763, 2012 WL 379936 (2012) (unpublished). While this opinion does not constitute binding legal authority, we find its reasoning persuasive. In *Hudson*, the defendant argued the testimony from the State's fingerprint expert should have been excluded because she failed to adhere to the Analysis, Comparison, Evaluation, and Verification ("ACE-V") methodology. 2012 WL 379936 at *2. The defendant asserted the fingerprint expert's work was confirmed by the supervisor, who could not have done an independent examination. *Id.*

¶ 41 This Court overruled this argument, holding "[o]nce the trial court determines the expert meets the minimum qualifications to qualify as such, deviations from

guidelines go to the weight of the expert's testimony, not [its] admissibility." *Id.* at *3. This language was later adopted by this Court in *State v. Hunt*, 249 N.C. App. 428, 435, 790 S.E.2d 874, 880 (2016). Here, as in *Hudson*, a challenge to ACE-V methodology goes towards the weight of the expert's testimony, not to its admissibility. *Hudson*, 2012 WL 379936 at *2. Defendant's argument is overruled.

## VI. Conclusion

¶ 42 Defendant did not timely preserve his objection to a purported denial of a public trial pursuant to the Sixth Amendment of the Constitution of the United States or under Article I, § 18 of the North Carolina Constitution. Presuming the issue was preserved, the trial court did not violate Defendant's right to a public trial under either the Constitution of the United States or the North Carolina Constitution. *State v. Clark*, 324 N.C. 146, 377 S.E.2d 54 (1989).

¶ 43 The trial court did not err, much less abuse its discretion, in admitting the expert testimony pursuant to Rule 702(a). N.C. Gen. Stat. § 8C-1, Rule 702(a).

¶ 44 Defendant received a fair trial, free from prejudicial errors he preserved and argued. We find no error in the jury's verdicts or in the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges INMAN and ARROWOOD concur.

Report per Rule 30(e).