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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-150

No. COA18-843-2

Filed 1 March 2022

Wake County, Nos. 15 CRS 218490, 218494–98, 218500–05

STATE OF NORTH CAROLINA

v.

JAMELL CHA MELVIN and JAVEAL AARON BAKER

On remand by opinion of the North Carolina Supreme Court filed 16 April 2021 in *State v. Melvin*, 377 N.C. 187, 2021-NCSC-39, reversing and remanding this Court's decision filed 19 November 2019. Case originally appealed by defendants from judgments entered 4 August 2017 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 23 May 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Benjamin O. Zellinger, for the State.*

*Sarah Holladay for defendant.*

DIETZ, Judge.

¶ 1 Defendant Jamell Melvin appeals his convictions for multiple charges of armed robbery and related offenses. On remand from our Supreme Court, the remaining issue in this case is whether the trial court erred by declining to sever Melvin's trial

from his co-defendant Javeal Baker. As explained below, the trial court's denial of the request to sever did not deprive Melvin of a fair trial and, as a result, the trial court's ruling was within the court's sound discretion. Accordingly, we find no error in the trial court's judgments.

## Facts and Procedural History

¶ 2 In July 2015, three armed men entered the business office of the Walnut Creek Amphitheater. The men held the amphitheater employees at gunpoint and stole a large amount of cash from a safe, along with other items. Witnesses provided a general description of the perpetrators, such as their height and body shape, but could not identify the three men because their faces were covered during the robbery.

¶ 3 After receiving anonymous tips and investigating potential suspects, police arrested Jamell Melvin, Melvin's stepson Javeal Baker, and several other individuals. The State charged both Melvin and Baker with six counts of robbery with a dangerous weapon, six counts of first degree kidnapping, and six counts of conspiracy to commit robbery with a dangerous weapon.

¶ 4 When the State moved to join Melvin and Baker for trial, Melvin objected and moved to sever his trial. The trial court allowed the State's motion to join and denied Melvin's to sever.

¶ 5 At the joint trial, the State presented evidence that Baker and two other masked men committed the robbery and that Melvin was a key planner of the robbery

and participated by driving the group to the amphitheater and standing by to act as the getaway driver.

¶ 6 In his defense, Baker asserted that Melvin, rather than Baker, was the third gunman in the robbery. In closing arguments, Baker's counsel argued that the evidence he presented showed "that it wasn't Javeal Baker, . . . it was Jamell Melvin" who went inside the amphitheater and committed the robbery with the other two gunmen. Baker's counsel emphasized that Melvin had a close relationship with one the other gunmen, that Melvin had committed other robberies with that gunman, and that Melvin matched the witnesses' general descriptions of that third gunman.

¶ 7 At the close of evidence, Melvin renewed his objection to the joinder of his trial with Baker's, but the court again overruled his objection. The jury convicted Melvin and Baker of six counts of robbery with a dangerous weapon, one count of conspiracy to commit robbery, and five counts of second degree kidnapping. Melvin and Baker both appealed to this Court.

¶ 8 On appeal, Melvin and Baker both argued that the trial court erred in denying their motions for severance of their trials based on antagonistic defenses. In an opinion filed 19 November 2019, this Court declined to address the merits of Melvin's and Baker's severance arguments, holding that those arguments were not preserved for appeal. *State v. Melvin*, 268 N.C. App. 467, 834 S.E.2d 452 (2019) (unpublished), *rev'd and remanded*, 377 N.C. 187, 2021-NCSC-39.

¶ 9 Melvin petitioned for discretionary review in the Supreme Court. *State v. Melvin*, 373 N.C. 595, 837 S.E.2d 888 (2020). The Supreme Court reversed our decision, holding that "Melvin sufficiently preserved for appellate review his motion to sever his trial from that of his co-defendants on the basis of antagonistic defenses," and remanded the case "for consideration of Mr. Melvin's claim on the merits." *State v. Melvin*, 377 N.C. 187, 2021-NCSC-39, ¶ 19.[1]

**Analysis**

¶ 10 Melvin argues that the trial court erred by denying his motion to sever his trial because Baker, his stepson, presented an antagonistic defense. Essentially, Melvin contends that Baker's defense theory at trial was to show that only one of them could have been the third man involved in the robbery and it wasn't Baker, it was Melvin. Melvin asserts that he was deprived of his right to a fair trial because "Baker elicited damaging testimony the State would not have."

¶ 11 "N.C.G.S. § 15A–927(c)(2) requires the court to grant severance whenever it is necessary to promote or achieve a fair determination of guilt or innocence." *State v. Burton*, 119 N.C. App. 625, 630, 460 S.E.2d 181, 186 (1995). A trial court's ruling on joinder or severance "is reviewed for abuse of discretion in light of the circumstances of the case, and the ruling will not be disturbed on appeal absent a showing that the

[1] Baker did not seek further review in the Supreme Court.

joinder caused the defendant to be deprived of a fair trial." *State v. Tirado*, 358 N.C. 551, 564, 599 S.E.2d 515, 526 (2004).

¶ 12 This denial of a fair trial, which our Supreme Court has described as a test of prejudice, exists "where codefendants' defenses are so irreconcilable that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty." *State v. Nelson*, 298 N.C. 573, 587, 260 S.E.2d 629, 640 (1979). Defendants are not "denied a fair trial by the joinder notwithstanding the conflicts" in their respective evidence where the State "offered plenary evidence" of guilt and the defendants' conflicting evidence "was not of such magnitude when considered in the context of other evidence that the jury was likely to infer from that conflict alone that both were guilty." *Id.* at 588, 260 S.E.2d at 641.

¶ 13 In this case, both Melvin and Baker denied involvement in the robbery. But beyond that, their defense strategies conflicted. A key issue was their respective roles in the robbery. The State's theory was that Melvin planned the robbery and acted as the driver, and that Baker was a late addition to the robbery plan and one of the three gunmen who entered the amphitheater.

¶ 14 Baker's defense strategy was to suggest that Melvin, not Baker, was the third gunman, meaning Baker did not participate in the robbery and was not guilty of the crimes charged. This theory likely would not have been presented in a separate trial of Melvin because neither the State nor Melvin took this position.

¶ 15 Baker's strategy led to evidentiary battles over the admission of witness testimony, with Melvin objecting to testimony that Baker sought to introduce at trial. Likewise, Baker focused a portion of his closing argument on evidence implicating Melvin as the third gunman and argued that the jury should acquit Baker on that basis.

¶ 16 But importantly, Baker's evidence and defense strategy did not impact the State's theory and evidence of Melvin's separate participation in the robbery. At trial, the State's key witness, Adjani Bryant, testified that, after committing smaller armed robberies together, he and Melvin decided that they needed "a big score." Bryant testified that it was Melvin's idea to rob the amphitheater because Melvin had worked there and knew about the safe where the business stored large sums of money. The State presented evidence that Melvin went to a retail store to purchase items used in the robbery, that Melvin drove the group to the amphitheater to commit the robbery, and that Melvin was supposed to pick the other perpetrators up and drive them from the scene after the robbery.

¶ 17 The State also presented evidence that police found a large portion of the cash taken from the amphitheater hidden in a suitcase in a storage unit. Melvin had visited the storage unit several times and had a key to the storage unit. A witness saw Melvin take money out of the suitcase inside the storage unit. Melvin's blood and fingerprints were found on the suitcase containing the stolen money.

¶ 18 This is "ample" and "plenary" evidence of Melvin's guilt of the charged crimes, as both a key planner of the crimes and a participant as the driver. *State v. Cook*, 48 N.C. App. 685, 688, 269 S.E.2d 743, 745 (1980); *Nelson*, 298 N.C. at 588, 260 S.E.2d at 641. Baker's assertion that Melvin, not Baker, was the third gunman who entered the amphitheater did not undermine this evidence of Melvin's guilt—indeed, it did not impact it all. Regardless of Melvin's role as one of the gunmen, the State had ample, separate evidence to convict Melvin for participation in the robbery.

¶ 19 Simply put, the conflict between Melvin's and Baker's defense strategies "was not of such magnitude when considered in the context of other evidence that the jury was likely to infer from that conflict alone" that Melvin was guilty. *Nelson*, 298 N.C. at 588, 260 S.E.2d at 641. We thus conclude that the joinder of Melvin's and Baker's trials did not cause Melvin to be deprived of his right to a fair trial. *State v. Golphin*, 352 N.C. 364, 400, 533 S.E.2d 168, 195 (2000). This, in turn, means the trial court did not abuse its discretion by denying Melvin's motion to sever. *Tirado*, 358 N.C. at 564, 599 S.E.2d at 526. We therefore find no error in the trial court's ruling on the motion to sever.

NO ERROR.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).