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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-243

No. COA21-145

Filed 5 April 2022

Mecklenburg County, No. 15CRS247086, 15CRS247158, 59, 61, 62

STATE OF NORTH CAROLINA

v.

JAMES HAMPTON EVANS, Defendant.

Mecklenburg County, No. 16CRS200319-23

STATE OF NORTH CAROLINA

v.

MARQUEZ BREON SPRINGS-OWENS, Defendant.

Appeal by Defendants from judgments entered 3 March 2020 by Judge R. Gregory Horne in Mecklenburg County Superior Court. Heard in the Court of Appeals 26 January 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Zachary K. Dunn, for the State.

Hynson Law, PLLC, by Warren D. Hynson, for Defendant James Hampton Evans.

Law Office of Kellie Mannette, PLLC, by Kellie Mannette, for Defendant Marquez Breon Springs-Owens.

DILLON, Judge.

¶ 1 Defendants were tried together and were convicted of first-degree murder, first-degree kidnapping, and possession of a firearm by a felon arising from a drug transaction which turned violent, resulting in a death. Each appeals his convictions.

I. Background

¶ 2 On 29 December 2015, prosecution witness Jamal Robinson planned a drug deal with his friend Germonta Wallace for the following day. The next day, Jamal arrived at the planned location with another friend, Norris Martin. When they arrived, Defendant James Hampton Evans was driving a vehicle with Germonta and a mutual friend Jay Phife inside. Germonta and Jay got out of Defendant Evans' vehicle and into Jamal's vehicle.

¶ 3 The drug deal went sour. Germonta shot Norris in the neck, killing him. Jay tied Jamal's hands with duct tape, and Germonta and Jay took the heroin from Jamal's vehicle. Jamal was dragged to the other vehicle, where Defendant Marquez Springs-Owens was also inside.

¶ 4 Defendant Springs-Owens had a gun, which he kept pointed at Jamal. The group drove to Jamal's home and stole several thousand dollars from his room. Jamal was driven to multiple other locations and eventually shot in the ribs, stomach, and back by Jay. The group left him for dead, but he survived.

¶ 5 That night, Jamal's vehicle was set on fire in a school parking lot in Gaston County. Officers apprehended Defendant Evans fleeing from the vehicle and found Norris' body in the trunk.

¶ 6 The following day, Jamal positively identified Defendant Evans, Jay, and Germonta in a police photo lineup. Jay was also thought to be at the school when the vehicle was set on fire, but he was later murdered in an unrelated incident. Germonta was also killed in a shootout when law enforcement attempted to apprehend him.

¶ 7 Defendant Springs-Owens was at the scene when Germonta was killed in a shootout. He was originally brought in for questioning for that purpose. However, police began to suspect that he was involved in the 30 December event. Jamal positively identified Defendant Springs-Owens as an individual who was involved in the events and who had "put a gun to his head."

¶ 8 Defendant Evans and Defendant Springs-Owens were each indicted for a number of felonies in connection with the events of 30 December. Defendants were found guilty by a jury on all charges, including first-degree murder. Defendants appealed to our Court and each filed a motion for appropriate relief.[1]

II. Analysis

¶ 9 There are three arguments presented on appeal. The first argument addressed

[1] We dismiss each Defendant's motion for appropriate relief without prejudice to file a similar motion at the superior court level.

below is being made by both Defendants. Defendant Evans separately makes an argument concerning the State's closing argument. And Defendant Springs-Owens makes an argument concerning his motion to sever the trial. We address each in turn below.

A. Prosecution Witness

¶ 10 Both Defendants argue that the trial court erred in denying them the constitutional right to cross-examine prosecution witness Jamal about criminal charges he had pending in Gaston County. We disagree.

¶ 11 We generally review a trial court's decision to limit cross-examination for an abuse of discretion. *State v. Bowman*, 372 N.C. 439, 444, 831 S.E.2d 316, 319 (2019). However, "if the trial court errs in excluding witness testimony showing possible bias, thus violating the Confrontation Clause, the error is reviewed to determine whether it was harmless beyond a reasonable doubt." *Id.* at 444, 831 S.E.2d at 319.

¶ 12 A defendant traditionally may not question a State's witness about the witness' pending criminal charges. *Id.* at 444, 831 S.E.2d at 320. However, a defendant is allowed to cross-examine the witness about pending charges *in the same county* when the defendant seeks to show bias or undue influence by the State. *Id.* at 444, 831 S.E.2d at 320. For instance, if a witness has charges pending in the same county, the jury could infer that the witness is providing the testimony in order to get a better deal from the county prosecutor on the charges pending against him. The defendant

may only cross-examine the witness about pending charges in *another county* if he provides "supporting documentation of . . . discussion between the two district attorneys' offices to demonstrate that [the witness'] testimony [is] biased." *State v. Murrell*, 362 N.C. 375, 404, 665 S.E.2d 61, 80 (2008).

¶ 13 Both Defendants have attempted to escape *Bowman*'s control in this case, arguing that *Davis v. Alaska,* 415 U.S. 308 (1974), applies instead. However, our Supreme Court in *Bowman* was aware of and cited *Davis* in its opinion. *Bowman*, 372 N.C. at 444-46, 831 S.E.2d at 319-21. *Bowman* is a case from our Supreme Court directly on point, and its language is clear: "[W]here a witness faces pending charges in a separate jurisdiction than the one he testifies in, a defendant *must* provide supporting documentation of a discussion between the two district attorneys' offices to demonstrate that the witness's testimony is biased." *Id.* at 444-45, 831 S.E.2d at 320 (emphasis added) (internal quotation marks and citation omitted).

¶ 14 In this case, Jamal had pending drug trafficking charges in Gaston County. He was never charged for his participation in the events in Mecklenburg County under an immunity agreement, which the jury did hear about. And there was no evidence of communication between the Mecklenburg and Gaston County District Attorneys' Offices. The trial court found in an evidentiary hearing that "there was no evidence before the Court" of a "showing of bias or undue influence by the State" primarily due to a lack of communication shown between the two District Attorneys'

Offices. Accordingly, the trial court correctly followed *Bowman* in reaching its decision.

¶ 15 Assuming *arguendo* that the trial court did err in this regard, we conclude that said error was harmless beyond a reasonable doubt. Jamal was never presented as a disinterested witness to the jury. He was a State's witness who was the only survivor of the events on 30 December 2015. The jury also heard that Jamal was a drug dealer and knew that he was subject to an immunity agreement.

¶ 16 Further, during the evidentiary hearing, Jamal testified that he knew about substantial assistance, a process by which a trial judge may reduce a cooperating witness' sentence. However, he also testified that he did not expect to receive a benefit and had not been promised a benefit in Gaston County for his testimony in the Mecklenburg County trial. The Defendants' contentions that Jamal could have *hoped* for a benefit do not amount to actual communication between the prosecutors of the two counties regarding Jamal's charges.

¶ 17 Finally, substantial assistance is in the discretion of a trial judge. N.C. Gen. Stat. § 90-95(h)(5) (2016) ("The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place the person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-

conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.”).

¶ 18 Therefore, we conclude that the trial court did not err in denying both Defendants the opportunity to cross-examine prosecution witness Jamal about his pending criminal charges in Gaston County.

B. Prosecutor’s Closing Argument

¶ 19 Defendant Evans argues that the trial court erred by failing to intervene *ex mero motu* when the prosecutor “repeatedly interjected her personal beliefs about and vouched for witness Jamal’s credibility” in her closing argument. We disagree.

¶ 20 “The standard of review for assessing alleged improper closing arguments that fail to provoke timely objection from opposing counsel is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*.” *State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002).

¶ 21 Our General Statutes provide that during an attorney’s closing argument to the jury:

> [A]n attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice. An attorney may, however, on the basis of his analysis of the evidence, argue any position or conclusion with respect to a matter in issue.

N.C. Gen. Stat. § 15A-1230(a) (2016).

¶ 22 However, it is well-settled that "prosecutors are given wide latitude in the scope of their argument and may argue to the jury the law, the facts in evidence, and all reasonable inferences drawn therefrom." *State v. Goss*, 361 N.C. 610, 626, 651 S.E.2d 867, 877 (2007). Further, a prosecutor providing reasons to believe a witness' credibility is not impermissible vouching. *See State v. Wiley*, 355 N.C. 592, 622, 565 S.E.2d 22, 43 (2002) ("The prosecutor was merely giving the jury reasons to believe the state's witnesses who had given prior inconsistent statements and were previously unwilling to cooperate with investigators."). Finally, alleged improper statements must be considered in context and length in relation to the entire closing argument as a whole. *State v. Fletcher*, 354 N.C. 455, 484, 555 S.E.2d 534, 552 (2001).

¶ 23 Defendant Evans argues that three specific passages from the State's closing argument were improper:

> I would submit to you he's not the kind of guy that's going to put on a show for you. He's not going to try to act and be like somebody he's not.
>
> I would submit that he was the same in court as we would expect to see him outside of court. His manner, his demeanor, his clothing, his mannerisms, the language he used. He didn't shine himself all up nice and pretty for you. He didn't come in here in a three-piece suit. He didn't come in here looking or trying to act like a Boy Scout. He came in here for real. He didn't hide his frustration from you when he was on the stand and being asked the same question over and over again or when he didn't understand

> a question. He was real with you.
>
> And I would submit to you that the more real he is in here, the more credible he is and the more you can believe his testimony.
>
> * * *
>
> I would submit to you that even though Jamal was the only witness, he's the only one that's to be believed, there is nothing that contradicts what he has told you. And if he's to be believed about all of those facts that have been corroborated and all that evidence, he's to be believed about who was involved.
>
> * * *
>
> I would submit to you that Jamal Robinson is Norris' voice. He's the only one you have. He's the only one that could tell you what happened that day, and he did. And he did so credibly supported by all of the other evidence.

Defendant Evans argues that these passages amounted to impermissible vouching for Jamal's credibility. However, taken in context of the State's entire argument, which spanned fifty-three (53) pages of the trial transcript, these comments were brief. Further, the prosecutor did not argue that she believed Jamal was telling the truth. She argued that Jamal should be perceived to be credible because (1) he did not put on an act, (2) his statements were supported by the trial evidence, and (3) he was the only surviving witness of the events. In any event, we conclude that the trial court did not err by declining to intervene *ex mero motu* during the State's closing argument.

C. Motion to Sever Trial

¶ 24 Defendant Springs-Owens argues that the trial court abused its discretion in denying his motion to sever his trial when Defendant Evans committed witness intimidation. Specifically, during the trial, evidence was presented that Defendant Evans worked with associates to commit witness intimidation. Specifically, a recorded jail call was admitted where Defendant Evans talked about having fliers posted around town about Jamal working as an "informer" for the police. The trial court approved additional security measures for the public at the entrance of the courtroom "in light of the nature of the allegations . . . that allegedly posters have been put up in the community with the alleged victim's and witness' face."

¶ 25 We review a trial court's decision on a motion for joinder or severance for an abuse of discretion. *State v. Golphin*, 352 N.C. 364, 399, 533 S.E.2d 168, 195 (2000). The trial court's ruling "will not be disturbed on appeal absent a showing that the 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).

¶ 26 Public policy supports joinder of trials when defendants are charged for the same crimes. *State v. Nelson*, 298 N.C. 573, 586, 260 S.E.2d 629, 639-40 (1979). However, if there "is a showing that a joint trial would be prejudicial and unfair, i.e., the existence of antagonistic defenses, or the admission of evidence which would be excluded on a separate trial, or the exclusion of evidence which would be admitted[,]"

joinder is inappropriate. *State v. Foster*, 33 N.C. App. 145, 149, 234 S.E.2d 443, 446 (1977).

¶ 27 Here, Defendant Springs-Owens made a pre-trial motion to sever and renewed the motion during trial and after the close of evidence. The trial court denied the motions and chose to deliver multiple limiting instructions. The first limiting instruction informed the jury that a witness intimidation flier was not introduced for hearsay purposes. The second limiting instruction informed the jury that witness intimidation committed by Defendant Evans was not to be considered against Defendant Springs-Owens. The trial court later repeated the second instruction.

¶ 28 It appears from the record that the initial purpose of Defendant Springs-Owens' motions was premised on speedy trial grounds rather than the concern about Defendant Evans' alleged witness tampering. On appeal, Defendant Springs-Owens also argues that the additional security measures imposed by the trial court, combined with the evidence of Defendant Evans' witness intimidation, resulted in the loss of a fair trial. We disagree.

¶ 29 The additional security measures ordered by the court were identical to those at the entrance of the courthouse (a metal detector and wand). All members of the public were required to pass through the same security measures at the entrance to the courthouse and again at the entrance to the courtroom. The trial court noted that the case involved defendants with first-degree murder allegations and did not rely

solely on the evidence of witness intimidation to order additional security measures. For these reasons, we conclude that the trial court did not err in denying Defendant Springs-Owens' motions to sever his trial from Defendant Evans.

¶ 30 Finally, the trial court's decision to deliver multiple limiting instructions to the jury addressed any potential prejudice Defendant Springs-Owens might have faced. We conclude the trial court did not abuse its discretion in denying the motion to sever.

III. Conclusion

¶ 31 The trial court did not err in limiting Defendants' cross-examination of prosecution witness Jamal Robinson about his pending criminal charges in Gaston County. Further, the trial court did not err in failing to intervene *ex mero motu* during the prosecutor's closing argument. Finally, the trial court did not abuse its discretion in denying Defendant Springs-Owens' motions to sever his trial from Defendant Evans.

NO ERROR.

Judge ZACHARY concurs.

Judge MURPHY concurs in part and concurs in result only in part.

Report per Rule 30(e).

MURPHY, Judge, concurring in part and concurring in result only in part.

¶ 32 Although the facts of *Bowman* tangentially concerned a witness's drug trafficking charges and the potential benefit she stood to gain at a future court's discretion through substantial assistance, that issue was not actually before our Supreme Court. *See generally State v. Bowman*, 372 N.C. 439, 831 S.E.2d 316 (2019) (making no mention of substantial assistance in analyzing relevant legal issues).[2] As discussed during oral argument before this Court, there is an argument to be made that our Supreme Court's use of "must" in articulating the evidentiary requirement in *Bowman*, at least as to substantial assistance and other witness incentives not discussed in our Supreme Court's analysis, was dicta. *See id.* at 444-45, 831 S.E.2d at 320 (emphasis added) (marks and citation omitted) ("[W]here a witness faces pending charges in a separate jurisdiction than the one he testifies in, a defendant *must* provide supporting documentation of a discussion between the two district attorneys' offices to demonstrate that the witness's testimony is biased."); North Carolina Court of Appeals, *21-145 State v. Evans*, YouTube (26 January 2022), at 17:31-20:25, https://www.youtube.com/watch?v=bf2dXVwmqYc. Here, the witness faced five out-of-county drug trafficking charges, each of which would require a statutory minimum sentence of 70 months, the potential mitigation of which would require no input from the State. *See* N.C.G.S. § 90-95(h)(4)(a) (2021) (providing for a

[2] The parties in *Bowman* also made no arguments concerning substantial assistance in their briefs.

person who traffics heroin in amounts commensurate with those in the witness's Gaston County charges to be "sentenced to a minimum term of 70 months").

¶ 33 The policy concerns underlying the evidentiary requirement in *Bowman* do not match its application here. The need for the jury to have the evidence which paints the full picture as to a witness's *subjective* motivation to lie on the stand is paramount, especially here where he was the primary witness for the State. Thus, inasmuch as the issue of bias created by the availability of mitigation through substantial assistance was not argued by the defendant in *Bowman*, I agree with Defendant that the scope of the evidentiary requirement could potentially be regarded as dicta.[3]

¶ 34 However, when our Supreme Court draws a clear line, as it did in *Bowman*, and does not limit its holding to the precise circumstances before it, we must assume that it meant "must" when, in articulating its evidentiary requirement, it said "must." *Bowman*, 372 N.C. at 444-45, 831 S.E.2d at 320. Therefore, I concur in the portion of the Majority's holding that Defendants have not complied with *Bowman*'s evidentiary requirement and, accordingly, did not have a Sixth Amendment right to cross-examine the witness with respect to his pending Gaston County charges. However, I decline to join the Majority's opinion with respect to ¶¶ 15-17 as, in the event the trial

[3] I note that, in their briefs, Defendants argue bias and undue influence by the State in tandem. The concerns addressed in this concurrence only apply to their arguments related to bias.

court's failure to allow cross examination regarding the pending charges in Gaston County had been error, such error was not harmless beyond a reasonable doubt. *Supra* at ¶¶ 15-17.