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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-246

No. COA20-881

Filed 5 April 2022

Transylvania County, Nos. 17 CRS 284–85, 288–91, 51409–10, 51412

STATE OF NORTH CAROLINA

v.

CONNELL DIXON HAWKINS, CHADLEY TYRONE NORRIS, and JAMES ALEXANDER RAY

Appeal by defendants from judgments entered 10 December 2019 by Judge Gary M. Gavenus in Transylvania County Superior Court. Heard in the Court of Appeals 30 November 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Michael T. Henry, for the State.

Anne Bleyman, for defendant Connell Dixon Hawkins.

Vitrano Law Offices, PLLC, by Sean P. Vitrano, for defendant Chadley Tyrone Norris.

Drew Nelson, for defendant James Alexander Ray.

DIETZ, Judge.

¶ 1 Defendants Connell Hawkins, Tyrone Norris, and James Ray appeal their convictions for first degree murder. Hawkins and Ray argue that the trial court erred

by admitting an improperly redacted version of Norris's confession to law enforcement. Hawkins and Norris argue that the trial court abused its discretion by admitting excessively gruesome and repetitive crime scene photos of the victim. Finally, Hawkins argues that the trial court erred by denying his motion to disqualify the Transylvania County District Attorney's office.

¶ 2 As explained below, the trial court did not err by admitting Norris's statement in this joint trial after redacting Hawkins's and Ray's names and replacing them with pronouns to comply with Confrontation Clause requirements. The trial court likewise did not err by admitting the crime scene and autopsy photographs after carefully reviewing them and excluding those the court found duplicative. Finally, the trial court properly determined that there was no actual conflict of interest within the Transylvania County District Attorney's office. We therefore find no error in the trial court's judgments.

Facts and Procedural History

¶ 3 In July 2017, Defendants Connell Hawkins, Tyrone Norris, and James Ray lived together at a home in Brevard. Late one night, Nioka Metcalf texted Norris to ask for drugs. Norris responded that he was with friends who had some and that Metcalf could come over. Metcalf met up with Norris, Ray, and Hawkins and the group used drugs together. Norris then asked Metcalf if she would take them to meet someone who owed Norris money for drugs. Metcalf asked him if they were going to

hurt anyone, but Defendants assured her they were not and that they just wanted to "shake the guy up." When Metcalf asked for more details, Norris told her the person they were going to meet was Saul Ayala.

¶ 4 The group left around 2:00 a.m. with Metcalf driving and Hawkins instructing her where to go. Metcalf did not see anyone carrying a weapon. Hawkins contacted Ayala, telling Ayala that he would "hook him up with some drugs." When they arrived, Defendants got out of Metcalf's car and returned with Ayala. Hawkins then directed Metcalf to drive a short distance before telling her to park in a dark area on Washington Avenue. Hawkins exited the car with Ray and Norris, and Ayala stayed in the car with Metcalf. Minutes later, Norris opened the door and pulled Ayala out of the car, closing the door behind him. Metcalf couldn't see what happened after that because the street was dark and her windows were tinted. She closed her eyes and covered her ears when she heard screaming outside the car. Metcalf yelled that she was leaving and Defendants got back in the car without Ayala. One of the men asked "what they got," and another replied, "weed and $60." Metcalf drove Defendants back to their house, where Hawkins handed her $30 stained with a "reddish-colored substance." Hawkins told Metcalf that he "spilled some Hawaiian Punch" on it.

¶ 5 A resident of Washington Avenue called 911 to report hearing "what sounded like someone being hurt" and a "bloodcurdling scream." Police arrived around 2:45 a.m. and found Ayala, unresponsive and lying face down in the road surrounded by

blood. Ayala was still breathing and officers attempted to stop the bleeding, but Ayala died at the scene.

¶ 6 That morning, Metcalf drove Defendants to a convenience store. The store manager contacted police after Hawkins paid with money that looked like it had blood on it. An officer went to the store in response to the report and a store clerk showed the officer a "bloodsoaked $10 bill." The officer approached Metcalf and explained why he was there. While speaking with Metcalf, the officer noticed what appeared to be a "blood spot on one of the passenger doors" of Metcalf's vehicle.

¶ 7 Later that day, police arrested Defendants for the murder of Ayala. At the time of his arrest, Hawkins had cash with dried dark-brown colored stains on it.

¶ 8 The next week, police searched the house where Metcalf was staying. They found a white trash bag containing a pair of black boots, a white t-shirt, a pair of jeans, and blue boxer shorts, all stained with a red substance. Forensic testing of the items indicated the presence of blood. The bag also contained a large "combat-type" knife with red stains on it that read "Rambo: First Blood" on the blade.

¶ 9 The State charged Defendants with conspiracy to commit robbery with a dangerous weapon, robbery with a dangerous weapon, and first degree murder.

¶ 10 Hawkins filed a pretrial motion to disqualify the Transylvania County District Attorney's office from prosecuting his case. He asserted that the Transylvania County District Attorney had represented him with respect to several property crimes while

in private practice roughly ten years ago. Hawkins asserted that, due to this prior representation, the District Attorney might have "confidential information" that he could disclose to the prosecuting attorney handling the case. The trial court denied Hawkins's motion, ruling that Hawkins failed to present evidence of an actual conflict. In an abundance of caution, the trial court ordered the District Attorney not to "personally participate" in the case or have "any involvement with any aspect."

¶ 11 In November 2019, Defendants' cases went to joint trial. Metcalf entered into a plea agreement with the State and testified at trial to the events as detailed above.

¶ 12 After the trial court overruled various objections from Hawkins and Ray, the State presented a redacted version of a statement Norris made to police in an interview following his arrest. The trial court gave a limiting instruction that the statement could be considered "only in the case against" Norris. In the redacted statement Norris described his and Metcalf's involvement in the robbery and murder of Ayala as well as the involvement of two other individuals. The statement was redacted to remove any identification of Hawkins and Ray as the other two individuals, referring to them only by pronouns.

¶ 13 In the statement, Norris asserted that the plan was for Norris and the two others to beat up Ayala and rob him. Norris stated that they didn't expect Ayala to "put up too much of a fight" because he was "just a little young dude." But, according to Norris, after the men dragged Ayala from the car, one of the others said they must

"leave no witnesses," and one of the men stabbed Ayala multiple times with "one of them big-ass Rambo knives." While Ayala was being stabbed, Norris searched his pockets and took the money and marijuana.

¶ 14 Ayala's nephew, Thomas Bellamy, testified that he had seen Ray carrying a "long knife, like a Rambo knife." Bellamy identified a knife sheath found near Ayala's body as the one he had seen on Ray. He also identified the knife found at Metcalf's house as the one he previously had seen in Ray's possession. Two friends of Defendants testified that, several days before Ayala's death, they heard Hawkins and Ray saying they were going to rob Ayala "because he had money."

¶ 15 Richard Parker, an overnight guest at Defendants' house, testified that he saw Defendants and Metcalf in the kitchen around 3:00 a.m. on the night Ayala was killed. Norris had blood on his pants and it looked "like he'd cleaned a knife off" on his pant leg. Parker asked Norris if he had been in a fight because Norris was washing his hands, had his shirt off, and seemed "kind of amped up." Parker also testified that he saw a knife that was not there before. Parker contacted the police later that day to report what he had seen.

¶ 16 The State also presented autopsy results, indicating that Ayala died from multiple stab wounds to his head, neck, and chest. The trial court admitted seven crime scene photos of Ayala as well as eleven photos from his autopsy. Defendants objected to the admission of the crime scene photos as duplicative and unfairly

prejudicial, and the trial court sustained the objection as to two photos it found to be duplicative. Defendants did not object to the admission of the autopsy photos.

¶ 17 On 10 December 2019, the jury convicted all three Defendants of robbery with a dangerous weapon and first degree felony murder in the perpetration of robbery with a dangerous weapon. The jury acquitted Defendants of the conspiracy charges. The trial court arrested judgment on Defendants' robbery convictions and sentenced each of them to life in prison without the possibility of parole for first degree murder. Defendants appealed.

Analysis

I. Admission of Norris's redacted statement to law enforcement

¶ 18 Hawkins and Ray both argue that the trial court erred by admitting an improperly redacted version of Norris's statement. They contend that the statement, although redacted to remove any specific identification of them and to refer to Norris's two co-perpetrators only by pronouns, improperly implicated them in violation of their Confrontation Clause rights.

¶ 19 "We review constitutional issues de novo." *State v. Whittington*, 367 N.C. 186, 190, 753 S.E.2d 320, 323 (2014). The admission of a non-testifying co-defendant's confession in a joint trial violates the Confrontation Clause rights of a defendant where the confession identifies that defendant. *Bruton v. U.S.*, 391 U.S. 123, 126 (1968). Under the Supreme Court's precedent in *Bruton*, "in joint trials of defendants

it is necessary to exclude extrajudicial confessions unless all portions which implicate defendants other than the declarant can be deleted without prejudice either to the State or the declarant. If such deletion is not possible, the State must choose between relinquishing the confession or trying the defendants separately." *State v. Fox*, 274 N.C. 277, 291, 163 S.E.2d 492, 502 (1968); *see also* N.C. Gen. Stat. 15A-927(c)(1)(b).

¶ 20 No *Bruton* violation occurs where the State "redacted the confessions to the extent that each defendant's confession contained no references to the other defendant." *State v. Brewington*, 352 N.C. 489, 507, 532 S.E.2d 496, 506 (2000). Thus, *Bruton* generally does not apply where the codefendant's statement is redacted to eliminate any reference to the defendant and to replace any reference to the defendant with a neutral pronoun. *Id.* at 511–12, 532 S.E.2d at 509–10. For example, this Court has found that a statement is "adequately sanitized" where all "explicit references to defendant were omitted and only oblique references to an unknown 'he' remained. A statement may indicate that the declarant had an accomplice so long as the identity of that accomplice is in no way indicated" in the statement itself. *State v. Johnson*, 71 N.C. App. 90, 93, 321 S.E.2d 510, 513 (1984).

¶ 21 This type of redaction and use of neutral pronouns runs afoul of *Bruton* only if "notwithstanding the redaction of defendant's name, the defendant is *directly* implicated by language which invites the jury to infer that the unnamed third party referred to in the confession was the defendant." *Brewington*, 352 N.C. at 512, 532

S.E.2d at 510. Importantly, it is not a *Bruton* violation if the redacted statement, when combined with other evidence in the case, permits the jury to infer that the redacted individual is the defendant. The focus is on whether the redacted statement, standing alone, directly invites the jury to infer or speculate from context that the neutral pronoun references the defendant. *Id*.

¶ 22 Here, the redacted version of Norris's statement removed all identification of Hawkins and Ray, replacing any specific references to them with the pronouns "he" or "we." To be sure, the admitted statement still referred to Metcalf by name and included references to other details of the crime and surrounding events that matched much of the State's other evidence. But the statement removed all identifications of Hawkins and Ray and nothing in the statement, standing alone, directly enabled the jury to infer that the unnamed individuals were the co-defendants.

¶ 23 In sum, under our precedent, the trial court "adequately sanitized" Norris's statement by replacing all specific references to Hawkins and Ray with pronouns in a manner that did not permit the jury directly to infer that the pronouns referred to Hawkins and Ray. *Brewington*, 352 N.C. at 507, 532 S.E.2d at 506; *Johnson*, 71 N.C. App. at 93, 321 S.E.2d at 513. Any inferential incrimination of Hawkins and Ray because the jury could infer, based on other evidence in the case, that those unnamed individuals were Hawkins and Ray is not a violation of *Bruton*. Thus, the trial court's determination that Norris's statement was adequately redacted to comply with

Bruton was appropriate and not error.

II. Admission of crime scene photos and video of the victim

¶ 24 Hawkins and Norris next argue that the trial court abused its discretion by admitting "excessively gruesome" photographs and police body camera video footage of Ayala's body at the crime scene. They contend that the photos were irrelevant, unduly prejudicial, and inflammatory and thus should have been excluded by the trial court.

¶ 25 The exclusion of evidence under the balancing test of Rule 403 of the North Carolina Rules of Evidence "is within the trial court's sound discretion." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). "Whether the use of photographic evidence is more probative than prejudicial and what constitutes an excessive number of photographs in the light of the illustrative value of each likewise lies within the discretion of the trial court." *Id.* "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." *Id.*

¶ 26 Under Rule 403 of the Rules of Evidence, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." N.C. R. Evid. 403. Unfair prejudice "means an undue tendency to suggest a decision on an improper

basis, usually an emotional one." *Hennis*, 323 N.C. at 283, 372 S.E.2d at 526.

¶ 27 In general, even in cases where "the cause of death and identity of the victim are uncontroverted, photographs may be exhibited showing the condition of the body and its location when found." *State v. Blakeney*, 352 N.C. 287, 310, 531 S.E.2d 799, 816 (2000). The law permits admission of this type of crime scene or autopsy photograph because it "may be used to illustrate testimony as to the cause of death" or "to illustrate testimony regarding the manner of killing." *Hennis*, 323 N.C. at 284, 372 S.E.2d at 526. These types of photographs are admissible "even if they are gory, gruesome, horrible or revolting, so long as they are used for illustrative purposes and so long as their excessive or repetitious use is not aimed solely at arousing the passions of the jury." *Id.*

¶ 28 So, for example, in *State v. Blymyer*, this Court upheld admission of twelve crime scene photos and eleven autopsy photos that the State used to illustrate an officer's testimony about the condition of the victim's body when it was found and a medical examiner's testimony about the cause of death. 205 N.C. App. 240, 244–45, 695 S.E.2d 525, 529 (2010). Similarly, in *State v. Hyde*, this Court held that the trial court's admission of 51 crime scene and autopsy photos of the victim did not amount to an abuse of discretion where the photos corroborated other evidence in the case about the condition or location of the victim's body and "illustrated the medical examiner's testimony" about the "large number of wounds inflicted upon different

parts of the victim's body." 352 N.C. 37, 54–55, 530 S.E.2d 281, 293 (2000).

¶ 29 Here, Hawkins and Norris objected to the admission of the crime scene photos as duplicative and unfairly prejudicial. The trial court reviewed the photos and video before ruling on their admissibility, determining that two of the proffered photos should be excluded as duplicative. The trial court then admitted seven crime scene photos of Ayala as well as eleven photos from his autopsy, along with video footage from an officer's body camera as he first approached Ayala at the scene. Defendants did not object to the admission of the autopsy photos.

¶ 30 As in *Blymyer* and *Hyde*, the admitted evidence was illustrative of the officer's testimony about the condition and location of the victim's body and the nature of the injuries he sustained; they were illustrative of the medical examiner's testimony about the nature of the victim's injuries and the cause of death; they corroborated other evidence and witness testimony in the case; and each photo showed a different angle of the scene or the body, assisting the jury in understanding the number and location of each of the victim's wounds. *Blymyer*, 205 N.C. App. at 244–45, 695 S.E.2d at 528–29; *Hyde*, 352 N.C. at 54–55, 530 S.E.2d at 293. In light of the trial court's careful consideration of these photographs and exclusion of those the court found duplicative, we hold that the court's determination was a reasoned one and not so manifestly arbitrary that it amounted to an abuse of the court's sound discretion in this area. *Hyde*, 352 N.C. at 55, 530 S.E.2d at 293; *Hennis*, 323 N.C. at 285, 372 S.E.2d

at 527.

¶ 31 In any event, any error in admission of these photographs was harmless in light of the overwhelming evidence of both Norris's and Hawkins's guilt. "An error is not prejudicial unless there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at trial. Where it does not appear that the erroneous admission of evidence played a pivotal role in determining the outcome of the trial, the error is harmless." *State v. Babich*, 252 N.C. App. 165, 172, 797 S.E.2d 359, 364 (2017) (citation omitted).

¶ 32 In this case, not only did Norris confess to his involvement in the robbery and murder of Ayala, but the State also presented testimony from other witnesses and various items of physical evidence linking him to the crimes. The State also presented overwhelming evidence of Hawkins's guilt through witness testimony, messages concerning the crime, and bloodstained money that tied Hawkins to the scene. In light of this evidence, there is no reasonable possibility that, had these photographs not been admitted, the jury would have found either defendant not guilty.

III. Denial of motion to disqualify the District Attorney's office

¶ 33 Hawkins also argues that the trial court erred by denying his motion to disqualify the Transylvania County District Attorney's office from prosecuting his case. Hawkins asserts that the elected District Attorney at the time of his trial had a conflict of interest due to prior representation of Hawkins on several unrelated

property crimes ten years before the murder. Hawkins argues that the trial court failed to sufficiently assess whether the District Attorney "acquired and disclosed any detrimental confidential information" from that previous representation.

¶ 34 We review a trial court's denial of a motion to disqualify a particular prosecutor or an entire district attorney's office for abuse of discretion. *State v. Perry*, 262 N.C. App. 132, 135–36, 821 S.E.2d 617, 620 (2018). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *Id.*

¶ 35 A prosecutor "may not be disqualified from prosecuting a criminal action in this State unless and until the trial court determines that an actual conflict of interests exists." *State v. Camacho*, 329 N.C. 589, 601, 406 S.E.2d 868, 875 (1991). An actual conflict of interest "is demonstrated where a District Attorney or a member of his or her staff has previously represented the defendant with regard to the charges to be prosecuted *and*, as a result of that former attorney-client relationship, the prosecution has obtained confidential information which may be used to the defendant's detriment at trial." *Id.* (emphasis added).

¶ 36 This Court has held that when the prosecutor "did not previously represent defendant in the charges to be tried against him" in the present matter, the defendant "failed to show the actual conflict of interest required by *Camacho* to disqualify [the

prosecutor], much less the entire [District Attorney's] Office, from prosecuting those charges." *Perry*, 262 N.C. App. at 137, 821 S.E.2d at 621. "Without proof of an actual conflict of interest as to those charges, further inquiry or direction by the trial court was unnecessary" and "defendant has failed to show the trial court's denial of his disqualification motion as to the prosecution of these particular charges was so arbitrary that it could not have been the result of a reasoned decision." *Id.*

¶ 37 Here, the trial court found that "there is no actual conflict of interest" because the District Attorney was in office "at the time the crimes are alleged to have occurred and has remained in office continuously since then," he had "not represented the defendant in these cases," he "represented the defendant 10-11 years ago for unrelated property crimes and no assaults," and Hawkins "failed to present any evidence that confidential information was acquired by [the District Attorney] during the representation of the defendant years ago." However, in an abundance of caution, the trial court ordered that the District Attorney "not personally participate" in this case or "have any involvement in any aspect."

¶ 38 We agree with the trial court's determination that Hawkins failed to show the existence of an "actual conflict of interest" as required by the standard for disqualification. *Camacho*, 329 N.C. at 601, 406 S.E.2d at 875. Thus, the trial court was well within its sound discretion to permit the District Attorney's office to handle the case while instructing the elected District Attorney not to personally participate.

¶ 39 Hawkins also contends that he received ineffective assistance of counsel because his trial counsel failed to proffer evidence in support of his motion to disqualify the entire District Attorney's office. "To prevail on a claim of ineffective assistance of counsel, a defendant must first show that his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense. *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006) (citations omitted).

¶ 40 Hawkins cannot show the first prong of an ineffective assistance claim—deficient performance—in this case. As explained above, the trial court properly denied Hawkins's motion to disqualify. Thus, Hawkins's ineffective assistance of counsel claim is likewise meritless.

IV. Sufficiency of first degree murder indictment

¶ 41 Finally, Hawkins argues that the trial court erred by not dismissing the first degree murder charge against him because the short-form indictment failed to sufficiently allege all essential elements of the offense.

¶ 42 Hawkins acknowledges that his argument is precluded by binding precedent from our Supreme Court and that he raises this issue only "for preservation purposes." *State v. Braxton*, 352 N.C. 158, 174–75, 531 S.E.2d 428, 437–38 (2000). We reject this argument as barred by controlling precedent, but acknowledge that it is preserved for further review in our Supreme Court.

Conclusion

¶ 43 For the reasons discussed above, we find no error in the trial court's judgments.

NO ERROR.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).