

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1063

Filed 20 February 2024

Wake County, Nos. 18 CRS 215678-79

STATE OF NORTH CAROLINA

v.

ERIC RAMOND CHAMBERS, Defendant.

Appeal by defendant from judgment entered 8 April 2022 by Judge Rebecca W. Holt in Wake County Superior Court. Heard in the Court of Appeals 10 January 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Caden W. Hayes, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for defendant-appellant.

DILLON, Chief Judge.

Defendant Eric Ramond Chambers appeals from judgments entered following jury verdicts convicting him of certain felonies. Based on precedent from our Supreme Court, we conclude that Defendant's right under our state constitution to a properly constituted jury was violated. Therefore, we vacate Defendant's convictions and remand this case for a new trial.

I. Background

Defendant was tried for various crimes in connection with a 21 August 2018

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shooting at a Raleigh motel which left a man dead and a woman injured. Defendant represented himself at trial.

After jury deliberations began, Juror #5 informed the trial judge that he could not return the next day because of a scheduled doctor's appointment. The trial court dismissed Juror #5, replaced him with an alternate juror, and instructed the jury to begin its deliberations anew with the alternate juror. Defendant was not in the courtroom at the time of the substitution.

The jury found Defendant guilty of first-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury. He was sentenced to life in prison without the possibility of parole for the murder conviction and 110 to 144 months for the assault conviction.

II. Appellate Jurisdiction

Defendant filed a petition for writ of *certiorari*. The State filed a motion to dismiss the appeal. In our discretion, we allow Defendant's petition for writ of *certiorari* to consider the merits of the case and deny the State's motion to dismiss.

III. Analysis

Defendant makes several arguments on appeal. We, however, address only his argument that his right to a properly constituted jury was violated, as our resolution of that issue is dispositive. Specifically, for the reasoning below, we agree with Defendant's argument that the trial court's substitution of an alternate juror after jury deliberations had begun constitutes reversible error.

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Our North Carolina Constitution provides that “[n]o person shall be convicted of any crime but by the unanimous verdict of a jury in open court[.]” N.C. Const. art. I, § 24. Our Supreme Court has interpreted this provision to preclude juror substitution during a trial after the commencement of jury deliberations. *State v. Bunning*, 346 N.C. 253, 255–57, 485 S.E.2d 290, 291–93 (1997).

In *Bunning*, shortly after jury deliberations had begun, a juror informed the court that she could not continue with jury deliberations due to a medical issue; she was, therefore, excused and replaced with an alternate juror. *Id.* at 255, 485 S.E.2d at 291. The trial court then instructed the jury to begin deliberations anew. *Id.* On appeal, our Supreme Court held that the defendant’s right under our state constitution to a properly constituted jury was violated by this substitution:

In this case, the jury verdict was reached by more than twelve persons. The juror who was excused participated in the deliberations for half a day. We cannot say what influence she had on the other jurors, but we have to assume she made some contribution to the verdict. The alternate juror did not have the benefit of the discussion by the other jurors which occurred before he was put on the jury. We cannot say he fully participated in reaching a verdict. In this case, eleven jurors fully participated in reaching a verdict, and two jurors participated partially in reaching a verdict. This is not the twelve jurors required to reach a valid verdict in a criminal case.

Id. at 256, 485 S.E.2d at 292.

The present case is strikingly similar to *Bunning*. Here, like in *Bunning*, a juror was excused and replaced with an alternate, after which the trial court

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instructed the jury to restart its deliberations. Consequently, following the reasoning in *Bunning*, the verdict here was also impermissibly reached by thirteen people.

The State argues, though, that Defendant failed to preserve any argument concerning the constitutional deficiency, as he failed to object when the juror substitution occurred. But we are bound by a 2003 case in which our Court held that a defendant's failure to object to the alternate juror's substitution after the commencement of jury deliberations does not preclude appellate review, as this error is not waivable. *State v. Hardin*, 161 N.C. App. 530, 533, 588 S.E.2d 569, 571 (2003).¹ This holding is consistent with our Supreme Court's holding in *State v. Hudson*, 280 N.C. 74, 185 S.E.2d 189 (1971). In that case, the defendant consented to be tried by only eleven jurors after one of the jurors could not continue, and the defendant made no argument regarding this deficiency on appeal. *Id.* at 78, 185 S.E.2d at 192. Notwithstanding, our Supreme Court ordered a new trial *ex mero motu*, stating:

It is elementary that the jury provided by law for the trial of indictments is composed of twelve persons; a less number is not a jury. It is equally rudimentary that a trial in a criminal action cannot be waived by the accused in the Superior Court as long as his plea remains "not guilty."

¹ We note that our Court recently held that a defendant who fails to object on state constitutional grounds to a juror substitution after the beginning of deliberations fails to preserve the issue for appellate review. *State v. Lynn*, __ N.C. App. __, __, 892 S.E.2d 883, 886 (2023). Notwithstanding, we are bound to follow *Hardin*, as it is older than *Lynn* and was not referenced in *Lynn*. See *State v. Gonzalez*, 263 N.C. App. 527, 531, 823 S.E.2d 886, 889 (2019) (relying on *In re R.T.W.*, 359 N.C. 539, 542, n.3, 614 S.E.2d 489, 491, n.3 (2005) to hold that, where there are two irreconcilable precedents which "develop independently[,] we must "follow[] ... the older of the two cases' and reject the more recent precedent").

Id. at 79, 185 S.E.2d at 192.

We note that, in 2021, our General Assembly amended a statute to provide that “[i]f an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury’s deliberations.” N.C. Gen. Stat. § 15A-1215(a). However, where a statute conflicts with our state constitution, we must follow our state constitution. *Bayard v. Singleton*, 1 N.C. 5 (1787). Our General Assembly cannot overrule a decision by our Supreme Court which interprets our state constitution. *See State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 479 (1989) (“[I]ssues concerning the proper construction and application of North Carolina laws and the Constitution of North Carolina can only be answered with finality by [our Supreme] Court.”).²

IV. Conclusion

Under existing precedent, we are compelled to conclude that Defendant’s right to a properly constituted jury under our state constitution was violated and that this issue is preserved, notwithstanding Defendant’s failure to object at trial. Accordingly, Defendant is entitled to a new trial. We need not address Defendant’s

² Although not raised by Defendant, we note that federal courts have held that substitution of a juror with an instruction for the jury to begin deliberations anew does not violate the *federal* constitution. *See Claudio v. Snyder*, 68 F.3d 1573, 1575–76 (3d Cir. 1995) (collecting cases). However, our Supreme Court is free to construe our state constitution in a manner which affords rights greater than those afforded under the federal constitution. *State v. Jackson*, 348 N.C. 644, 648, 503 S.E.2d 101,103–104 (1998) (“States remain free to interpret their own constitutions in any way they see fit, including constructions which grant citizen rights where none exist under the federal Constitution.”).

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remaining arguments.

NEW TRIAL.

Judges MURPHY and CARPENTER concur.