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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-596

Filed 2 April 2024

Guilford County, Nos. 19CRS67313-14, 19CRS69762, 21CRS28730

STATE OF NORTH CAROLINA

v.

CARLTON LASHAUN WHITE

Appeal by defendant from judgments entered 19 September 2022 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 20 March 2024.

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

Appellate Defender Glenn Gerding by Assistant Appellant Defender Wyatt Orsbon, for the defendant-appellant.

TYSON, Judge.

Carlton Lashaun White (“Defendant”) appeals from judgments entered upon a jury’s verdicts of guilty for two counts of robbery with dangerous weapon and two counts of possession of a firearm by a felon. Our review reveals no error.

I. Background

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A person wearing a black ski mask with a single opening entered a BP Family Fare convenience store in Greensboro in the early morning hours on 21 December 2018. The person pulled out a small revolver handgun and demanded money from the clerk, Yawo Komlavi (“Komlavi”). Komlavi complied. Before the perpetrator departed the store, they shifted the ski mask, which exposed their face. Komlavi recognized the person behind the mask as Defendant, who was a regular customer.

Three weeks later, a person entered an Orange Mart convenience store in Greensboro wearing a black ski mask with a single opening on 24 January 2019. The person also pulled out a small black revolver handgun and demanded money from the clerk, Jatin Shah (“Shah”). When Shah hesitated, the person fired a shot above Shah’s left ear. Shah emptied the cash register and gave the funds to the perpetrator, who left the store. Again, before leaving, Shah recognized the person wearing the mask as Defendant, who was a regular customer at that store.

A plethora of evidence linked Defendant to committing both robberies. An anonymous tip to the Guilford County CrimeStoppers reported Defendant was the Orange Mart robber. Both store clerks and victims, Komlavi and Shah, identified Defendant in open court as the person who had pulled out a revolver handgun and demanded money and robbed their respective gas stations. Komlavi identified Defendant as the robber of the BP Family Fare from a photographic lineup.

The owner of the Orange Mart recognized Defendant’s voice from the surveillance footage of the robbery. The owner testified Defendant had previously

flashed a similar revolver in the Orange Mart, and he identified Defendant as the robber in open court.

The clothing worn by the perpetrator of each robbery was captured in surveillance footage and matched clothing found in Defendant's apartment, including the one-opening ski mask. Finally, five bullets matching the caliber and style of the bullet fired in and recovered from the Orange Mart were found inside of a jacket belonging to Defendant.

Defendant was indicted for committing two counts of robbery with dangerous weapon and for two counts of possession of a firearm by a felon. Defendant was tried three times for these offenses. Defendant was originally tried in Guilford County Superior Court before Judge David L. Hall on 13 September 2021. A jury found Defendant guilty on all charges and he was sentenced to a term of active imprisonment. Judge Hall ordered a new trial following evidentiary hearings on defendant's subsequent motion for appropriate relief ("MAR"), alleging juror misconduct.

The MAR alleged jurors had inadvertently seen a court calendar, which revealed Defendant was also charged with first-degree murder in an unrelated case. The information had elicited a "notable negative reaction" from the jurors, and some jurors conducted follow-up internet searches. The trial court held evidentiary hearings and ordered a new trial.

Defendant was retried before Judge R. Stuart Albright on 25 July 2022 in

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Guilford County. Judge Albright declared a mistrial following excusals for cause as a result of jurors contracting COVID-19 and COVID-19-like symptoms, which left fewer than twelve jurors remaining.

Defendant was retried for a third time on 12 September 2022 before Judge Albright. The jury began deliberating on 16 September 2022 at 3:15 p.m. Approximately forty minutes after beginning deliberations, the jury requested to review photographs, inspect the ski mask, and watch surveillance footage of the Orange Mart robbery. The trial court allowed each of the jury's requests.

The jury resumed deliberations at 4:43 p.m. and the jury adjourned for the weekend at approximately 6:00 p.m. Before deliberations resumed on Monday morning, the bailiff reported Juror 11 had informed him of a family emergency. Her son's girlfriend had attempted suicide Friday evening, and the Department of Social Service ("DSS") indicated Juror 11's grandchildren would be taken into its custody. Given the circumstances, Juror 11 doubted her ability to focus on deliberations and asked the court to be excused.

The court, observing jurors are sometimes able to "power through" such situations, brought Juror 11 into the courtroom to question her. The trial court offered Juror 11 sympathy for the family challenges she was facing, but at the same time assured her any action taken by DSS would be temporary in the absence of further hearings. While acknowledging Juror 11 would "rather be somewhere else," the court asked whether she could nevertheless "stay with us this morning," "continue

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to deliberate,” “follow the [trial court’s] instructions,” and “work hard towards reaching a verdict.” Juror 11 replied, “I don’t feel like I can,” “I can’t even think straight,” and “I didn’t sleep last night.” Judge Albright instructed Juror 11 to return to the jury room and asked counsel to comment regarding their thoughts.

Both counsel initially deferred to the court’s discretion, but Defendant’s counsel later moved to strike Juror 11 and substitute an alternate juror. Noting this would require the jury “restart [its] deliberations from the beginning” despite having already deliberated several hours, the court elected to “bring [Juror 11] in one more time” to “see what she [had] to say.”

The court engaged in an extended colloquy with Juror 11 and asked her to continue with the deliberations and follow all instructions, and Juror 11 agreed she would “try” to comply. Judge Albright instructed Juror 11 to send a note if she was unable to “continue as a fair juror.”

Deliberations resumed at 9:21 a.m. Approximately half an hour later, the jury requested to review body camera footage, which the court allowed. After the jury watched the footage in the courtroom, the court made the following observations regarding Juror 11’s conduct:

[Trial Court]: All right. The record should reflect that all twelve jurors have left the courtroom to resume deliberations. . . . The Court notes I looked at all twelve jurors [while watching the body camera footage]. They were all paying attention including [] Juror Number 11. She had her notepad out and appeared in all respects to be following my previous instructions.

Defendant did not object or disagree with the trial judge's observations. Deliberations resumed at 10:16 a.m. Approximately half an hour later, the jury requested to review surveillance footage from the Orange Mart, which the trial court also allowed. The jury watched the Orange Mart footage three times. After the jury left, Judge Albright made the following observation regarding Juror 11's behavior and attention span:

[Trial Court]: Okay. All twelve jurors have left the courtroom and have resumed deliberations. The Court notes I watched all twelve jurors as they reviewed the video all three times. All twelve jurors were paying attention to the video, looking at one or the other monitor, including [Juror 11], who was very attentive and using her notepads and indicating to the Court in all outward appearances that she is absolutely following the Court's previous instructions.

Defendant did not object or otherwise disagree with the trial court's characterizations of Juror 11's conduct. Deliberations resumed at 10:44 a.m. and the jury reached an unanimous verdict at 11:12 a.m. The jury convicted Defendant of all four counts, and the jurors were polled individually as to whether they affirmed and assented to the verdicts. Juror 11 expressed her assent to the guilty verdicts.

Judge Albright sentenced Defendant as a prior record level III to consecutive sentences of 80 to 108 months for the robbery with dangerous weapon and possession of a firearm by a felon for the incidents at BP Family Fare, 13 to 25 months for possession of a firearm by a felon for the incident at Orange Mart, and 80 to 108

months for robbery with a dangerous weapon at Orange Mart. Defendant gave oral notice of appeal in open court.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

III. Exclusion of a Juror

Defendant argues the trial court's failure to exclude Juror 11 effectively left only eleven qualified jurors to try him, which violated his constitutional right to be tried by twelve jurors.

A. Standard of Review

"The trial court's discretion in supervising the jury continues beyond jury selection and extends to decisions to excuse a juror and substitute an alternate." *State v. Davis*, 325 N.C. 607, 628, 386 S.E.2d 418, 429 (1989).

The trial judge's authority to regulate the composition of the jury continues beyond empanelment. Our standard of review on appeal in such matters is abuse of discretion, and the trial court's decision will be upheld unless defendant can show the ruling to be so arbitrary that it could not have been the result of a reasoned decision.

State v. Price, 201 N.C. App. 153, 156, 684 S.E.2d 911, 913 (2009) (citations and internal quotation marks omitted).

B. Analysis

This Court has recently held a trial court may not substitute an alternate juror

after deliberations have begun for one that has participating in deliberations. *State v. Chambers*, __ N.C. App. __, __, __ S.E.2d __, __, No. COA22-1063, 2024 WL 675885, at *2 (Feb. 20, 2024) (unpublished).

In *State v. Cox* the defendant argued a trial court had abused its discretion by failing to replace a juror who was observed falling asleep during the trial. *State v. Cox*, 190 N.C. App. 714, 719, 661 S.E.2d 294, 298 (2008). This Court explained:

A review of the record reveals that defense counsel first raised concerns regarding juror 8 during jury selection. Nonetheless, defense counsel neither challenged her for cause nor moved to strike her. Instead, defense accepted her as a juror. Defendant now argues before this Court that the trial court abused its discretion in allowing juror 8 to deliberate when it was sufficiently aware of the issue to closely monitor her during the trial. Characterizing the juror's responses as "equivocal at best[.]" he contends that these facts are distinguishable from *Lovin* because defense counsel personally observed the sleeping juror. We find these arguments unpersuasive. We hold that *Lovin* controls these facts, and, as in *Lovin*, we can find no abuse of discretion in the court's inquiry and determination that juror 8 was sufficiently alert to perform her duties as a juror. This argument is without merit.

Id. (citing *State v. Lovin*, 339 N.C. 695, 715-16, 454 S.E.2d 229, 241 (1995)).

Here, the facts are similar to those in *Cox*. Juror 11, distressed from the ongoing situation with her children and grandchildren, worries about her ability to deliberate, focus, and stay alert. As in *Cox*, the trial court questioned Juror 11 regarding her ability to follow his instructions, and provided an opportunity for her to send a note to the bailiff if she could not fulfill her duties as a juror. The trial judge

paid special attention to Juror 11's demeanor and attentiveness when she was twice present in the courtroom to review the requested video footage of both robberies. Defendant's counsel made no objection to the trial court's characterizations of Juror 11 as being attentive. Defendant has failed to demonstrate the trial court abused its discretion. This argument is without merit. *See Davis*, 325 N.C. at 628, 386 S.E.2d at 429.

IV. Conclusion

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

NO ERROR.

Judges CARPENTER and STADING concur.

Report per Rule 30(e).