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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-600

Filed 18 June 2024

Iredell County, Nos. 19 CRS 50847-48, 50850

STATE OF NORTH CAROLINA

v.

JEREMY CHAUNCY TEASLEY

Appeal by Defendant from Judgments rendered 5 August 2022 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 10 January 2024.

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

Glover & Petersen, PA, by James R. Glover, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Jeremy Chauncy Teasley (Defendant) appeals from Judgments rendered 5 August 2022 upon jury verdicts finding him guilty of two counts of Second-Degree Forcible Sex Offense, one count of Crime Against Nature, and one count of Assault on a Female. The Record before us tends to reflect the following:

On 6 May 2019, Defendant was indicted for two counts of First-Degree Sex Offense, one count of Crime Against Nature, Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury, and Misdemeanor Assault on a Female. The alleged victim in each offense was D.A.¹ Defendant pleaded not guilty to all charges.

The matter came on for trial on 1 August 2022. At the outset of the proceeding, the State requested a continuance to the next day because D.A. had just been released from custody in Arizona and was in the process of traveling to North Carolina. Defense counsel objected to the continuance and moved to dismiss the cases. The trial court allowed the continuance over the Defense's objections and motion to dismiss. The trial court indicated it would reconsider a Motion to Dismiss if D.A. was not present the next day.

The next day, D.A. was present, and the State called D.A. to testify as its first witness. D.A. testified to the following:

On 17 February 2019, D.A. and Defendant got into an argument over the telephone. That night around 11:00 p.m., she arrived home from work and used methamphetamine in the bathroom. As she was leaving the bathroom, Defendant had entered the boarding house and the two entered their room. Once inside the room, Defendant and D.A. started to argue about their telephone conversation earlier. Defendant then punched D.A. in the head, causing her to fall to the floor. Defendant

¹ We refer to the victim using initials only.

began kicking and hitting D.A. while she was on the floor. Defendant continued to subject D.A. to different forms of sexual and physical assault over a period of two hours. Eventually, D.A. ran out of their room again and grabbed the knob on the door of the room across the hall. As D.A. held on to the knob, Defendant kicked and punched her. Defendant tried to force her back into their room and put his arm around her neck. D.A. then lost consciousness. D.A. regained consciousness in the hallway lying on the floor. She got up and ran into the room of one of the other residents. Police were called to the scene, and when they arrived, she was taken to the hospital.

D.A. continued to testify to what happened after the assault until the jury was excused for the day. D.A. later retook the stand for a *voir dire* examination regarding a State's exhibit until the trial court concluded for the day.

On the third day of trial, D.A.'s testimony continued. D.A. testified about the effects of the assault. She further testified about her drug use after the assault. She maintained, however, she had been sober from drugs for the past 17 days.

The trial court halted D.A.'s testimony and sent the jury to lunch early. Following a bench conference, the trial court noted on the Record that on two occasions during her testimony, D.A. had fallen asleep and on one occasion the bailiff had to wake her. At the direction of the trial court D.A. was drug tested by a probation officer. D.A. tested positive for methamphetamine and told the probation officer that she had consumed both methamphetamine and fentanyl prior to her

arrival in North Carolina. Defendant moved for a mistrial. The trial court ordered D.A. to be held in custody until the lunch recess was over and directed a conference in chambers with counsel to discuss how to proceed. After lunch, the trial court determined the trial could not continue that day with a witness who tested positive for methamphetamine and admitted taking fentanyl in the last couple of days. The trial court arranged for a certified Drug Recognition Expert (DRE) from the Mooresville Police Department to examine D.A. The jury was excused until the following morning.

The DRE examined D.A. that afternoon and subsequently testified that in his opinion D.A. was impaired and could not safely drive a motor vehicle. Additionally, it was the DRE's opinion the impairment was from the downside effects of consuming a CNS² stimulant—such as methamphetamine—or the upside effects of having consumed a narcotic analgesic—such as fentanyl. He also stated that in his opinion D.A. could answer appropriately when asked questions. After the DRE testimony, counsel made further arguments about whether a mistrial was warranted. When the trial court denied Defendant's Motion, they acknowledged D.A.'s impairment and its impact on the trial. The trial court observed that while D.A. may not have been able to operate a vehicle, based on the DRE's testimony, "she is capable of providing

² CNS stands for Central Nervous System.

coherent testimony and accurate testimony.” The trial court allowed D.A. to continue her testimony on the fourth day of trial.

On the fourth day of trial, D.A. again took the stand and offered further testimony regarding her drug use. D.A. explained that she had been in jail in Arizona for violating probation and was released two days prior to coming to North Carolina. She also admitted to using methamphetamine and fentanyl before she got on the airplane and stated it had been four days since she last used drugs. Defense counsel cross-examined D.A. regarding her drug use and truthfulness. During the cross-examination, D.A. testified about her history with methamphetamine and admitted she lied about her drug use in her earlier testimony.

At the close of the evidence, the trial court dismissed one of the counts of Crime Against Nature. On 5 August 2022, the jury returned verdicts finding Defendant guilty of two counts of Second-Degree Forcible Sex Offense, one count of Crime Against Nature, and one count of Assault on a Female. After the jury’s verdict, the following colloquy occurred:

[DEFENSE COUNSEL]: And I believe at the conclusion of today, I would have 88.6 hours in the case.

[THE COURT]: Okay. And that’s at the \$85 range; is that right?

[DEFENSE COUNSEL]: I believe so, Your Honor.

[THE COURT]: Anything else on behalf of your client?

[DEFENSE COUNSEL]: I would tender him to the Court in the event he has anything to say before the Court imposes sentence.

[THE COURT]: Okay. Thank you. Mr. Teasley, I will certainly give you a chance to say something if you would like to. You are absolutely within your right to exercise your Fifth Amendment privilege during the trial. You don't have to say anything now, but if you want to, I'll certainly give you the opportunity.

Defendant proceeded to criticize his representation at trial, stating his attorney did not make a defense for him. The trial court consolidated the convictions for one count of Second-Degree Forcible Sex Offense, Crime Against Nature, and Assault on a Female, and sentenced Defendant to 114–197-months in prison. For the additional conviction for Second-Degree Forcible Sex Offense, the trial court sentenced Defendant to a consecutive prison term of 114–197-months. The trial court also ordered a \$75.00 attorney-appointment fee, and \$7,531.00 in attorney fees to be entered as a civil judgment against Defendant. Defendant gave oral notice of appeal in open court. Additionally, Defendant filed a Petition for Writ of Certiorari in this Court seeking review of the trial court's imposition of a civil judgment for the attorney-appointment fee and attorney fees.

Issues

The issues on appeal are whether: (I) the trial court abused its discretion by not declaring a mistrial based on D.A.'s impairment; and (II) the trial court erred by entering a civil judgment against Defendant without first giving him an opportunity to be heard about his attorney fees and attorney-appointment fee.

Analysis

I. Defendant's Motion for Mistrial

Defendant contends the trial court erred in denying his Motion for a Mistrial. Defendant raises several arguments in support of his contention that the denial of his Motion for a Mistrial was an abuse of discretion. Defendant asserts that the DRE was not qualified to offer opinions about the impairing effects of illegal drugs on a witness; the DRE did not testify D.A was experiencing the downside effect of these drugs; and the drug testing was completed Wednesday afternoon, but D.A.'s most damaging testimony occurred the day before. Defendant cites no legal authority for his arguments. We disagree.

"[A] judge must declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case." N.C. Gen. Stat. § 15A-1061 (2021). However, "[i]t is within the trial court's discretion to determine whether to grant a mistrial, and the trial court's decision is to be given great deference because the trial court is in the best position to determine whether the degree of influence on the jury was irreparable." *State v. Hill*, 347 N.C. 275, 297, 493 S.E.2d 264, 276 (1997) (citation omitted). As such, "[o]ur standard of review when examining a trial court's denial of a motion for mistrial is abuse of discretion." *State v. Dye*, 207 N.C. App. 473, 482, 700 S.E.2d 135, 140 (2010) (citation and quotation marks omitted). "An abuse of discretion occurs 'only upon a showing that the judge's ruling was so arbitrary that it could not have been the result of a

reasoned decision.’ ” *State v. Salentine*, 237 N.C. App. 76, 81, 763 S.E.2d 800, 804 (2014) (quoting *State v. Dial*, 122 N.C. App. 298, 308, 470 S.E.2d 84, 91, *disc. review denied*, 343 N.C. 754, 473 S.E.2d 620 (1996)).

“This Court has previously noted that drug use alone will not make a witness incompetent to testify.” *State v. Burgess*, 271 N.C. App. 302, 303, 843 S.E.2d 706, 708 (2020) (citing *State v. Edwards*, 37 N.C. App. 47, 49, 245 S.E.2d 527, 528 (1978)). “If the witness is able to express [themselves] well enough to be understood and is able to understand the obligation to testify truthfully, impairment by drugs does not render [them] incompetent [.]” *Id.* at 304, 843 S.E.2d 708.

In this case, the trial court *sua sponte* raised its concerns about D.A. being impaired due to her falling asleep on the stand during her second day of testimony. The trial court conducted a further inquiry into whether she was impaired by having her take a drug test with a probation officer. D.A. tested positive for methamphetamine and admitted to having taken fentanyl. When the trial court informed the parties of D.A.’s drug test result and admission, defense counsel moved for a mistrial. The trial court noted, on the Record but outside of the presence of the jury, that D.A. tested positive for methamphetamine and admitted to taking fentanyl. The trial court then decided to delay the testimony until the next day to ensure the integrity of the trial. Additionally, the trial court and counsel looked into whether a blood test could be used to determine the level of impairment; however, according to the probation officer, such a test would take weeks or months. At that point, a DRE

was mentioned to determine the level of impairment. The DRE evaluated D.A. and during *voir dire* testified that D.A. was not safe to drive a vehicle but “could answer appropriately when asked a question. . . .” Based on the DRE’s testimony and after the arguments from counsel, the trial court determined D.A. was “capable of providing coherent and accurate testimony.” The trial court then denied Defendant’s Motion for a Mistrial.

The Record demonstrates the trial court took measures to answer the question on whether D.A. was able to express herself well enough to be understood and was able to understand the obligation to testify truthfully. The Record also demonstrates that the trial court immediately addressed D.A.’s behavior and tried to determine the level of impairment, by immediately stopping the trial and getting D.A. tested for drugs, bringing in the DRE as an available professional at the time, and using these measures to determine D.A.’s ability to express herself and understand her obligation. The trial court used these measures to make a reasoned decision about D.A.’s ability to testify.

Regarding Defendant’s arguments about the qualifications of the DRE, the effects of the drugs on D.A., and D.A.’s impairment, the trial court was in the best position “to investigate any allegations of misconduct, question witnesses and observe their demeanor[,] and make appropriate findings.” *State v. Washington*, 141 N.C. App. 354, 376, 540 S.E.2d 388, 403 (2000) (citation and quotation marks omitted). The trial court’s use of the DRE’s testimony as a resource to determine D.A.’s

impairment was an appropriate measure to assist in making an informed and reasoned decision. Additionally, the trial court was able to observe D.A.'s impairment firsthand over the course of two days of trial and determine after reasonable and informed inquiry that D.A. was competent to testify. Considering the immediate and reasonable steps taken by the trial court to address D.A.'s behavior, the trial court's decision to deny Defendant's Motion for a Mistrial was the result of a reasoned decision. Thus, the trial court did not abuse its discretion by not declaring a mistrial. Consequently, there was no error in Defendant's trial.

II. Civil Judgment for Attorney Fees

A. *Defendant's Petition for Writ of Certiorari*

Here, Defendant gave oral Notice of Appeal in open court, which was sufficient to appeal his criminal convictions, but, as Defendant acknowledges, it was not sufficient to appeal the civil judgment for attorney fees. Consequently, on 30 August 2023, Defendant filed a Petition for Writ of Certiorari to obtain review of that civil judgment. *See State v. Mayo*, 263 N.C. App. 546, 549, 823 S.E.2d 656, 659 (2019) ("A criminal defendant may file a petition for a writ of certiorari to appeal a civil judgment for attorney's fees and costs."). This Court may grant a defendant's Petition for Writ of Certiorari under N.C. Gen. Stat. § 7A-32(c) if the case is heard "in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial courts of the General Court of Justice[.]" N.C. Gen. Stat. § 7A-32(c) (2023). Further, this Court allows "certiorari in order to correct a trial court's error in failing to directly

address a criminal defendant directly and afford a defendant the basic right to be heard prior to entering civil judgment against that defendant for the attorney'[s] fees of defense counsel.” *State v. Baungartner*, 273 N.C. App. 580, 583, 850 S.E.2d 549, 551 (2020) (citation omitted). In our discretion, we allow Defendant’s Petition and review the merits of his argument.

B. Notice and Opportunity to be Heard on entry of a Civil Judgment

A trial court may enter a civil judgment against an indigent criminal defendant for the amount of the fees incurred by the defendant’s appointed counsel. N.C. Gen. Stat. § 7A-455(b) (2022). “Before imposing a judgment for these attorney[] fees, the trial court *must* afford the defendant notice and an opportunity to be heard.” *State v. Friend*, 257 N.C. App. 516, 522, 809 S.E.2d 902, 906 (2018) (emphasis added). This Court has held “before entering money judgments against indigent defendants for fees imposed by their court-appointed counsel under N.C.G.S. § 7A-455, trial courts should ask defendants—personally, not through counsel—whether they wish to be heard on the issue.” *Friend*, 257 N.C. App. at 523, 809 S.E.2d at 907. We have previously vacated civil judgments and remanded these matters to the trial courts for the defendants to be given the opportunity to be heard on the issue. *Id.* We have done so in recognition that, unlike other case-related matters, on the issue of attorney fees incurred by appointed counsel, “the interests of the defendant and trial counsel are not necessarily aligned.” *Id.* at 522-23, 809 S.E.2d at 907. The rule established in *State v. Jacobs*, 172 N.C. App. 220, 235, 616 S.E.2d 306, 316 (2005) and *State v. Crews*,

284 N.C. 427, 442, 201 S.E.2d 840, 849-50 (1974), and reiterated by Judge—now Justice—Dietz in *Friend* requires that the Defendant must be notified and given an opportunity to be heard regarding the imposition of a civil judgment for attorney fees. When a defendant is not given notice and an opportunity to be heard regarding the imposition of attorney fees, we have vacated and remanded the imposition of attorney fees to ensure proper notice and opportunity to be heard. *See e.g., Jacobs*, 172 N.C. App. at 236, 616 S.E.2d at 317; *Friend*, 257 N.C. App. at 523, 809 S.E.2d at 907.

Here, Defendant argues the trial court did not engage in a personal colloquy with him prior to entering the civil judgment. The State contends a sufficient colloquy occurred. The following colloquy occurred at sentencing:

[DEFENSE COUNSEL]: And I believe at the conclusion of today, I would have 88.6 hours in the case.

[THE COURT]: Okay. And that's at the \$85 range; is that right?

[DEFENSE COUNSEL]: I believe so, Your Honor.

[THE COURT]: Anything else on behalf of your client?

[DEFENSE COUNSEL]: I would tender him to the Court in the event he has anything to say before the Court imposes sentence.

[THE COURT]: Okay. Thank you. Mr. Teasley, I will certainly give you a chance to say something if you would like to. You are absolutely within your right to exercise your Fifth Amendment privilege during the trial. You don't have to say anything now, but if you want to, I'll certainly give you the opportunity.

After this, Defendant spoke to the trial court about his trial and how he felt his attorney was not effective regarding the outcome of the case. Defendant stated

“There was no defense made. He rested my case. I begged. I tried to get him off my case the first time.” Here, Defendant was present and heard his attorney explain the number of hours and heard the applicable hourly rate for calculation of the attorney fees. The trial court also provided Defendant an opportunity to be heard generally prior to sentencing.

However, what is not clear from this colloquy is whether Defendant was on notice that he might be ordered to pay fees, that he might challenge the reasonableness of the amount of fees, or that a civil judgment might be entered against him. Nor is there other evidence—at least in the Record before us—as to whether Defendant was otherwise on notice. *Id.* at 523, 809 S.E.2d at 907 (“Absent a colloquy directly with the defendant on this issue, the requirements of notice and opportunity to be heard will be satisfied only if there is other evidence in the record demonstrating that the defendant received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard.”).

Thus, the Record in this case lacks a clear indication that Defendant was on notice of the potential for a civil judgment being entered against him and a colloquy directly with him addressing the issue of attorney fees. Therefore, we are unable to conclude the trial court complied with the mandate of *Friend*. Consequently, out of an abundance of caution, we vacate the civil judgment for attorney fees and remand this matter for the trial court to create a record establishing Defendant was provided notice and an opportunity to be heard on the issue of attorney fees prior to the entry

of a civil judgment against him.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error in Defendant's trial and affirm the trial court's Judgments. However, we vacate the civil judgment for attorney fees and remand this matter to the trial court to establish Defendant was on notice of the possibility of a civil judgment against him and was provided directly with an opportunity to be heard on the issue of a civil judgment for attorney fees.

NO ERROR; VACATED IN PART AND REMANDED.

Judges COLLINS and THOMPSON concur.

Report per Rule 30(e).