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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-730

Filed 17 September 2024

Forsyth County, Nos. 19 CRS 55162, 22 CRS 1020

STATE OF NORTH CAROLINA

v.

CONFUCIOUS LEDREL PATTERSON, Defendant.

Appeal by Defendant from judgment entered 19 January 2023 by Judge Richard S. Gottlieb in Forsyth County Superior Court. Heard in the Court of Appeals 20 March 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Scott A. Conklin, for the State.

Vitrano Law Offices, PLLC, by Sean P. Vitrano, for Defendant.

PER CURIAM.

Defendant Confucious Patterson appeals from a jury verdict finding him guilty of felony fleeing to elude arrest with a motor vehicle and of obtaining habitual felon status. After careful review, we discern no error.

I. Background

On 22 May 2019, the Forsyth County Sherriff's Office set up a driver's license

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checkpoint on Lewisville-Clemmons Road. The checkpoint consisted of about five law enforcement officers and at least one marked vehicle with blue lights activated. At 3:54 a.m., the driver of a car, later identified as Defendant, approached the checkpoint. Deputy Butcher heard another deputy yell “stop” several times with increasing volume. The engine in Defendant’s car “revved” and “sped up” as he drove past the checkpoint. Deputy Butcher proceeded to chase Defendant with his patrol car’s flashing blue lights and siren activated. Defendant ended up on the interstate where he drove at an estimated speed of 120 miles per hour. Defendant’s car began to decelerate and stopped when its engine malfunctioned.

Deputy Butcher approached and instructed Defendant, the sole occupant, to exit the car. After Defendant complied, he was arrested and charged with felony fleeing to elude arrest with a motor vehicle. A search of Defendant’s car revealed an open bottle of tequila and several grams of marijuana. Defendant waived his Miranda rights and told Deputy Butcher that he had attempted to bypass the checkpoint because of the marijuana in his possession and the open container of alcohol in the vehicle.

Defendant was indicted for felony fleeing to elude arrest with a motor vehicle and attaining habitual felon status. On 17 January 2023, the case was called for trial and Defendant’s attorney recounted a dispute between him and Defendant about the legal merit of a motion to suppress the checkpoint. Ultimately, Defendant’s attorney agreed that the motion could be filed but it was summarily denied as untimely.

During the trial, Defendant continually interrupted the court proceedings complaining about communication with his attorney and the counsel's failure to file his motion to suppress earlier. In response, Defendant's attorney moved to withdraw from representing "a client who will not respect [his] advice." Defendant responded, "I hired him because I had an hour to get a lawyer where [sic] my trial was going to start." The trial court denied motion to withdraw. Nonetheless, Defendant continued to raise objections to his attorney's representation throughout the rest of the trial.

After deliberations, the jury found Defendant guilty of felony flee to elude arrest with a motor vehicle. During the habitual felon phase, Defendant told the trial court that two of the jurors knew him as they were employed at a local restaurant he used to frequent. The trial court treated these statements as an oral motion for mistrial, which was denied. At this point, Defendant repeatedly interrupted the proceedings which resulted in the trial court holding him in criminal contempt. The next day Defendant continued this pattern of interruption after continued warnings from the trial court and he was removed from the courtroom. Following the presentation of evidence during the habitual felon phase, the jury found Defendant guilty of attaining habitual felon status. Defendant was brought back into the courtroom for his sentencing hearing and thereafter entered notice of appeal in open court.

II. Jurisdiction

This Court has jurisdiction to review this matter as an appeal of right under

N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

III. Analysis

Defendant argues the trial court erred when it denied: (1) his attorney’s motion to withdraw from representation due to an absolute impasse; and (2) his motion for a mistrial after alleging a personal relationship with two of the jurors. We address each argument in turn and hold that the trial court’s denials were without error.

A. Motion to Withdraw

Defendant contends that the trial court committed error when it denied his attorney’s motion to withdraw and did not conduct further inquiry into the alleged impasse between the attorney and Defendant.

The Sixth Amendment of the United States Constitution guarantees a criminal defendant’s right to counsel. U.S. Const. amend. VI; *State v. Ali*, 329 N.C. 394, 403, 407 S.E.2d 183, 189 (1991). Notably, “[n]o person can be compelled to take the advice of his attorney.” *Ali*, 329 N.C. at 403, 407 S.E.2d at 189 (citation and quotation marks omitted). “[T]actical decisions—such as which witnesses to call, which motions to make, and how to conduct cross-examination—normally lie within the attorney’s province.” *State v. Brown*, 339 N.C. 426, 434, 451 S.E.2d 181, 187 (1994), *cert denied*, 516 U.S. 825, 116 S. Ct. 90, 113 L. Ed. 2d 46 (1995). “The court may allow an attorney to withdraw from a criminal proceeding upon a showing of good cause.” N.C. Gen. Stat. § 15A-144 (2023). The decision whether to permit withdrawal of counsel is left to the trial court’s discretion. *See State v. McGee*, 60 N.C. App. 658, 662, 299 S.E.2d

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796, 798 (1983). Under an abuse of discretion standard, a trial court’s judgment may be disturbed “only upon a showing that its actions are ‘manifestly unsupported by reason.’” *Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006) (quoting *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980)).

“[W]hen counsel and a fully informed criminal defendant client reach an *absolute* impasse as to such tactical decisions, the client’s wishes must control. . . .” *State v. Ali*, 329 N.C. 394, 404, 407 S.E.2d 183, 189 (1991) (emphasis added). When an “absolute impasse” between a defendant and his counsel is at issue, our Supreme Court has instructed: “[i]n such situations, . . . defense counsel should make record of the circumstances, her advice to the defendant, the reasons for the advice, the defendant’s decision and the conclusion reached.” *Id.* Generally, where the trial court is aware of an absolute impasse between a defendant and his counsel on a tactical matter—allowing the attorney’s wishes to prevail over the defendants would constitute reversible error. *State v. Freeman*, 202 N.C. App. 740, 746, 690 S.E.2d 17, 22 (2010). Exceptions to the absolute impasse rule exist where a defendant requests his counsel to violate the law or assert frivolous or unsupported claims. *Ali*, 329 N.C.at 403, 407 S.E.2d at 189; *State v. Jones*, 220 N.C. App. 329, 395, 725 S.E.2d 415, 417 (2012). No redressable impasse exists where the record fails to disclose any disagreement between the defendant and counsel concerning trial tactics. *See, e.g., State v. McCarver*, 341 N.C. 364, 385, 462 S.E.2d 25, 36 (1995).

Here, Defendant maintains that “it was abundantly clear to the court that

there was an impasse related to matters of trial strategy.” Yet, upon a review of the evidentiary record, no indication of an absolute impasse between Defendant and his counsel exists that would warrant reversible error.

Defendant first assigns error to his defense counsel by their failure to file a pretrial motion to suppress at Defendant’s request “from day one.” The evidentiary record shows that although the pretrial motion was ultimately filed and denied—defense counsel did not file it “from day one” because he was unsure if proper grounds existed to file the motion to suppress. Under N.C. Gen. Stat. § 15A-951, such a motion must: “[s]tate the grounds of the motion.” N.C. Gen. Stat. § 15A-951 (a)(2) (2023). Defense counsel’s apprehension in filing the motion until sufficient grounds could be established are well within his province. *Id.*; N.C. Gen. Stat. § 15A-975 (2023); *Ali*, 329 N.C.at 403, 407 S.E.2d at 189; *State v. Ward*, 250 N.C. App. 254, 258, 792 S.E.2d 579, 582 (2016) (“Tactical decisions, such as which witnesses to call, whether and how to conduct cross-examinations, what jurors to accept or strike, and what trial motions to make are ultimately the providence of the lawyer.”).

Here, Defendant’s attorney ended up filing a pretrial motion to suppress evidence, challenging the constitutionality of the checkpoint, in conformity with Defendant’s wishes. However, the motion was not filed until he believed such course of action was proper and was ultimately determined “untimely” by the trial court. Although Defendant may seek recourse by alternative means, the facts underlying this argument do not support that Defendant reached an absolute impasse with his

attorney. *See Jones*, 220 N.C. App. at 395, 725 S.E.2d at 417 (“Nothing in *Ali* or our Sixth Amendment jurisprudence requires an attorney to comply with a client’s request to assert frivolous or unsupported claims.”) Defendant offers no arguments challenging the effectiveness of counsel and the evidentiary record fails to show such a violation. *State v. Turner*, 237 N.C. App. 388, 395, 765 S.E.2d 77, 83 (2014) (“claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal.”). Further, for ineffective assistance of counsel claims, “if a reviewing court can determine at the outset that there is no reasonable probability that in the absence of counsel’s alleged errors the result of the proceeding would have been different, then the court need not determine whether counsel’s performance was actually deficient.” *Id.* at 396, 765 S.E.2d at 84 (citation and brackets omitted).

We next turn to whether the trial court erred by denying defense counsel’s motion to withdraw without further inquiry. Given the lack of an absolute impasse between Defendant and his defense counsel, the trial court was not under an obligation to inquire deeper into the nature of the impasse. *See Ali*, 329 N.C. 394, 404, 407 S.E.2d 183, 189. The trial court did not abuse its discretion in denying defense counsel’s motion to withdraw.

B. Motion for Mistrial

Defendant next argues the trial court abused its discretion by denying his motion for a mistrial due to his assertion that two of the jurors knew him.

“When juror misconduct is alleged, it is the trial court’s responsibility ‘to make such investigation as may be appropriate, including examination of jurors when warranted, to determine whether misconduct has occurred and, if so, whether such conduct has resulted in prejudice to defendant.’” *State v. Salentine*, 237 N.C. App. 76, 81, 763 S.E.2d 800, 804 (2014) (citing *State v. Aldridge*, 139 N.C. App. 706, 712, 534 S.E.2d 629, 634 (2000)). The trial court 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 (2023). “In examining a trial court’s decision to grant or deny a motion for mistrial on the basis of juror misconduct, we review for abuse of discretion.” *Salentine*, 237 N.C. App. at 81, 763 S.E.2d at 804 (citing *State v. Bonney*, 329 N.C. 61, 73, 405 S.E.2d 145, 152 (1991)).

Here, Defendant contends two of the jurors knew of him because of their employment at a local restaurant he had frequented “years ago.” Yet, Defendant did not raise a concern about the jurors or even acknowledge knowing them until his family had alerted him. In any event, Defendant, not his counsel, repeatedly asserted juror misconduct in the presence of the jury because he maintained that two of the jurors knew him. The trial court asked the jurors to disregard the exchange. Failing to do so, Defendant continued to press the issue while a witness was testifying; the trial court judge excused the jury and held Defendant in contempt. After advising

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Defendant to defer to his attorney, the trial court judge permitted Defendant to speak:

Your Honor, it was brought to my attention that when I was in the hallway with my family members that juror number one, Madison, I know her personally. She works at J. Butler's on Lewisville-Clemmons Road. She's known me for years. I don't understand her – Caleb also works at J. Butler's in Lewisville. So I don't understand how they got up there and said they didn't know me.

It was brought to my attention, I tip her every time I go in there. So I don't understand if – I guess it was years ago, but they said I used to go there. I don't understand how they're able to decide my fate.

That's all – I want to put on record that the jury knows me – and I want it put on record that I have been treated unfairly by you. You have not upheld the law of the court. You have went totally against – everything I said was no, everything the DA said was yes. You have totally went against me, Your Honor, like you have not protected my rights in no type of way. I feel that my rights have been violated totally.

After hearing Defendant's grievances, the trial court considered his statements as an oral motion for a mistrial which it denied.

Our review of the evidentiary record shows that neither party moved for the trial court to conduct an inquiry into the potential juror conflict. Our jurisprudence dictates that the trial court is only responsible to make an investigation into juror misconduct when appropriate. *See Salentine*, 237 N.C. App. at 81, 763 S.E.2d at 804. "It is within the discretion of the trial judge as to what inquiry to make." *State v. Willis*, 332 N.C. 151, 173, 420 S.E.2d 158, 168 (1992) (citing *State v. Rutherford*, 70 N.C. App. 674, 320 S.E.2d 916 (1984)). Even so, nothing in the record indicates that

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this alleged contact from “years ago” raises to the level of “substantial” or “irreparable prejudice” to Defendant’s case. N.C. Gen. Stat. § 15A-1061; *see, e.g., State v. Rogers*, 52 N.C. App. 676, 279 S.E.2d 881 (1981). Considering the foregoing, the trial court’s denial of Defendant’s motion for a mistrial was not error.

IV. Conclusion

The trial court did not abuse its discretion by denying Defendant’s attorney’s motion to withdraw or denying Defendant’s motion for a mistrial.

NO ERROR.

Panel consisting of Judges TYSON, CARPENTER, and STADING.

Report per Rule 30(e).