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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-187

Filed 19 November 2024

Moore County, No. 20 CRS 050877

STATE OF NORTH CAROLINA

v.

MARQUETTE ANTONIO COLQUITT

Appeal by defendant from judgment entered 13 June 2023 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 7 November 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Derek L. Hunter, for the State.*

*Ryan Legal Services, PLLC, by John E. Ryan III, for defendant-appellant.*

PER CURIAM.

On 13 June 2023, a jury found Defendant Marquette Antonio Colquitt guilty of (1) discharging a weapon into occupied property and (2) assault with a deadly weapon with the intent to kill inflicting serious injury (“AWDWIKISI”). The jury

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found him not guilty of attempted murder.<sup>1</sup> The trial court sentenced Defendant to 50 to 72 months of imprisonment for AWDWIKISI and 24 to 41 months of imprisonment for discharging a weapon into occupied property, with the sentences to run concurrently. Defendant appeals.

Defendant argues the trial court erred by denying his motion for a mistrial. Specifically, Defendant argues the jury was “hopelessly deadlocked,” thus requiring a new trial. We disagree.

“Whether to grant a motion for mistrial rests in the sound discretion of the trial court.” *State v. Ward*, 338 N.C. 64, 92 (1994). “An 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.” *State v. Richardson*, 385 N.C. 101, 133 (2023) (cleaned up).

Here, after deliberating for approximately six-and-one-half hours, the jury sent a note to the trial court stating, “We are ten-two this morning. And now we are eight-four. The two are adamant that they are not changing their mind[s].” The trial court informed the parties, “The Court will bring in the jury and inquire as to whether or not they are hopelessly deadlocked. If so, the Court will declare a mistrial.”

The trial court then read to the jury Pattern Jury Instruction 101.40—

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<sup>1</sup> The trial court entered judgment consistent with the jury’s verdicts regarding AWDWIKISI and attempted murder. However, the record does not include a judgment regarding discharging a weapon into occupied property.

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commonly referred to as the “*Allen* instruction”—which, in part, instructs the jurors “not [to] surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.” After giving the *Allen* instruction, the court polled the jurors, asking, “If one or more of you believe that you can continue with your deliberations and reach a unanimous verdict, raise your hand.” The court stated that one juror raised his hand.<sup>2</sup> The court then instructed the jury to return to its deliberations and “continue with your efforts to reach a verdict.”

The jury asked several more questions, which the trial court addressed each time, during the remainder of the jury’s deliberations (which ended with unanimous verdicts that afternoon). The trial court also addressed the jury before and after the lunch recess.

Defendant takes issue with the trial court’s failure to repeat the *Allen* instruction at those successive addresses after the initial *Allen* instruction. However, providing an *Allen* instruction is discretionary. See *State v. Sumney*, 228 N.C. App. 730, 740 (2013); N.C.G.S. § 15A-1235(c). Thus, despite Defendant’s contention, the trial court was not required to re-read the *Allen* instruction each time it addressed the jury.

Defendant further argues the trial court coerced the jury’s verdict by repeating

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<sup>2</sup> The State noted, for the record, that another juror also raised her hand.

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other jury instructions without an accompanying *Allen* instruction. “In determining whether a trial court’s instructions force a verdict or merely serve as a catalyst for further deliberations, our Courts apply a totality-of-the-circumstances test, considering both the circumstances under which the instructions were made and the probable impact of the instructions on the jury.” *State v. Gillikin*, 217 N.C. App. 256, 262 (2011) (cleaned up). Here, nothing in the trial court’s instructions appear coercive. In contrast, the trial court explicitly informed the jurors not to surrender their honest convictions or to reach a decision merely to return a verdict. The trial court instructed the jurors to continue with their *efforts* to reach a verdict—it did not require them to reach a unanimous verdict, only to make efforts to reach a verdict. And when the trial court addressed the jury after the initial *Allen* instruction, the trial court’s instructions did not contain any indication that it was pressuring the jurors to reach a verdict by surrendering their honest convictions. These circumstances indicate that the trial court’s instructions merely served as a catalyst for further deliberations and did not force a verdict.

We conclude Defendant received a fair trial, free of reversible error.

NO ERROR.

Panel consisting of Chief Judge DILLON and Judges HAMPSON and CARPENTER.

Report per Rule 30(e).