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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-674

Filed 31 December 2024

Vance County, Nos. 20 CRS 726-27; 21 CRS 276-77

STATE OF NORTH CAROLINA

v.

MITCH TAYBRON PITTMAN and PURAV PATEL

Appeal by defendants from judgments entered 3 December 2021 by Judge Cindy King Sturges in Vance County Superior Court. Heard in the Court of Appeals 8 October 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney Heidi M. Williams, for the State.

Office of the Appellate Defender, by Appellate Defender Glenn Gerding and Assistant Appellate Defender James R. Grant, for defendant-appellant Mitch Taybron Pittman.

Mark L. Hayes for defendant-appellant Purav Patel.

PER CURIAM.

On 13 June 2022, we granted Defendants’ petition for writ of certiorari to review the trial court’s interlocutory orders entered in each of Defendants’ cases instructing Defendants’ dual trial counsel to withdraw from representation of both

STATE V. PITTMAN

Opinion of the Court

Defendants. In this combined appeal, Defendants argue that the trial court's orders violate their constitutional rights to be represented by the counsel of their choice.

I. Background

Defendants Mitch Taybron Pittman and Purav Patel are both officers and employees of Vance County Sheriff's Office ("VCSO").

In October 2020, Defendant Pittman was indicted on charges of extortion and obstruction of justice relating to the means by which VCSO obtained title to two vehicles that had been used in various crimes and were then seized by VCSO.

Defendant Pittman retained Hairston Lane, PA, by James Hairston, Jr., as trial counsel. At a hearing on 31 March 2021, Defendant Pittman was represented in court by Attorney Hairston. Attorney Hairston's associate, Moses V. Brown, "attended the same hearing and subsequent hearings" in Defendant Pittman's matter "and conferred with Attorney Hairston during the hearing[.]" leading the State to believe that Attorney Brown participated in Defendant Pittman's representation.

On 14 April 2021, *both* Defendants were indicted as co-conspirators on charges related to one of the vehicles which was the subject of: (1) embezzlement by employee of government, (2) conspiracy to embezzle by employee of government, (3) motor vehicle title fraud, (4) conspiracy to commit motor vehicle title fraud, (5) accessing government computer to defraud, (6) conspiracy to access government computer to defraud, (7) extortion, and (8) conspiracy to obstruct justice, all relating to a 2007 White Cadillac STS, based on allegations that Defendants acted as co-conspirators.

Defendant Patel initially retained separate trial counsel. However, on or about 25 August 2021, Attorney Brown appeared on behalf of both Defendants. During this hearing, the State did not object to dual representation, but noted that the trial court would likely require Defendants to sign a waiver “of any conflict that this firm may have in representing both of them[.]”

Two months later, on 29 October 2021, the State filed a motion in limine to determine whether a non-waivable conflict of interest existed between Defendants with both being represented by attorneys from the same law firm; and, if a waivable conflict existed, but no non-waivable conflict existed, whether Defendants had adequately waived the conflict. In this motion, the State alleged, *inter alia*:

13. That Defendant Pittman and Defendant Patel are indicted for conspiracy charges wherein they are co-defendants.

14. That the State alleges that Defendant Pittman and [Defendant] Patel were both present and could observe and witness the others’ actions at all relevant times.

15. That Defendant Patel has given an interview that implicates Defendant Pittman in the crimes charge[d] and the State of North Carolina characterizes this statement as inculpatory.

16. That Defendant Patel has given testimony under Oath in a pre-trial hearing in this matter.

17. That at this point neither Defendant Pittman nor Defendant Patel have filed a sworn and subscribed waiver of conflict in this matter nor has either defendant been examined under oath as to the waiver of this conflict.

On 3 December 2021, after a hearing on the matter, the trial court entered orders in each of Defendants' matters, requiring Hairston Lane, PA, by Attorney Hairston and Attorney Brown to withdraw from both Defendants' matters and prohibiting any attorney from Hairston Lane from representing either Defendant in the future. Defendants gave notice of appeal, and we granted *certiorari* to review this matter.

II. Analysis

“On a motion for disqualification, the findings of the trial court are binding on appeal if supported by any competent evidence, and the court’s ruling may be disturbed only where there is a manifest abuse of discretion, or if the ruling is based on an error of law.” *State v. Rogers*, 219 N.C. App. 296, 299 (2012).

An accused’s right to counsel in a criminal prosecution is guaranteed by the Sixth Amendment of the United States Constitution and is applicable to the states through the Fourteenth Amendment, Sections 19 and 23 of the North Carolina Constitution. This right includes the right to select an attorney of the accused’s choice. The essential aim of the Sixth Amendment is to guarantee an effective advocate for each criminal defendant rather than to [e]nsure that a defendant will inexorably be represented by the lawyer whom he prefers. We note that courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them. Therefore, where it is shown that an actual conflict or the potential for conflict exists, the presumption in favor of an accused’s counsel of choice will be overcome. As there is a necessity of avoiding the appearance of impropriety, it is incumbent upon a court faced with either an actual or potential conflict of interest, regarding attorney representation, to conduct an appropriate inquiry and, if need be, grant the motion for disqualification. The trial

court must be given substantial latitude in granting or denying a motion for attorney disqualification.

State v. Shores, 102 N.C. App. 473, 474–75 (1991) (cleaned up).

In sum, the Sixth Amendment provides Defendants with a “presumption in favor of [their] counsel of choice[.]” *Id.* at 475. However, as instructed by the United States Supreme Court:

The [trial] [c]ourt must recognize a presumption in favor of petitioner’s counsel of choice, but that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict. The evaluation of the facts and circumstances of each case under this standard must be left primarily to the informed judgment of the trial court.

Wheat v. United States, 486 U.S. 153, 164 (1988). That Court, though, recognized that the trial court must be given “substantial latitude” in making the call:

Unfortunately for all concerned, a [] court must pass on the issue whether or not to allow a waiver of a conflict of interest by a criminal defendant not with the wisdom of hindsight after the trial has taken place, but in the murkier pre-trial context when relationships between parties are seen through a glass, darkly.

...

[C]ourt[s] must be allowed substantial latitude in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses.

Id. at 162–63. We, therefore, review a trial court’s orders for abuse of discretion. *See Rogers*, 219 N.C. App. at 299.

During the motion hearing, the State argued:

[W]ith respect to the . . . matters in which [Defendant Pittman and Defendant Patel] are codefendants, for most purposes, they were there together. They had a chance to see, observe, hear, and know about each other's activities.

And in this case, Mr. Patel has given statements both to law enforcement and testified in court. And statements that while . . . they may not be . . . we would contend are inculpable of Mr. Pittman. And with respect to that, for instance, things like placing him at a certain location or saying that he said something and those kinds of things. And that has now been stated.

Mr. Pittman and Mr. Patel, because of respective facts in the case, the State may assess that they have differing levels of culpability. And because of that, we don't intend or we don't think that necessarily that we would seek the same result in the case or that the same result would be just. And then that is where the conflict or the State perceives a conflict is -- arising.

Number one, not only because of the facts and . . . whether or not . . . the attorneys are going to be able to look out individually for the different defendants, but also with respect to this limits the State's ability to . . . deal with these respective defendants.

And for instance, if the State were to confer immunity on one or the other defendant, would they . . . not then be in a position to, what I would see as what seems to be the . . . plan now or what I see is a tactic, which is the circle of wagons. Like we're just not going to talk. We're going to be in a position where we're all going to plead the Fifth, and therefore, you know, we're . . . going to prevent you from getting certain facts into evidence. Which, number one, I don't think would work anymore because Mr. Patel has given statements already and he would be an unavailable witness [if he pled the Fifth]. And thus, his prior statements could come in as a hearsay exception.

But in the second sense, . . . we could not give him plea offers because in this case we don't really know exactly what the status is. And so if . . . we were to decide to confer immunity on one or the other defendant, they would no longer have the right not to testify. They would then be compelled to testify or risk criminal sanctions by the [trial] [c]ourt with respect to contempt.

So I think the [trial] [c]ourt's inquiry, number one, we have this issue about whether or not there is a conflict presently or the substantial risk of a conflict in the future.

. . .

So what this inquiry asks the [trial] [c]ourt to do is to look into the future, which is a very difficult kind of thing. But that's something that the [trial] [c]ourt is going to have to do

The second thing is what [D]efendants cannot do is say that no conflict exists and it never will be. And the reason why is, you know, as we go from point A to point B, . . . this is not static. And day to day, week to week facts become available; decisions get made [I]t unfairly restricts the [D]efendants' ability and the State's ability to make decisions in the interim as they prepare for trial.

In its orders, the trial court found that “[i]n April and May of 2020, Defendant Patel’s position within the VCSO was much junior to that of Defendant Pittman.” The trial court further found, based on an affidavit of the officer who interviewed Defendant Patel, that Defendant Patel confirmed traveling with Defendant Pittman to a location at which both Defendants are accused of committing criminal acts, and the officer recounted the statement that Defendant Patel gave to law enforcement, which the State contended to be inculpatory of Defendant Pittman. The trial court also made findings that trial counsel indicated neither Defendant would accept any

plea deals offered by the State and claimed that the State had already presented an offer to Defendant Patel, which he declined, but that the State indicated it was still considering offering immunity to one of the two Defendants. The trial court found, after it inquired as to whether trial counsel would advise either Defendant to accept an offer of immunity, trial counsel indicated that it was their understanding that neither Defendant would testify against the other and, therefore, “that prospect means nothing” Specifically, the trial court determined:

3. At a minimum, a potential conflict of interest exists in that both Defendant Pittman and Defendant Patel are named co-conspirators in their respective indictments. Counsel conceded this fact during the 9 November 2021 hearing.

4. Defendant Patel’s statements could potentially be used against Defendant Pittman in Defendant Pittman’s trial creating a conflict of interest.

5. Should either Defendant Pittman or Defendant Patel testify against the other, defense counsel’s ability to effectively cross-examine or impeach either testifying Defendant would be substantially impaired due to counsel’s dual representation. The fruition of this possibility would create a real and direct conflict of interest for Mr. Hairston and Mr. Brown.

6. Additionally, there is the appearance of a conflict if either Defendant Pittman or Defendant Patel were convicted of any of the charged offenses. In such a case, it would appear that such defendant could have mitigated his punishment by turning State’s evidence but failed to do so upon defense counsel’s advice. In this situation, defense counsel cannot aid one co-defendant without harming the second co-defendant.

7. The fact that Defendant Patel is a much junior officer to Defendant Pittman suggests these co-Defendants have different levels of alleged culpability. This variance in the level of the Defendants' alleged culpability indicates Defendant Patel may likely receive a more generous plea offer than Defendant Pittman.

8. Should either Defendant Pittman or Defendant Patel accept an offer of immunity and testify for the State, that Defendant would essentially become a prosecuting witness.

9. In such a case, confidential communications from either or both co-Defendants with their counsel of a revealing nature which might otherwise prove to be quite helpful in the preparation of a case might be suppressed.

10. Also, extensive cross-examination, particularly of an impeaching nature, may be held in check.

11. If such an event occurs, then duties of loyalty and care might be compromised if the attorney tries to perform a balancing act between two adverse interests.

12. The potential conflicts that could readily become actual conflicts in the joint representation of Defendant Pittman and Defendant Patel are not limited to those previously enumerated.

13. Given counsel's own admission to the existence of several potential conflicts of interest, the [c]ourt is concerned that any such potential conflict would readily materialize into an actual conflict of interest mid-trial. If such an event occurs, the interests of justice would require the trial court to declare a mistrial.

14. A mistrial under these circumstances would prejudice all parties involved, as well as the [c]ourt's interest in the efficient administration of justice.

15. This [c]ourt is charged with considering the possibility that the government may seek to manufacture a conflict in order to prevent a defendant from having a particularly

able defense counsel at his side. This [c]ourt has carefully considered this possibility, and given the presence of potential conflicts, as well as the possibility an actual conflict would develop, this [c]ourt finds and concludes that no manufactured conflict exists.

. . .

18. Based on the foregoing, the [c]ourt concludes this case presents a non-waivable conflict of interest for Defendant [Pittman or Patel] and declines to accept Defendant Pittman's waiver of conflict-free counsel.

19. . . . potential conflicts and/or the appearance of conflicts outweigh [Defendant Pittman or Defendant Patel's] Sixth Amendment right to counsel of his choice.

(Internal marks and citations omitted.)

We have reviewed the orders of the trial court and have considered the arguments of counsel on appeal, including concerns raised by Defendants that the State should not be allowed to "create" a potential conflict by stating that it may offer one defendant immunity or a deal. Based on our review of the record, it may have been within the discretion of the trial judge to have allowed Defendants to be represented by the same counsel based on the waivers of conflict executed by Defendants. However, we are compelled by precedent to give the trial court wide discretion to make the call. The trial court has made its call. And based on the unchallenged findings and findings supported by the record, we conclude that the trial court did not abuse its discretion in its orders. We, therefore, affirm those orders.

AFFIRMED.

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Opinion of the Court

Panel consisting of Chief Judge DILLON and Judges MURPHY and GRIFFIN.

Report per Rule 30(e).