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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-499

Filed 19 March 2025

Craven County, No. 20 CRS 52626

STATE OF NORTH CAROLINA

v.

MELVIN WALLACE OLLISON, Defendant.

Appeal by defendant from judgment entered 8 March 2023 by Judge Joshua Willey, Jr., in Craven County Superior Court. Heard in the Court of Appeals 15 January 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Sharon Patrick-Wilson, for the State.

William D. Spence for Defendant-Appellant.

DILLON, Chief Judge.

In this appeal, Defendant Melvin Ollison argues that the trial court abused its discretion by failing to declare mistrial *sua sponte*. We hold that Defendant received a fair trial, free from prejudicial error.

I. Background

Defendant was charged with various crimes arising from his alleged abuse in

his home of Anne,¹ who was nine years old at the time of the incident. The evidence shows that Anne had told her mother that while she was at Defendant's house, Defendant approached her, pulled his pants down, got on top of her, and touched her "in [her] private areas." Two days later, Anne's mother filed a police report.

During her testimony at trial, Anne's mother remarked that Defendant was on probation while discussing her family's relationship with Defendant. Defense counsel made an objection to the testimony, stating Defendant was in fact on probation. The trial court sustained the objection and made a curative instruction. There was no further objection or discussion from either party about the testimony.

The jury found Defendant guilty of felony indecent liberties with a child and misdemeanor sexual battery. Defendant timely appealed.

II. Analysis

Defendant's sole argument on appeal is that the trial court erred by failing to declare a mistrial *sua sponte* based on the testimony about him being on probation.

Our General Assembly has provided that "upon his own motion, a judge may declare a mistrial if ... [i]t is impossible for the trial to proceed in conformity with law[.]" N.C.G.S. § 15A-1063(1). Our Supreme Court, though, has instructed that a "[m]istrial is a drastic remedy, warranted only for such serious improprieties as would make it impossible to attain a fair and impartial verdict[.]" *State v. Taylor* 362

¹ A pseudonym.

N.C. 514, 538 (2008), and that “the decision as to whether substantial and irreparable prejudice has occurred lies within the sound discretion of the trial judge and ... his decision will not be disturbed on appeal absent a showing of abuse of discretion,” *State v. Williamson*, 333 N.C. 128, 138 (1985). *See also State v. Shore*, 258 N.C. App. 660, 678 (2008) (applying an abuse of discretion standard to determine whether a trial court erred in failing to declare a mistrial *sua sponte*).

This case at hand is most analogous to *State v. Shore*, where the defendant contended that the trial court abused its discretion by failing to declare mistrial *sua sponte*. *Id.* at 677. In *Shore*, this Court determined that the “record demonstrate[d] that the trial judge took immediate measures to address” the inappropriate conduct. *Id.* at 680. Additionally, the defendant “did not request additional action by the trial court, move for a mistrial, or object to the trial court’s method of handling the alleged misconduct in the courtroom.” *Id.* Thus, based on the trial court’s immediate remedial action and the lack of response from the defendant, this Court held that the trial court did not abuse its discretion. *Id.* at 677.

In the case before us, the testimony in question is as follows:

[State]: What were [your] interactions [with Defendant] like?

[Witness]: Well, how we are is that we accept everybody as a family. We don’t look at – I mean, we don’t care who you are.

...

And we understood that he was on probation, and I didn't even know what he was on probation for but --

[State]: I'm going to stop you right there, okay?

[Defense Counsel]: Objection, Your Honor.

[Court]: Sustained. Ladies and gentlemen, you will disregard the last statement. It has no relevance to this case. You will disregard that statement and treat it as if it had never been made.

After the trial judge took this action to remedy the inappropriate comment, no further objections or motions were made by defense counsel regarding the testimony.

Defense counsel analogizes this case to that of *State v. Aycoth*, 270 N.C. 270 (1967). However, the testimony in the *Aycoth* trial was much more severe and had a higher likelihood of being prejudicial. In *Aycoth*, the witness testified to the defendant being indicted for murder during a trial in which he was convicted of armed robbery. *Id.* at 272. The information that he was indicted for a much more severe crime could have easily led a jury to believe that he would have committed the lesser crime of armed robbery. Here, Defendant was on trial for indecent liberties with a child, first degree kidnapping, and sexual battery, and the witness only testified that during the event in question, Defendant was on probation. The witness never testified or insinuated that Defendant may have committed any crime which would lead the jury to believe he could have committed the one in question.

III. Conclusion

“It is assumed that jurors are individuals of sufficient character and

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intelligence to fully understand and comply with the court's instructions, and it is presumed that they have done so." *State v. Parton*, 303 N.C. 55, 73 (1981). Therefore, "[w]hen the trial court withdraws incompetent evidence and instructs the jury not to consider it, any prejudice is ordinarily cured." *State v. Black*, 328 N.C. 191, 200 (1991).

We conclude that the trial court did not commit reversible error in failing to declare a mistrial and, accordingly, hold that Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges WOOD and MURRY concur.

Report per Rule 30(e).