North Carolina v. Henderson

173 S.E.2d 291 (1970) | Cited 14 times | Supreme Court of North Carolina | April 15, 1970

Although they present their fourteen assignments of error in a joint statement, each defendant filed a separate brief.

Assignments of Error Nos. 2 and 4 are based on defendants' exceptions to the denial of their motions under G.S. 15-173 for judgments as in case of nonsuit.

In the consideration of these assignments, we apply the wellestablished and oft-stated rules summarized in 2 Strong's North Carolina Index 2d, Criminal Law § 104, as follows: "On motion to nonsuit, the evidence must be considered in the light most favorable to the state, and the state is entitled to every reasonable intendment thereon and every reasonable inference therefrom. Contradictions and discrepancies, even in the state's evidence, are for the jury to resolve, and do not warrant nonsuit. Only the evidence favorable to the state will be considered, and defendant's evidence relating to matters of defense, or defendant's evidence in conflict with that of the state, will not be considered."

The credibility of the State's crucial evidence, particularly the testimony of Williams, Miller and Thomas, was sharply challenged by cross-examination and by defendants' testimony and by evidence offered in their behalf.

Williams, who identified both Price and Henderson in his testimony at trial, did not know either defendant by name on the night of the attempted robbery and the murder of Stanley. Miller, who identified Price in his testimony at trial, did not know him by name on the night of the attempted robbery and the murder of Stanley.

As witnesses for the State, various officers, namely, a Kinston Police Officer (Loftin), two Kinston Detectives (Brooks and Gay), a Private Detective (Whaley) and an SBI Agent (Campbell), testified to statements made by Williams in response to their inquiries. Portions of this testimony tended to corroborate Williams' testimony at trial. Other portions thereof tended to show discrepancies and conflicts between Williams' testimony at trial and statements previously made by him. Conflicts between the testimony of certain of the State's witnesses and the testimony of Detective Long, a witness for Henderson, are noted in our preliminary statement. The testimony of Thomas was contradicted by each defendant in his personal testimony and also by the testimony of Mrs. Annie Belle Shaw ("Miss Annie"). Testimony of Thomas, under cross-examination, tended to show Thomas' prior criminal record; that he had "pulled five years" in prison and in addition had "pulled some time just around the city jail"; and that he was in custody for forgery when he told the officers of

overhearing the conversation at "Miss Annie's house" and under a probationary sentence for forgery when he testified for the State against defendants. Too, each defendant offered alibi evidence. This evidence tended to show the defendants were not together on the night of October 5th and that each was at a location in Kinston other than the premises of the Supermarket.

This statement from the opinion of Stacy, C.J., in State v. Satterfield, 207 N.C. 118, 176 S.E. 466, is applicable: "Counsel for the defendant assailed the State's case with force and vigor, pointing out the apparent contradictions in the testimony and the equivocation of some of the witnesses, but these were matters bearing upon the weight of the evidence or its credibility, and not upon its competency. The jurors alone are the triers of the facts."

Considered in the light of applicable legal principles, the evidence was sufficient to require submission to the jury and to support the verdict. Hence, the assignments of error with reference to nonsuit are without merit.

Assignment of Error No. 1 contains nothing of sufficient significance to require discussion and is overruled.

A preliminary hearing was conducted November 1, 1968, in the Municipal-County Recorder's Court. The solicitor of that court, P. H. Crawford, Jr., as a rebuttal witness for the State, testified to his conversation with Williams, in the presence of several law enforcement officers, in the judge's office adjoining the courtroom, preparatory to the hearing. A portion of his testimony is the subject of Assignment of Error No. 3.

Mr. Crawford testified in part as follows: "At the beginning of my conference with him he indicated a very pronounced reluctance to talk, he replied to questions in monosyllables and I had difficulty in bringing him out. I insisted to him that what I wanted him to tell me was exactly what he knew about the facts and what happened, and one or two of those present made similar statements to him about telling me what happened, to tell the truth. One of those present, I think it was Mr. Whaley, made the statement to him -- if there are not the words it is the substance; he said 'Tell it to Mr. Crawford just like you told it to me.' (And almost suddenly the boy began to talk and he was very forthright and complete -- Objection overruled -- and gave an articulate statement.) DEFENDANTS' EXCEPTION NO. 3. Yes, sir, immediately after my conference with him he testified at the hearing."

Although the words "Objection overruled" appear in the record as indicated, the record does not show the question to which the objection was addressed. Nor does the record show that defendants made a motion to strike any particular portion of Mr. Crawford's testimony.

In their briefs, defendants call attention to "DEFENDANTS' EXCEPTION NO. 3," on which they base Assignment of Error No. 3. Their only point seems to be that Crawford was testifying to an opinion or conclusion as distinguished from facts. We perceive no error prejudicial to defendants.

Crawford's testimony that Williams was reluctant to talk when the conference began and later talked freely constituted what may well be considered a shorthand statement of fact. Stansbury, N.C. Evidence, Second Edition, § 125. If deemed desirable, counsel for defendants could have explored in depth exactly what Williams said at various stages of this conference.

Assignment of Error No. 14 asserts "the court erred in overruling the defendants' motions to set aside the verdict for that the

evidence was overwhelmingly against the verdict, for errors made during the trial, and for arrest of judgment." No ground for the arrest of judgment is suggested other than defendants' contentions that the verdicts were contrary to the weight of the evidence. Since this was a matter for determination by the trial judge in the exercise of his discretion, this assignment is deemed formal.

In his brief, Henderson expressly abandons Assignments of Error Nos. 6 and 7. Since Price's brief states no reason and cites no authority in support thereof, these assignments will be taken as abandoned by him. Rule 28, Rules of Practice in the Supreme Court, 254 N.C. 783, 810; Freeman v. City of Charlotte, 273 N.C. 113, 116, 159 S.E.2d 327, 329.

Assignments of Error Nos. 5-13, inclusive, quote excerpts from the charge and assert the court erred in so charging the jury. In these assignments, defendants do not indicate in what particular any of the quoted excerpts is erroneous. They ignore the requirement of Rule 19(3), Rules of Practice in the Supreme Court, 254 N.C. 783, 797, as interpreted in numerous decisions of this Court, that "always the very error relied upon shall be definitely and clearly presented, and the Court not compelled to go beyond the assignment itself to learn what the question is." State v. Mills, 244 N.C. 487, 94 S.E.2d 324.

The excerpt on which Assignment of Error No. 5 is based is the only portion of the charge assigned as error which relates to an instruction with reference to a legal principle. Other portions of the charge assigned as error involve either the court's review of evidence or statement of contentions.

With reference to Assignment of Error No. 5, Price contends that the court used the words, "if you find from the evidence," instead of the words, "if you find from the evidence beyond a reasonable doubt." In other portions of the charge, the court fully and correctly instructed the jury that the burden was on the State to satisfy the jury beyond a reasonable doubt as to the guilt of the defendants or either of them before such verdict (s) could be returned. The contention advanced by Price is without merit.

Henderson's contention with reference to Assignment of Error No. 5 is that the instruction given in the quoted excerpt was "unclear and ambiguous." This contention is without merit. The clear import of the instruction is that if the attempted robbery and the murder were committed pursuant to a conspiracy to rob, each conspirator would be responsible for the acts of the other on the occasion the

crime was committed; but, in the absence of such conspiracy, each would be guilty only if he individually was engaged in the perpetration of the attempted robbery and fired the fatal shots. The instructions were favorable to defendants. It is noteworthy that the court failed to instruct the jury as to the legal principle that each would be responsible for the acts of the other if both were present, aiding and abetting each other in the perpetration of the attempted robbery, even if there were no evidence of a previously formed conspiracy. Too, the charge was quite favorable to defendants in that, notwithstanding all the evidence tended to show a murder committed in the perpetration of an attempted robbery, the court instructed the jury it would be permissible for them to return a verdict of guilty of murder in the second degree as to either or both of the defendants.

The excerpt from the charge on which Assignment of Error No. 8 is based consists of a brief summary by the court of the testimony of (State's witness) Loftin. We find no significant conflict between the court's summary and Loftin's testimony. This assignment is without merit.

The excerpt from the charge on which Assignment of Error No. 9 is based is in these words: "The State offered a number of rebuttal witnesses -- I am not going to recount their testimony, or attempt to recapitulate it here -- you heard it this morning, and it was offered in substance opposed to the testimony of James Robert Williams to explain away some of the discrepancies between the testimony of certain officers, Eubanks, Whaley and others, and Officer Carl Long. I assume that was the purpose of the offer. That was all given today and you will recall it."

Obviously, the rebuttal evidence was not offered "in substance opposed to the testimony of James Robert Williams," the State's principal witness, but was offered in an attempt "to explain away some of the discrepancies" between the testimony of Officer Eubanks, Whaley and others, on the one hand, and the testimony of Officer Long, on the other hand. Although this portion of the charge as reported seems somewhat confusing, we find nothing therein which may be considered prejudicial to defendants.

The remaining excerpts from the charge, on which Assignments of Error Nos. 10, 11, 12 and 13 are based, consist of the court's review of certain of the contentions of the State. The excerpts on which Assignments of Error Nos. 10 and 11 are based are lengthy and involve multiple and diverse matters. Apparently, defendants were inadvertent to the rule that "an exception to a portion of a

charge embracing a number of propositions is insufficient if any of the propositions are correct." Powell v. Daniel, 236 N.C. 489, 493, 73 S.E.2d 143, 146, and cases cited. The excerpt on which Assignment of Error No. 12 is based is worded as follows: "The State says and contends that even the discrepancies between the testimony of Officer Carl Long and some of the other officers are not as pronounced as they appear when they are examined in the light of the whole case, and consider that the memory of people who are active in law enforcement work is, like others, it is not perfect; they may not remember exactly what happened at a given session at a given time." (Our italics.) This sufficiently illustrates the type of statement of contention which defendants assert constitutes

prejudicial error.

The discrepancies and conflicts in the evidence were obvious. Defendants did not except to the failure of the court to charge the jury in respect of any matter. "It is elemental that an exception to an excerpt from the charge ordinarily does not challenge the omission of the court to charge further on the same or another aspect of the caes." Peek v. Trust Co., 242 N.C. 1, 16, 86 S.E.2d 745, 757. Be that as it may, it would seem the court's frequent references to the discrepancies and conflicts in the evidence tended to emphasize rather that to minimize the significance thereof. Careful readings of the evidence and of the charge make it clear that the respective contentions of the State and of defendants with reference to these discrepancies and conflicts were well understood by the jury. These assignments fail to disclose prejudicial error and are overruled.

In the lengthy excerpt on which Assignment of Error No. 11 is based, the court, while reciting contentions of the State, said: " . . . and there is evidence here that he (James Robert Williams) did have some reluctance -- it was recited by Mr. Crawford, who I thought put it very accurately, that there was a marked reluctance on his part to be the only eyewitness to talk about Henderson." Conceding the court should not have expressed the view that he thought (State's witness) Crawford had "put it very accurately," all the evidence tended to show that, at the beginning of the conference preceding the preliminary hearing, Williams was in fact reluctant to talk. Indeed, (defense witness) Long testified that Williams stated "he was not going in there and testify about Curtis Henderson because he could not positively identify him." According to the State's evidence, the initial reluctance of Williams to testify against Henderson was based on his belief that he was to be the only witness against Henderson and that this reluctance ceased when he learned that other witnesses were to testify against Henderson.

Assignment of Error No. 11 fails to disclose prejudicial error and is overruled.

While, as indicated, the assignments of error, except those relating to nonsuit, do not comply with our rules, we have elected to consider all of them and all contentions made with reference thereto in the briefs. After reading and re-reading the evidence and the charge, we find no error deemed prejudicial to the defendants or either of them. The real issues in dispute were factual in nature. They were resolved adversely to defendants by the jury.

The record shows the following:

"THE JURORS, BEING CALLED BY NAME AND BEING INDIVIDUALLY POLLED BY THE CLERK OF SUPERIOR COURT, RENDERED THE FOLLOWING VERDICTS:

" AS TO THE DEFENDANT, MOSES PRICE, JR. :

"VERDICT: 'Grilty of murder in the first degree with recommendation of life imprisonment.'

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" AS TO THE DEFENDANT, CURTIS HENDERSON :

"VERDICT: 'Guilty of murder in the first degree with recommendation of life imprisonment.'

"Upon the bringing in of the verdict as to the defendant, Moses Price, Jr., said defendant, through counsel, requested that the jury be polled.

"THE CLERK OF SUPERIOR COURT POLLED THE JURY.

"Upon the bringing in of the verdict as to the defendant, Curtis Henderson, said defendant, through counsel, requested that the jury be polled.

"THE CLERK OF SUPERIOR COURT POLLED THE JURY."

In their briefs, each defendant asserts that, although there is no exception or assignment of error in respect of the polling of the jury, the record does not disclose affirmatively that each and every juror assented to the verdict. They contend the Court should order a new trial ex mero motu on authority of State v. Dow, 246 N.C. 644, 99 S.E.2d 860. The contention is without merit.

In State v. Dow, supra, the record showed that the jurors were polled in open court and that the responses of all the jurors were not in accord with the verdict as announced by the foreman of the jury. Here, defendants' counsel did not include in the record what occurred when the jury was polled. In view of the contention made in their briefs, we have obtained a certificate from the clerk of the

Superior Court of Lenoir County to the effect that, subsequent to the announcement of the verdict, each juror, upon being polled by the clerk as to each defendant, replied that his verdict was guilty of murder in the first degree with recommendation that the punishment be imprisonment for life.

Finding no prejudicial error in the trial, the verdict and judgment will not be disturbed.

No error.

Disposition

No error.