

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e) (3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1322

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Wayne County
No. 98 CRS 15006

TIMOTHY SMITH

Appeal by defendant from judgment entered 16 May 2001 by Judge Gary E. Trawick in Wayne County Superior Court. Heard in the Court of Appeals 1 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General Elizabeth F. Parsons, for the State.

Adrian M. Lapas for defendant-appellant.

BRYANT, Judge.

Defendant was found guilty of possession with intent to sell or deliver cocaine and sale of cocaine for selling five rocks of crack cocaine to an undercover officer in exchange for \$100 on 17 June 1998. The convictions were consolidated and defendant was sentenced to active imprisonment for a minimum term of twelve months and a maximum term of fifteen months. Defendant appeals and brings forth two assignments of error.

I.

First, he contends the trial court erred by allowing Sergeant Daniel Peters of the Goldsboro Police Department to testify that

defendant was a target of an undercover drug operation and that defendant was also known by the name of "Boo." He argues this evidence should have been excluded under Rule 404(b).

We do not need to consider the admissibility of the evidence under Rule 404(b) because another witness previously testified, without objection, that defendant was a target of the investigation and that defendant's nickname was "Boo." A settled principle of law is that "[w]here evidence is admitted over objection after the same evidence has already been admitted without objection, the benefit of the objection is lost." *State v. Warren*, 327 N.C. 364, 373, 395 S.E.2d 116, 122 (1990). This assignment of error is therefore overruled.

II.

Next, defendant contends the trial court erred by denying his motion for a mistrial made on the ground that the jurors saw the prosecutor taping defendant's photograph to an envelope, thereby concealing or redacting extraneous information. A mistrial is to be granted if an error or legal defect occurs that results in substantial and irreparable prejudice to the defendant's case. N.C.G.S. § 15A-1061 (2001). The decision whether to grant a mistrial is addressed to the sound discretion of the trial judge, whose decision will not be disturbed on appeal unless it is shown that the ruling was so arbitrary it could not have been the result of a reasoned decision. *State v. Barts*, 316 N.C. 666, 682, 343 S.E.2d 828, 839 (1986). This showing has not been made. The record fails to show any substantial or irreparable prejudice to

defendant's case. The record does not show what information, if any, was concealed or redacted by the prosecutor. In addition, the record does not show that defendant objected to the prosecutor's action at the time it occurred or that defendant requested any limiting instruction.

We hold defendant received a fair trial, free of prejudicial error.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).