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NO. COA01-593

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

STATE OF NORTH CAROLINA

v.

Catawba County  
No. 00 CRS 6301

JUAN CARLOS MARTINEZ

Appeal by defendant from judgments entered 4 December 2000 by Judge Claude S. Sitton in Catawba County Superior Court. Heard in the Court of Appeals 31 December 2001.

*Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Mabel Y. Bullock, for the State.*

*David Shawn Clark, P.A., by D. Shawn Clark, for defendant-appellant.*

EAGLES, Chief Judge.

Defendant-appellant Juan Carlos Martinez appeals from judgments entered on jury verdicts finding him guilty of trafficking in marijuana by possession, possession of cocaine, and knowingly maintaining a place or residence for keeping controlled substances. Defendant-appellant contends that the trial court erred in denying his motion to suppress. After careful review of the record, briefs, and contentions of the parties, we disagree.

The evidence tended to show the following. Walter Craig was the owner of property located at 919 9th Street Drive, Northeast,

in Hickory, North Carolina. On 11 or 12 January 2000, Craig showed the property to prospective tenants, a young hispanic couple and their child. The couple identified themselves as Jesus and Claudette Chavez. Craig met with the couple for about forty-five minutes to an hour. Craig met with the couple a second time on 13 January 2000, again for about forty-five minutes. During this meeting, Craig agreed to lease the property to them.

On or about 10 May 2000, Craig visited the property to collect unpaid rent. Upon inspection, Craig noticed that the house had been vacated and the property damaged, so he called the police. Shortly thereafter, Craig was informed by Officer Randy Isenhour of the Hickory City Police Department that there had been a drug bust at the property and arrests had been made.

On or about 12 May 2000, Craig met with Investigator Mike Saunders of the Catawba County Sheriff's Office to view a photographic lineup. Craig was shown three photographs and a picture identification. The lineup included two hispanic men and two hispanic women. Craig picked out the photographs of the two people who had identified themselves as Jesus and Claudette Chavez when leasing the property from him. The photographs were of co-defendant Jesus Martinez and Norma Morones. Defendant-appellant is Jesus Martinez's brother.

On 7 August 2000, defendant-appellant was indicted on charges of trafficking in marijuana by possession, trafficking in cocaine by possession, and knowingly maintaining a place or residence for keeping controlled substances. The case was tried during the 27

November 2000 Criminal Session of Catawba County Superior Court. Defendant-appellant's, Jesus Martinez's, and Maria Martinez's (defendant-appellant's aunt) cases were joined for trial. At the conclusion of the trial, a jury found defendant-appellant guilty as charged.

At trial, defendant-appellant moved to suppress the identification of Martinez and Morones. After a voir dire hearing, the motion was denied. Craig then identified Martinez in court and Morones as the person who had been with Martinez.

Defendant-appellant's sole argument on appeal is that the trial court erred by denying his motion to suppress the photographic identification of Martinez and Morones. Defendant-appellant notes that Craig was only given four photographs to view, two of two hispanic males, and two of two hispanic females. Additionally, defendant-appellant notes that Craig had described the couple as young, yet the pictures presented to Craig were of an older male and female, and a younger male and female. Thus, defendant-appellant asserts that the photographic identification was impermissibly suggestive.

Defendant-appellant further argues that even though he was not identified, the process was equally violative of his constitutional rights. The defendants were arrested, tried, and convicted as a group. Thus, defendant-appellant contends that when Craig identified Martinez and Morones, the identification guaranteed his conviction.

Finally, defendant-appellant argues that the suggestive photographic identification led to an irreparable in-court misidentification of Martinez and Morones. Defendant-appellant contends that in addition to the suggestive photographic identification: (1) Craig only viewed the tenants for ninety minutes when he rented them the property; (2) he had twenty-one tenants, several of whom were hispanic; (3) he did not ask Jesus and Claudette Chavez for additional identification, personal information, or references; (4) he was not a victim of a crime, and thus had no reason to pay particular attention to the tenants; (5) his degree of attention when meeting with the tenants was not acute, and he gave very little attention to their physical attributes; (6) he never gave a detailed description of the tenants; and (7) approximately four months passed between the time Craig first met with Jesus and Claudette Chavez and the date of the photographic identification.

Initially, we note that there is a question as to whether defendant-appellant has standing to challenge the identification. However, even assuming *arguendo* that defendant-appellant does have standing, we find no error.

This Court has stated that:

"Identification evidence must be excluded as violating a defendant's right to due process where the facts reveal a pretrial identification procedure so impermissibly suggestive that there is a very substantial likelihood of irreparable misidentification." *State v. Harris*, 308 N.C. 159, 162, 301 S.E.2d 91, 94 (1983). Therefore, even when the procedures used at a pretrial identification are suggestive, the pretrial identification is

nevertheless admissible unless under the totality of the circumstances "there is a substantial likelihood of irreparable misidentification." *State v. Pigott*, 320 N.C. 96, 99, 357 S.E.2d 631, 633 (1987). In determining whether this substantial likelihood exists, the trial court must consider the following factors:

- 1) The opportunity of the witness to view the criminal at the time of the crime;
- 2) the witness' [s] degree of attention;
- 3) the accuracy of the witness' [s] prior description;
- 4) the level of certainty demonstrated at the confrontation; and
- 5) the time between the crime and the confrontation.

*Id.* at 99-100, 357 S.E.2d at 633-34. A trial court's findings of fact regarding these factors are binding on appeal when supported by competent evidence.

*State v. Pinchback*, 140 N.C. App. 512, 518, 537 S.E.2d 222, 225-26 (2000) (citation omitted).

Here, the trial court concluded that the pretrial identification was "somewhat suggestive," but that the procedure was not so impermissibly suggestive as to result in irreparable misidentification. The trial court based its conclusions on findings that Craig viewed and talked with Martinez and Morones for an extended period of time (approximately forty-five minutes to one hour on the first occasion they met, and another forty-five minutes on the day they signed the lease agreement); that he had an interest in observing them and to pay particular attention to them because they planned to lease property from him; that the

observation was made when he was in a "cool, collected manner;" and Craig based his identification of Martinez and Morones not on the photographs, but on the two occasions he met with them in January 2000. There was sufficient competent evidence in the record to support each of the trial court's findings.

In sum, we conclude that under the totality of the circumstances, the identification of Martinez and Morones was sufficiently reliable to be admissible. Accordingly, the trial court did not err.

No error.

Judges TIMMONS-GOODSON and McCULLOUGH concur.

Report per Rule 30(e).