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NO. COA02-83

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

STATE OF NORTH CAROLINA

v.

New Hanover County  
No. 99 CRS 51897

ROBERT EARL WILLIAMS

Appeal by defendant from judgment entered 18 July 2001 by Judge Ernest B. Fullwood in New Hanover County Superior Court. Heard in the Court of Appeals 30 September 2002.

*Attorney General Roy Cooper, by Assistant Attorney General David L. Elliott, for the State.*

*James M. Bell, for defendant-appellant.*

BIGGS, Judge.

Robert Earl Williams (defendant) was tried by a jury and found guilty of assault with a deadly weapon inflicting serious injury. Defendant was sentenced to 34-50 months imprisonment. For the reasons discussed herein, we find no error.

The State's evidence tended to show the following: On 5 August 1999, someone had taken a gold chain from Pierre Boynton (Pierre) at a nightclub. The next day, Pierre and his cousin, Angelena Boynton (Boynton), went to the Taylor Homes area to find the stolen necklace. While they were questioning two individuals known as "Bam-Bam" and "Mook," defendant approached on his bicycle and said

he had possession of the necklace. Boynton told defendant to give the necklace back and the two started to argue. When defendant ran, Boynton followed him. Defendant then turned around, brandished a handgun and shot Boynton in the leg. A jury found defendant guilty as charged. The trial court sentenced defendant to thirty-four to fifty months imprisonment. Defendant appeals.

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Defendant first contends the trial court erred by denying his motion to strike testimony of Officer Sidney Bullard (Bullard), the Wilmington Police officer who responded to the shooting. During redirect examination of Bullard, the following questioning occurred:

Q. Now, Mr. [Pierre] Boynton also told you that the suspect was pigeon-toed?

A. Yes, sir.

. . . .

Q. Do you have any independent knowledge of whether the Defendant is pigeon-toed?

A. Yes, sir.

Q. What's your knowledge of that?

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Sustained as to the form of the question.

Q. Have you ever seen the Defendant walk before?

A. Yes, sir, I have.

Q. How does he walk?

A. He's pigeon-toed. His toes turn in when he walks.

[DEFENSE COUNSEL]: Objection, Your Honor.  
Move to Strike.

THE COURT: Overruled. Motion denied.

Defendant argues the above exchange prejudiced him because it suggests Bullard was familiar with defendant's physical characteristics based upon a prior criminal past of defendant. We disagree.

We are convinced from an examination of this witness's testimony and the context in which the answer was elicited that Bullard's comments do not suggest defendant had a prior criminal past or suggest any bad acts by defendant. Assuming, *arguendo*, that the trial court erred, when compared with the overwhelming evidence of defendant's guilt, we do not believe that there is a reasonable possibility that a different result would have been reached at the trial if the error in question had not been committed. See N.C.G.S. § 15A-1443 (2001).

Defendant next argues the trial court erred by finding Boynton competent to testify. During cross-examination, defense counsel asked Boynton about her testimony that she "never had a conversation while Bam-Bam's seated in the car with her child[.]" Boynton stated that she could not recall the conversation "because I've been to the mental health center afterwards and before it." She testified that she had been in a mental institution in 1996 and a week before the trial for "detox" and "stress". Defendant objected to Boynton's competency to testify. The trial court dismissed the jury and the following exchange took place:

THE COURT: You do understand that you are

testifying under oath; is that correct?

[MS. BOYNTON]: Yes.

THE COURT: You know what it means to testify under oath?

[MS. BOYNTON]: Yes.

THE COURT: What is your understanding that it means to testify under oath?

[MS. BOYNTON]: Tell the truth, nothing but the truth, so help me God.

THE COURT: And that if you don't?

[MS. BOYNTON]: I got to pay for it.

The trial court then ruled she was "competent to testify under our law."

The test of competency is whether the witness understands the obligation of an oath or affirmation and has sufficient capacity to understand and relate facts which will assist the jury in reaching its decision. *State v. Jenkins*, 83 N.C. App. 616, 351 S.E.2d 299 (1986), *cert. denied*, 319 N.C. 675, 356 S.E.2d 791 (1987). The ruling on the competency of a witness is within the trial court's discretion. *State v. Beane*, 146 N.C. App. 220, 552 S.E.2d 193 (2001). A ruling committed to a trial court's discretion may be upset only when it is shown that it "could not have been the result of a reasoned decision." *Id.* at 227, 552 S.E.2d at 198.

The defendant has made no such showing in the present case. Here, the trial court's *voir dire* of Boynton shows she understood "the obligation of an oath." *Jenkins*, 83 N.C. App. at 621, 351

S.E.2d at 302. We conclude the trial court acted well within its discretion in allowing Boynton to testify.

Defendant finally contends the trial court erred by allowing into evidence x-rays of the victim's leg. The State's witness, Terry Gentry (Gentry), testified that he was the manager for support services and records custodian for the radiology department at New Hanover Regional Medical Center. He then testified that the radiology department had taken x-rays of Boynton's left femur, and that the x-rays were a "business record that is kept in the ordinary course of business for New Hanover Regional Medical Center." Gentry further testified that the x-rays were in his custody and control. Over defendant's objection, the trial court admitted the x-rays into evidence.

Defendant essentially argues that the State was required to introduce the records through a medical expert. Under N.C.R. Evid. Rule 803(6), once the proper foundation for admission is established "by the testimony of the custodian or other qualified witness," the record is admissible regardless of the fact that it is hearsay. N.C.G.S. § 8C-1, Rule 803(6) (2001). Rule 803(6) explicitly permits use of a record custodian's testimony to establish a foundation for admission of the records; it does not require that this foundation be established by an expert. Accordingly, the trial court properly admitted the victim's x-rays into evidence.

No error.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).