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NO. COA05-1101

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 04 CRS 220866

RONAL GABRIEL MERENOPERDOMO

Appeal by defendant from judgment entered 18 March 2005 by Judge Yvonne Mims Evans in Superior Court, Mecklenburg County. Heard in the Court of Appeals 20 March 2006

Attorney General Roy Cooper, by Assistant Attorney General Jay L. Osborne, for the State.

J. Clark Fischer for defendant-appellant.

McGEE, Judge.

Defendant was convicted of robbery with a dangerous weapon and was sentenced to sixty to eighty-one months in prison. The evidence at trial tended to show that: the victim was washing his car at the South Boulevard Car Wash in Charlotte, North Carolina on the morning of 9 May 2004, when a primer-gray Honda vehicle with tinted windows and a distinctive-sounding muffler drove in. Defendant, who was driving the vehicle, pointed a black revolver at the victim and said, "[D]on't move, you bastard." The victim ran to the front of the car wash and told the manager to call the

police. He then ran across the road to a Goodwill store until the vehicle left the area. When the victim returned to his car, he found that his Sony car stereo had been taken. Both the victim and the car wash manager identified defendant in court as the gunman. The car wash manager further testified that he watched "one of the guys . . . reach[] inside of [the victim]'s car and snatch[] the whole radio system out of it."

The victim gave a description of the Honda vehicle and its occupants to Charlotte-Mecklenburg Police Officer April Knox. Later, on 9 May 2004, officers conducting surveillance in Idlewild Park observed a Honda vehicle matching the vehicle description in the robbery report. Officers William C. Hastings and Edward M. Gonzalez stopped the Honda vehicle and detained its four occupants. Defendant was driving the vehicle and was its registered owner. Officer Hastings testified that the vehicle had been "freshly painted" black and was "tacky or . . . sticky -- you put your hand on it, you come up with paint." The victim was brought to Idlewild Park, and Officer Gonzalez testified the victim identified defendant as "the driver, the one who pointed the gun at him." Police found the victim's Sony car stereo and three spray paint cans, at least one of which was black, inside defendant's vehicle.

On appeal, defendant claims the trial court erred in overruling his objection to Officer Hastings' testimony that Officer Hastings was assigned to "the Gang One Program" at the time of defendant's trial. Defendant contends Officer Hastings's testimony was irrelevant and "had the unavoidable effect of tarring

[d]efendant with the brush of gang affiliation."

The transcript reflects that the State began its direct examination of Officer Hastings with general questions regarding his work as a police officer, as follows:

Q. What is your current assignment?

A. Eastway [D]ivision.

Q. How long have you been in that assignment?

A. About six and a half years.

Q. What are your general duties?

A. *My general duties are the Gang One Program at this time.*

(emphasis added).

After the trial court overruled defendant's objection, the State continued its direct examination of Officer Hastings as follows:

Q. The -- were you on duty on May the 9th of '04?

A. Yes, ma'am. I was called in the day before.

Q. *Where were you -- were you in the Eastway Division?*

A. No, ma'am.

Q. What were you doing that day?

A. *I was called the day before to assist CMPD and ATF in a --*

Q. In a surveillance activity in the park?

A. -- a surveillance operation.

Q. Where was that surveillance operation?

A. *Idlewild Park.*

(emphasis added).

After careful review, we find that Officer Hastings' preliminary and isolated reference to his involvement in "the Gang One Program," even if inadmissible, was insufficiently prejudicial to warrant relief under N.C. Gen. Stat. § 15A-1443(a) (2005). See *State v. Berry*, 356 N.C. 490, 507-09, 573 S.E.2d 132, 144-45 (2002). The transcript reveals that Officer Hastings made no further reference to gangs and did not in any way implicate defendant in gang-related activity. *Id.* at 508, 573 S.E.2d at 145. We note that Officer Hastings did not testify that he was assigned to the Gang One Program on 9 May 2004; nor did he "make a direct connection between [his] formal assignment" and his interaction with defendant. *Id.* at 508-09, 573 S.E.2d at 145. Rather, he stated that he had been called away from his Eastway Division assignment on 9 May 2004, to assist in the surveillance of Idlewild Park. He thus portrayed his encounter with defendant as arising by coincidence, incident to this general surveillance activity. Under the circumstances, we cannot say "that defendant has shown that the outcome of the trial would have been any different if this evidence had been excluded." *Berry*, 356 N.C. at 509, 573 S.E.2d at 145.

The record on appeal contains additional assignments of error not addressed by defendant in his brief to this Court. We deem them abandoned pursuant to N.C.R. App. P. 28(b)(6).

No error.

Judges WYNN and HUNTER concur.

Report per Rule 30(e).