NO. COA05-859

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

STATE OF NORTH CAROLINA

v. Pitt County
Nos. 04 CRS 7030, 7032
CHRISTOPHER LAMONT BULLOCK 54812

Appeal by defendant from judgments entered 26 January 2005 by Judge Clifton W. Everett, Jr., in Pitt County Superior Court. Heard in the Court of Appeals 23 February 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Thomas J. Ziko, for the State.

Thomas R. Sallenger for defendant appellant.

MCCULLOUGH, Judge.

Defendant appeals from judgments entered 26 January 2005 after jury verdicts of guilty of robbery with a dangerous weapon, possession of a firearm by a felon, and assault with a deadly weapon inflicting serious injury. We find no error.

On 24 May 2004, a Pitt County grand jury indicted defendant for the offenses of robbery with a dangerous weapon, possession of a firearm by a felon, and assault with a deadly weapon with the intent to kill inflicting serious injury. The State presented evidence at trial tending to show the following:

On 12 May 2004, Lindrick Ampley ("Ampley") was robbed and shot by defendant at 1912A South Pitt Street in Greenville, North Carolina. Officer Woodford was patrolling the area on 12 May 2004 when he heard the emergency medical services call to South Pitt Street and responded to the scene. Officer Woodford radioed for other officers to be on the lookout for a person wearing a white t-shirt and dark blue jeans. Officer Barrett was patrolling the area around South Pitt Street on 12 May 2004 when he heard the lookout notice and saw defendant wearing a white t-shirt, dark blue jeans, and riding a bicycle less then half a mile from the scene of the incident where Ampley was robbed and shot.

Officer Barrett followed defendant until he turned his bicycle into the driveway of 1202 Clark Street. Officer Barrett set up surveillance of the residence at 1202 Clark Street until other officers arrived. While Officers Barrett and Carlton were surveying the area, they were approached by Tywon Johnson ("Johnson") who told Officer Carlton that the person the officers were looking for went inside an apartment at 1202 Clark Street and that he would go inside and bring him out. The officers observed Johnson go into the driveway at 1202 Clark Street and come back out with defendant. Officer Barrett recognized defendant as the man on the bicycle, matching the description of the suspect whom he had followed to 1202 Clark Street. After the officers arrested defendant, Johnson approached Officer Weaver and stated that he knew what the officers were looking for and that he could help them. Officer Weaver followed Johnson to the back of the apartment

where Johnson pointed to an area under the deck which led the officers to the discovery of a black, semi-automatic handgun lying under the deck. Forensic testing showed that the weapon found under the deck at the 1202 Clark Street apartment was the weapon which fired a shell casing and a bullet found at the apartment where Ampley was shot and robbed.

Ibn Kornegay testified at trial that he resided at 1202 Clark Street, Apartment C, and that on the afternoon of 12 May 2004, defendant came to his house and asked to use the restroom and the telephone to make a call. While searching the premises, the officers found a baseball cap which was later identified by Ampley as the hat that defendant was wearing when he robbed and shot him. The day following the arrest, Ampley identified defendant as the man who robbed him through a photographic identification. Ampley also identified defendant at trial as the man who robbed and shot him.

Johnson was not present at defendant's trial; however, the State offered the statements made by Johnson into evidence through the testimony of the officers. Defendant made objections to the admissibility of these statements and the objections were overruled. The jury found defendant guilty of robbery with a dangerous weapon, possession of a firearm by a felon, and assault with a deadly weapon inflicting serious injury.

Defendant now appeals.

Defendant contends on appeal that the trial court erred in admitting two separate hearsay statements made by Tywon Johnson to

police officers in violation of his constitutional right to confrontation and the standards set forth in *Crawford v. Washington*, 541 U.S. 36, 158 L. Ed. 2d 177 (2004). We disagree.

"'[T]he Sixth Amendment's Confrontation Clause bars the use of a "*testimonial*" statement made by a witness who does not appear at a criminal trial, unless the witness is unavailable to testify at trial and was subject to cross-examination at the time the statement was made.'" *State v. Forrest*, 164 N.C. App. 272, 278, 596 S.E.2d 22, 26 (citation omitted), *disc. review denied,* 359 N.C. 193, 607 S.E.2d 653 (2004), *aff'd*, 359 N.C. 424, 611 S.E.2d 833 (2005). A court must determine whether a particular statement is testimonial or non-testimonial in nature. *Id.* If it is determined that the offered statements are non-testimonial, then the Confrontation Clause is not implicated and the statement must only clear the hurdles presented by the evidentiary rules. *Id.*

If a testimonial statement of an unavailable witness were introduced against a defendant at trial in order to prove the truth of the matter asserted, it would be error. Assuming *arguendo* that the trial court introduced Johnson's statements in error, the question before this Court is whether that error was prejudicial. N.C. Gen. Stat. § 15A-1443(b) (2005). "A violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt." *Id.* "One way for the appellate court to determine whether a constitutional error is harmless beyond a reasonable doubt is to ascertain whether there is other

overwhelming evidence of the defendant's guilt; if there is such overwhelming evidence, the error is not prejudicial." *State v. Lewis*, 360 N.C. 1, 29, 619 S.E.2d 830, 848 (2005).

In the instant case, the outcome of the jury trial would have been the same had Johnson's statements to police officers not been admitted because competent overwhelming evidence of defendant's guilt existed. On the day of the shooting, Officer Barrett recognized defendant as matching the description given of the suspect of the crime. Officer Barrett saw defendant go into an apartment at 1202 Clark Street. Ibn Kornegay testified at trial that on the day in question, defendant visited him in Apartment C, 1202 Clark Street. After defendant was arrested, police officers recovered a semi-automatic weapon behind the residence at 1202 Clark Street which was later determined to be the same weapon which fired a shell casing and bullet found where Ampley was shot. Police officers also seized a baseball cap from inside Apartment C at 1202 Clark Street which was identified by Ampley as the hat worn by the person who shot and robbed him.

Further, Ampley identified defendant as the person who shot and robbed him when police showed him a photograph of defendant after his arrest and again at trial when he was asked whether he saw the man who shot him in the courtroom. We decline to address the issue of whether or not Johnson's statements were introduced at trial in violation of defendant's constitutional rights where it is evident that presuming error occurred, it was harmless beyond a

reasonable doubt. Therefore, the corresponding assignments of error are overruled.

Accordingly, the trial court's admission of statements made by Johnson against defendant through the testimony of the officers does not warrant a new trial. Any error would be harmless beyond a reasonable doubt, and therefore we find

No prejudicial error.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).