NO. COA06-1176

NORTH CAROLINA COURT OF APPEALS

Filed: 01 May 2007

STATE OF NORTH CAROLINA

v. Pitt County
No. 04 CRS 52591-93

FLOYD HADDOCK, JR.

Appeal by defendant from judgments entered 23 February 2006 by Judge Quentin T. Sumner in Pitt County Superior Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Lisa G. Corbett, for the State.

Geoffrey W. Hosford for defendant-appellant.

STEELMAN, Judge.

The trial court did not err in refusing to allow defendant to cross-examine a State's witness concerning charges that were fourteen and eleven years prior to trial. Since any weak links in the chain of custody of controlled substances goes to the weight of the evidence and not its admissibility, the trial court did not err in admitting controlled substances into evidence.

The State presented evidence at trial which tends to show the following: In early 2004, the Pitt County Sheriff's Office began an investigation into suspected drug activities at defendant's

residence. Detectives conducted surveillance and observed "quick traffic," meaning traffic that came in but stayed just a brief amount of time before leaving. On 1 February 2004, detectives stopped a vehicle that they had observed while surveilling defendant's residence. Don Hardee was operating the vehicle. Detectives explained to Hardee what they had observed and discovered that Hardee's driver's license had been revoked. Officer John Croley received consent from Hardee to search his vehicle and located what appeared to be crack cocaine. Subsequently, Hardee acknowledged that he had controlled substances on his person and handed Detective Vance Head an amount of crack cocaine. Hardee told Detective Head that he received the cocaine from defendant. Detective Head explained to Hardee that defendant's residence was under investigation and offered him the opportunity to become an informant. Detective Head testified that they made no promises to Hardee, but explained to him that he could be given credit for providing substantial assistance. Hardee accepted this arrangement.

In accordance with their agreement, Detective Head used Hardee to purchase cocaine from defendant on 10 February, 12 February and 8 March 2004. Prior to each transaction, Hardee and his vehicle were searched. Hardee was then given money to purchase the drugs. Hardee would first call the defendant to set up the transaction. Officers then observed Hardee going to and then leaving defendant's residence. Officers met Hardee at a predetermined location and searched him again. Each time, Hardee returned without the money

he was given for the transaction. On all three dates, Detective Head retrieved a controlled substance from Hardee that was then secured in an evidence bag. Upon completion of their investigation, they submitted the evidence bags from the three transactions to the State Bureau of Investigation for testing.

Defendant was charged with three counts of possession with intent to sell or deliver cocaine and three counts of sale of cocaine. A jury found defendant guilty of all charges, and he was sentenced to three consecutive active terms of 21-26 months imprisonment on the sale charges, and three consecutive active terms of 15-18 months on the charges of possession with intent to sell or deliver. Defendant appeals.

In his first argument, defendant contends that the trial court erred by prohibiting defendant from cross-examining Hardee regarding outstanding orders for arrest. We disagree.

Hardee was arrested in 1991 for misdemeanor larceny. Hardee was also arrested in 1995 for making a false fire alarm. The State had taken a dismissal with leave as to each charge, and they were still outstanding. Defendant claims the State had influence over Hardee because it could have reinstated the charges if he failed to cooperate, and therefore the trial court should have permitted cross-examination regarding Hardee's possible bias. Defendant asserts that the trial court's ruling constituted an impermissible limitation upon his right to confront the evidence against him.

After careful review of the record, briefs and contentions of the parties, we find no error. "The scope of cross-examination .

. . is within the sound discretion of the trial court, and its rulings thereon will not be disturbed absent a showing of abuse of discretion." *State v. Herring*, 322 N.C. 733, 743, 370 S.E.2d 363, 370 (1988) (citing *State v. Hinson*, 310 N.C. 245, 254, 311 S.E.2d 256, 263, *cert. denied*, 469 U.S. 839, 83 L. Ed. 2d 78 (1984)). In *Davis v. Alaska*, 415 U.S. 308, 39 L. Ed. 2d 347 (1974), the United States Supreme Court ordered a new trial where a defendant's right to cross-examine a witness regarding his probationary status was improperly curtailed. The Supreme Court concluded, "[t]he claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue pressure because of [the witness's] vulnerable status as a probationer." *Id.* at 317-318, 39 L. Ed. 2d. at 354. The Supreme Court held this violated the defendant's Sixth Amendment right "to be confronted with the witnesses against him." *Id.* at 315, 39 L. Ed. 2d at 353.

Based on *Davis*, the North Carolina Supreme Court found reversible error in *State v. Prevatte*, 346 N.C. 162, 163, 484 S.E.2d 377, 378 (1997). In *Prevatte*, the trial court curtailed cross-examination of a witness about pending charges and whether the witness had been promised or expected anything in regard to the charges in exchange for his testimony. The Court stated that "[t]he fact that the trial of Mr. Burr on the forgery and uttering charges had been continued for eighteen months might have led the jury to believe the State was holding those charges in abeyance pending the witness' testimony in this case." *Id.* at 164, 484 S.E.2d at 378. Accordingly, the Court concluded that "[t]he effect

of the handling of the pending forgery and uttering charges on the witness was for the jury to determine. Not letting the jury do so was error." *Id.*

In both *Davis* and *Prevatte*, the State held power over the witnesses due to the fact that they were either presently facing charges or the loss of their probationary status. Here, however, the charges against Hardee were long ago stale. In fact, the trial court sustained the State's objection to the line of questioning because the charges were "almost ancient." The misdemeanor larceny charge was fourteen years old at the time of defendant's trial. The other charge, making a false fire alarm, a Class 2 misdemeanor, was over ten years old. Both charges had been dismissed with leave, but there was no indication in the record that the State intended to reinstate the charges. Therefore, it was unlikely that the charges would be probative of any potential witness bias.

Furthermore, even assuming *arguendo* that the trial court erred by prohibiting defendant from cross-examining Hardee regarding his old misdemeanor arrests, it was not prejudicial error. Although the trial court did not allow defendant to cross-examine Hardee regarding the 1991 and 1995 arrests, the trial court did allow defendant to inquire into Hardee's prior criminal convictions and drug and alcohol use. Additionally, defendant made repeated inquiries regarding Hardee's agreement to become an informant, promises made to Hardee in exchange for his cooperation, and Hardee's understanding of how his cooperation would benefit him. Thus, the jury was given ample opportunity to evaluate Hardee's

credibility. Accordingly, we find no error.

In his second argument, defendant contends that the trial court erred by admitting into evidence State's exhibits five, eight and eleven. These exhibits were the substances purchased by Hardee on 10 February, 12 February, and 8 March 2004. Defendant contends that the State failed to lay a proper foundation for their admission. Specifically, defendant asserts that the State failed to prove that the exhibits were the same items involved in the transactions between Hardee and defendant and that they had not been substantially altered. We are not persuaded.

Our Supreme Court has stated that:

> Before real evidence may be received into evidence, the party offering the evidence must first satisfy a two-pronged test. "The item offered must be identified as being the same object involved in the incident and it must be shown that the object has undergone no material change." Determining the standard of certainty required to show that the item offered is the same as the item involved in the incident and that it is in an unchanged condition lies within the trial court's sound discretion. "A detailed chain of custody need be established only when the evidence offered is not readily identifiable or is susceptible to alteration and there is reason to believe that it may have been altered." Any weak links in the chain of custody pertain only to the weight to be given to the evidence and not to its admissibility.

State v. Fleming, 350 N.C. 109, 131, 512 S.E.2d 720, 736 (citations omitted), *cert. denied*, 528 U.S. 941, 145 L. Ed. 2d 274 (1999). Here, Detective Head testified regarding police standard procedure in the handling of illegal narcotics. He testified that the drugs would be placed in an evidence envelope, sealed and then sent to

the State Bureau of Investigation for analysis once the investigation was completed. Detective Head stated that he recognized the initials of one of the detectives on the evidence bags. Detective Head further testified that the controlled substances appeared to be in substantially the same condition as they were when they were received from Hardee. There was no contention that any of the seized drugs had been altered. Therefore, we conclude that the trial court did not abuse its discretion by admitting the evidence.

Defendant has failed to argue his remaining assignments of error in his brief, and they are deemed abandoned. *See State v. Elliott*, 360 N.C. 400, 427, 628 S.E.2d 735, 753 (2006); N.C. R. App. P. 28(b)(6) (2006).

NO ERROR.

Judges McCULLOUGH and LEVINSON concur.

Report per Rule 30(e).