NO. COA06-136

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v. Forsyth County
No. 04 CRS 59223
JOHNNY RAY FARRIS 05 CRS 1447

Appeal by defendant from judgment entered 9 August 2005 by Judge Edwin G. Wilson, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 9 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General LaShawn L. Strange, for the State.

Nancy R. Gaines, for defendant-appellant.

ELMORE, Judge.

Defendant was found guilty of felony breaking and entering, felonious larceny, and habitual felon status. The offenses were consolidated and defendant was sentenced to a minimum term of 133 months and a maximum term of 169 months.

The State's evidence tends to show that on 28 April 2004, Officer September Webster Tuttle was dispatched to investigate a suspected break-in at the residence of Ms. Faye Pinkney. Officer Tuttle observed Ms. Pinkney's home to be in disarray. After speaking with Ms. Pinkney, Officer Tuttle began to look for a person by the name of "J-5" who lived with Mr. Walter Wells in a

house five or six houses down the street. Mr. Wells confirmed that "J-5," whom he identified as defendant, resided with him. He related that defendant mowed Ms. Pinkney's grass and cleaned her home. Defendant also had a key to her residence.

On 21 May 2004, Detective C.S. Sluder of the Winston-Salem Police Department came to Mr. Wells' residence. Detective Sluder awakened defendant and asked him to accompany him to the police station for questioning. Defendant agreed to go with him. At the station defendant gave an inculpatory statement in which he indicated that he had a key to Ms. Pinkney's residence and that he helped another gentleman remove a large screen television set from her residence while Ms. Pinkney was away for the weekend. He helped the other man push the television set to the other man's residence. He also gave a written statement in which he apologized to Ms. Pinkney for helping to take the television out of her house.

As Detective Sluder drove defendant back to Mr. Wells' residence, defendant showed the officer the residence where he transported the television set. On 17 June 2004, Detective Sluder went to the home that defendant identified and asked a resident, Mr. Tommie Richardson, whether he had a large screen television set. Mr. Richardson showed the detective a large screen television set he said he bought from "J-5" for the sum of $125.00. The serial number on the television set matched that of the set taken from Ms. Pinkney's home.

Mr. Tommie Richardson, Jr. testified for the State that defendant came to his residence and offered to sell a large screen

television set for $300.00. Defendant accepted his offer of $125.00 for the television.

Defendant did not present any evidence.

By his only assignment of error brought forward, defendant contends that the court erred by denying his motion to suppress an inculpatory statement on the ground that it was the product of a custodial interrogation conducted without defendant having waived his rights. For the following reasons, we dismiss this assignment of error.

The exclusive method for challenging evidence on the ground that its exclusion is constitutionally required is published in Article 53 of Chapter 15A of the General Statutes. *State v. Jeffries*, 57 N.C. App. 416, 424, 291 S.E.2d 859, 864, *cert. denied and appeal dismissed*, 306 N.C. 561, 294 S.E.2d 374 (1982). Specifically, N.C. Gen. Stat. § 15A-975 provides in pertinent part:

> (a) In superior court, the defendant may move to suppress evidence only prior to trial unless the defendant did not have reasonable opportunity to make the motion before trial or unless a motion to suppress is allowed during trial under subsection (b) or (c).
>
> (b) A motion to suppress may be made for the first time during trial when the State has failed to notify the defendant's counsel or, if he has none, the defendant, sooner than 20 working days before trial, of its intention to use the evidence, and the evidence is:
>
> > (1) Evidence of a statement made by a defendant;
> >
> > (2) Evidence obtained by virtue of a search without a search warrant; or
> >
> > (3) Evidence obtained as a result of search with a search warrant when the defendant was not present at the time of the execution of the search warrant.

> (c) If, after a pretrial determination and denial of the motion, the judge is satisfied, upon a showing by the defendant, that additional pertinent facts have been discovered by the defendant which he could not have discovered with reasonable diligence before the determination of the motion, he may permit the defendant to renew the motion before the trial or, if not possible because of the time of discovery of alleged new facts, during trial.

N.C. Gen. Stat. § 15A-975 (2005). Failure to comply with these requirements or to qualify under one of the exceptions to filing of a pretrial motion will result in the waiver of the right to challenge the admissibility of the evidence on appeal. *State v. Maccia*, 311 N.C. 222, 228, 316 S.E.2d 241, 244 (1984). The burden of showing compliance with the statutory procedural requirements is upon the defendant. *State v. Jones*, 157 N.C. App. 110, 113, 577 S.E.2d 676, 679 (2003).

The record shows that at the beginning of trial the prosecution stated for the record that approximately two months prior to trial it had provided defense counsel with statements made by defendant. Counsel for defendant acknowledged in court that he received these materials. During Detective Sluder's testimony defendant moved to suppress the statement defendant wrote in which he apologized to Ms. Pinkney. The prosecutor opposed the motion on the ground that defendant failed to move to suppress the evidence prior to trial. In response, defense counsel asserted that he was not aware of any evidence that defendant was taken to the police station in handcuffs until he heard Mr. Wells's testimony at trial.

Although N.C. Gen. Stat. § 15A-975(c) does allow the making of a motion to suppress during trial, it also expressly mandates that

a pretrial determination of a motion to suppress must have been made. This never occurred in the case at bar. Moreover, the law is well settled that an objection to the admission of evidence is waived if evidence of similar import is admitted at another point of trial without objection. *State v. Wilson*, 313 N.C. 516, 532, 330 S.E.2d 450, 461 (1985). Prior to the objection at bar and after Mr. Wells had testified, Detective Sluder testified extensively without objection regarding inculpatory statements made by defendant.

For these reasons, we hold that defendant failed to preserve this assignment of error for review.

No error.

Judges WYNN and GEER concur.

Report per Rule 30(e).