

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-289

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

STATE OF NORTH CAROLINA

v.

Moore County
Nos. 02 CRS 52609 - 52612

WILLIAM GARFIELD LITTLE, JR.

Appeal by Defendant from judgments entered 24 February 2005 by Judge Jerry Cash Martin in Superior Court, Moore County. Heard in the Court of Appeals 1 November 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Edwin W. Welch, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Anne M. Gomez, for Defendant.

McGEE, Judge.

William Garfield Little, Jr. (Defendant) appeals his convictions of three counts of first degree murder. At trial, Juan Carlos Guerrero Romero (Romero) testified that on 3 June 2002, Kevin Brower (Brower) called Romero and asked whether Romero knew where Brower could purchase a kilogram of cocaine. Romero said he had a friend who could sell Brower the cocaine. Later that day, Brower and Defendant went to Romero's house and asked to purchase a kilogram of cocaine. Romero talked to his friend, Jose Luis Zapatero (Zapatero), and Zapatero told Romero to bring Brower and Defendant to his house.

Romero testified that he, Brower, and Defendant went to Zapatero's trailer and waited inside the trailer for the cocaine to be delivered. Romero further testified that Elmer Carbajal (Carbajal) and Emedel Hernandez (Hernandez) arrived at Zapatero's trailer and put cocaine on the table. Romero testified that either Brower or Defendant put a plastic bag containing money on the table. Romero testified that Hernandez told Brower and Defendant that four ounces of cocaine were missing from the kilogram, but that he would give them the missing four ounces at a later time. Romero then said he was leaving, and stood up. Romero testified that before he could leave, Defendant shot him in the neck, causing him to fall down. Romero further testified that Brower and Defendant began shooting Zapatero, Carbajal, and Hernandez. After the shooting stopped, Brower and Defendant took the cocaine and the money, and left.

Defendant gave a statement to police that was admitted into evidence. In his statement, Defendant said he told Brower he needed to buy cocaine and that Brower told him where he could buy cocaine. Defendant and Brower drove to Romero's house and then followed Romero to another trailer. Defendant stated that he, Brower, Romero, and another man waited in the trailer for several hours until two Mexican men arrived and put cocaine on the table. The men spoke to Romero in Spanish. Romero then told Brower that four ounces were missing from the kilogram of cocaine, but that the men would supply the missing four ounces the next day. Brower then told Defendant about the missing four ounces and Defendant said he

did not want to buy the cocaine. Defendant said he began talking with Romero, and Brower began arguing with the other three men. Defendant stated that Brower pulled out his gun and shot the three men, and that Defendant "pulled out [his] gun and shot [Romero] while [Romero] came toward [Defendant]." Defendant stated he left the money and the cocaine on the table, and went to the car. Brower came out of the trailer with the cocaine and the money, and got in the car. Defendant and Brower drove away.

Romero survived his gunshot wound. However, the Associate Chief Medical Examiner of North Carolina, Dr. Deborah Radisch, testified that Zapatero, Carbajal and Hernandez died as a result of gunshot wounds.

The jury returned verdicts finding Defendant guilty of the first degree murders of Zapatero, Carbajal and Hernandez under the first degree felony murder rule, based on robbery with a firearm and assault with a deadly weapon inflicting serious injury on Romero. The jury recommended that Defendant be sentenced to life imprisonment for each of the three murders. The jury also returned a verdict of guilty of assault with a deadly weapon inflicting serious injury on Romero. The trial court entered judgments on the three counts of first degree murder and sentenced Defendant to three consecutive terms of life imprisonment without parole. The trial court arrested judgment on the charge of assault with a deadly weapon inflicting serious injury. Defendant appeals.

I.

Defendant argues he is entitled to a new trial because the

trial court improperly excluded evidence offered by Defendant to show Romero's bias in favor of the State. Specifically, Defendant argues the trial court erred by excluding evidence that Romero was an illegal alien. We disagree.

An accused in a criminal case has a constitutional right to cross-examine the witnesses against him. *State v. Wrenn*, 316 N.C. 141, 144, 340 S.E.2d 443, 446 (1986). However, the Confrontation Clause only "'guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *State v. McNeil*, 350 N.C. 657, 677, 518 S.E.2d 486, 498 (1999) (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20, 88 L. Ed. 2d 15, 19 (1985)), cert. denied, *McNeil v. North Carolina*, 529 U.S. 1024, 146 L. Ed. 2d 321 (2000). "[C]ross-examination guaranteed by the Confrontation Clause is '[s]ubject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation.'" *Id.* at 677, 518 S.E.2d at 499 (quoting *Davis v. Alaska*, 415 U.S. 308, 316, 39 L. Ed. 2d 347, 353 (1974)). The scope of cross-examination of witnesses is a matter within the sound discretion of the trial court, and the trial court's rulings thereon will only be disturbed upon a showing of abuse of discretion. *Wrenn*, 316 N.C. at 144, 340 S.E.2d at 446.

In *State v. Hatcher*, 136 N.C. App. 524, 524 S.E.2d 815 (2000), our Court held the trial court did not abuse its discretion by excluding cross-examination regarding the immigration status of the two victims because the evidence was of tenuous relevance and the

trial court allowed cross-examination of similar import. *Id.* at 526, 524 S.E.2d at 816-17. In the present case, evidence of Romero's immigration status was also of tenuous, if any, relevance. Moreover, Defendant was able to elicit similar information to impeach Romero. Defendant asked Romero whether he had been charged with any drug offenses by the state or federal governments. Romero testified he had not been charged. He also testified that no government official had told him he would not be charged. This tended to show that Romero had not been promised anything in return for his testimony. Romero also testified that his uncle, a laborer, gave Romero a social security card when Romero first arrived in the United States. Romero testified that he had used this social security number to work in the United States for the past ten years. Romero further testified that he did not know to whom the social security number belonged. This tended to show that Romero had used a false social security number. We hold the trial court did not abuse its discretion by excluding cross-examination regarding Romero's immigration status, and we overrule this assignment of error.

II.

Defendant also argues the trial court erred by denying his motion to dismiss the murder indictments on the ground that the indictments did not allege all the elements of first degree murder. Our Supreme Court recently reaffirmed its holding that short-form murder indictments are permissible under N.C. Gen. Stat. § 15-144 (2005) and the United States and North Carolina Constitutions.

State v. Allen, 360 N.C. 297, 316-17, 626 S.E.2d 271, 286, cert. denied, *Allen v. North Carolina*, ___ U.S. ___, 166 L. Ed. 2d 116 (2006). Accordingly, this argument lacks merit and we overrule this assignment of error.

III.

Defendant filed a Motion for Appropriate Relief with this Court. Pursuant to N.C. Gen. Stat. § 15A-1418(b) (2005),

[w]hen a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, or whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings.

In the present case, we cannot determine Defendant's Motion for Appropriate Relief on the basis of the materials before us, and we therefore remand the Motion for Appropriate Relief for an evidentiary hearing. *See, e.g., State v. Brigman*, ___ N.C. App. ___, ___, 632 S.E.2d 498, 509, *disc. review denied*, 360 N.C. 650, 636 S.E.2d 813 (2006) (remanding the defendant's Motion for Appropriate Relief to the trial court for an evidentiary hearing.).

No error; remanded for an evidentiary hearing on Defendant's Motion for Appropriate Relief.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).