NO. COA06-737

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v. Wake County
No. 05CRS016431

SEDRICK MAXWELL BAKER

Appeal by defendant from judgment entered 15 June 2005 by Judge Evelyn W. Hill in Wake County Superior Court. Heard in the Court of Appeals 2 April 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Larissa S. Ellerbee, for the State.

Richard G. Roose for defendant-appellant.

HUNTER, Judge.

Defendant was found guilty of trafficking in marijuana by possession. He was sentenced to a minimum of twenty-five months and a maximum of thirty months in the North Carolina Department of Correction. After a careful review, we find no error.

The State presented evidence tending to show that on 26 February 2005, officers of the Raleigh Police Department received information that a package containing drugs was being delivered to the United Parcel Service ("UPS") facility at the Raleigh-Durham airport. A drug-sniffing dog subsequently alerted on a particular package. The officers opened the package and found approximately

twenty pounds of marijuana contained therein. The officers repackaged the box and one officer, dressed in a UPS driver uniform, delivered the package to the address listed on the label, 7301 Brookmont Drive, Apartment 208, in Raleigh. A person answered the door of the apartment, responded that he was "Joe" as listed on the package, and accepted delivery of the package by signing the name "Joe Frazier." The officer identified defendant as the person who accepted delivery of the package.

Other officers obtained a warrant to search the delivery address. Inside the apartment, the officers found the package that had just been delivered. They also found in the closet of the master bedroom twenty-five grams of marijuana. They also found documents tending to identify the resident of the apartment as "Sedrick Baker."

A chemist identified the substance inside the package as 19.9 pounds of marijuana.

Defendant testified that he resided at Apartment 208, 7301 Brookmont Drive, with his girlfriend and their two children. He acknowledged signing for the package. He also admitted to possession of the marijuana found in the master bedroom for personal usage. He asserted that he accepted the package as a favor on behalf of a friend named "Moe."

Defendant also testified that Moe told him the package "was clothes coming from his uncle." The State objected and moved to strike. The court sustained the objection and instructed the jury to disregard the statement. Later, in response to a question by

defense counsel as to whether he knew what was contained in the package, defendant declared: "No, ma'am, they told -- he told me." The court interrupted and refused to allow defendant to testify as to what he was told on the ground the testimony was hearsay.

Defendant's sole assignment of error concerns the court's refusal to permit him to testify regarding what he was told. He contends the testimony should not have been excluded as hearsay because it was offered not to prove the truth of the matter asserted but to explain his conduct.

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2005). By converse, "[o]ut-of-court statements offered for purposes other than to prove the truth of the matter asserted are not considered hearsay." *State v. Golphin*, 352 N.C. 364, 440, 533 S.E.2d 168, 219 (2000), *cert. denied*, 532 U.S. 931, 149 L. Ed. 2d 305 (2001). For example, "[w]hen offered to explain the subsequent conduct of the person to whom the declaration was made, an out-of-court declaration is not considered hearsay." *State v. Jones*, 347 N.C. 193, 216, 491 S.E.2d 641, 655 (1997).

We agree with defendant that the evidence was not hearsay because it was not offered to show the truth of the matter asserted, that is, that the declarant's uncle mailed or was mailing clothes to the declarant, but to explain why defendant accepted delivery of the package. The court, therefore, erred by excluding the evidence.

Even so, a "defendant is not entitled to a new trial based on trial errors unless such errors were material and prejudicial." *State v. Alston*, 307 N.C. 321, 339, 298 S.E.2d 631, 644 (1983).

> [T]he exclusion of testimony cannot be held prejudicial when the same witness is thereafter allowed to testify to the same import, or when the evidence is thereafter admitted, or when the party offering the evidence has the full benefit of the fact sought to be established thereby by other evidence.

State v. Ransome, 342 N.C. 847, 853, 467 S.E.2d 404, 408 (1996). Thus, the erroneous exclusion of evidence as hearsay is not prejudicial error if similar evidence is admitted elsewhere. *State v. Burke*, 342 N.C. 113, 120, 463 S.E.2d 212, 217 (1995). Moreover, overwhelming evidence of guilt may render an error even of constitutional dimension harmless beyond a reasonable doubt. *State v. Autry*, 321 N.C. 392, 403, 364 S.E.2d 341, 348 (1988).

We conclude the error is harmless. Defendant testified that he accepted the package solely as a favor for an acquaintance identified as "Moe"; that he had no reason to suspect Moe was a drug dealer; and that he did not know what was in the package. Moreover, when defendant saw a police officer approach him outside the apartment after he had accepted delivery of the package, he turned and ran from the officers. Upon apprehension, before any questioning by the officers, he voluntarily stated that he did not know what was in the package. "An accused's flight is 'universally conceded' to be admissible as evidence of consciousness of guilt and thus of guilt itself." *State v. Jones*, 292 N.C. 513, 525, 234 S.E.2d 555, 562 (1977) (quoting Wigmore on Evidence § 276 (1940)).

Defendant received a fair trial, free of prejudicial error.

No error.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).