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NO. COA06-832

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v.

JO LYNN HUNT

Robeson County
No. 02 CRS 51753

Appeal by defendant from judgment entered 14 February 2006 by Judge Jack A. Thompson in Robeson County Superior Court. Heard in the Court of Appeals 9 April 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Elizabeth Leonard McKay, for the State

Haakon Thorsen for defendant-appellant.

ELMORE, Judge.

On 18 March 2002, a warrant was issued charging defendant Jo Lynn Hunt with wantonly injuring personal property causing damage in excess of $200.00. On 15 April 2002, defendant was convicted in district court and sentenced to forty-five days imprisonment. Defendant appealed. The case was tried at the 14 February 2006 Criminal Session of Robeson County Superior Court.

The State presented evidence at trial which tended to show the following: On 17 March 2002, Laquanda Smith was living in Lumberton. Smith owned a 1990 Ford Probe, and had parked it in

front of the balcony of her apartment. Smith’s car had been recently vandalized, so she went out on the balcony to check on it three or four times. The last time she went out to check on it, she saw defendant leaving the passenger side of her car. Smith called the police and then went out to look at her car which was covered in paint. She also saw the defendant leaving in a red Ford Escort. Afterwards, Smith went by defendant’s residence to get her address for the police, and discovered a red Ford Escort parked behind her house.

At trial, during the State’s direct examination of Smith, the following exchange occurred:

> Q: And when did these incidents of damage to your automobile, when did they start, if you recall?
>
> A: When she first found out that I was pregnant from James.
>
> [Defendant’s Counsel]: Objection.
>
> THE COURT: The objection is overruled.
>
> THE WITNESS: When she first found out I was pregnant from James.

During the State’s cross-examination of defendant, the following exchange occurred:

> Q : . . . Ms. Hunt, what have you been convicted of in the last ten years that carries a sentence of more than sixty days in jail?
>
> A: Nothing
>
> Q: So, you wouldn't be the Jo Lynn Hunt who has been convicted of trespassing, would you?
>
> A: That was --

[Defendant’s Counsel]: Objection, Your Honor.

THE COURT: Overruled.

The WITNESS: That was some time ago.

At the close of the evidence, defendant moved for a mistrial based on the allowance of the question regarding her prior conviction for trespassing. The motion was denied. Defendant was convicted of committing willful and wanton injury to personal property causing damage of more than $200.00. Defendant was given a suspended thirty day sentence and placed on supervised probation for eighteen months. Defendant appeals.

Defendant first argues that the trial court erred in allowing the State to cross-examine her regarding a prior conviction for trespassing. Defendant notes that second-degree trespass is a Class 3 misdemeanor and may not be used for the purpose of impeachment regarding prior convictions. Thus, defendant contends that the questioning to which she was subjected exceeded the limitations set by Rule 609(a). Defendant further argues that the trial court should have granted a mistrial, because the improper question was highly prejudicial. Defendant claims that the question destroyed her credibility.

After careful review of the record, briefs and contentions of the parties, we find no error. There is a presumption that a trial court’s evidentiary rulings are proper, and defendant bears the burden of demonstrating that a particular ruling was incorrect. *State v. Herring*, 322 N.C. 733, 749, 370 S.E.2d 363, 373 (1988). Defendant claims that the State’s questioning regarding her prior

conviction for trespassing exceeded the limits of Rule 609(a). "For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited *from the witness* or established by *public record during cross-examination or thereafter*." *State v. Renfro*, 174 N.C. App. 402, 412, 621 S.E.2d 221, 227 (2005)(quoting N.C. Gen. Stat. § 8C-1, Rule 609(a) (2003)). First-degree trespass under N.C. Gen. Stat. § 14-159.12 is designated a Class 2 misdemeanor. Second degree trespass is a Class 3 misdemeanor. N.C. Gen. Stat. § 14-159.13(b). Here, however, the record is silent as to whether the defendant was convicted of first or second-degree trespassing. Thus, defendant has failed to carry her burden of proving error in the trial court's ruling.

Moreover, even assuming *arguendo* that the trial court erred by admitting the evidence of trespassing conviction, we conclude there was no prejudicial error in light of the overwhelming evidence of her guilt. See *State v. Patterson*, 103 N.C. App. 195, 205-06, 405 S.E.2d 200, 207 (1991)(stating that [u]nder G.S. 15A-1443(a) a defendant must demonstrate that 'there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.') (quotations omitted). Smith testified that she saw defendant standing by her car, saw defendant leave the scene in a red Ford Escort, and then discovered paint on her car. Smith later saw a red Ford Escort parked behind defendant's residence. Smith

further testified that she had known defendant for eight or nine years, knew her when she saw her "very well," and that the parking lot where her car was parked was brightly lit and had "plenty of light around." Smith also identified defendant in court. Thus, we hold that there was no prejudicial error.

We also conclude that the trial court did not abuse its discretion by refusing to declare a mistrial. Whether to declare a mistrial is a decision:

> . . . within the sound discretion of the trial court and its ruling will not be disturbed on appeal unless it is so clearly erroneous as to amount to a manifest abuse of discretion.'" It is appropriate for a trial court to declare a mistrial "'only when there are such serious improprieties as would make it impossible to attain a fair and impartial verdict under the law.

State v. Bowman, 349 N.C. 459, 472, 509 S.E.2d 428, 436 (1998)(citations and quotations omitted). Defendant argued that the trial court should have declared a mistrial due to the question regarding her prior conviction for trespassing. As explained above, we have concluded that there was no error. However, even if admission of the evidence was in error, the trial court gave a curative instruction. The court instructed the jury:

> Ladies and gentlemen, during the cross examination of the defendant, the prosecutor referred to the defendant's conviction of trespassing. You will disregard the question and answer of the defendant and not consider it in your deliberations in any way.

"Jurors are presumed to follow the trial court's instructions." *State v. McNeil*, 350 N.C. 657, 689, 518 S.E.2d 486, 506 (1999)(citing *State v. Jennings*, 333 N.C. 579, 618, 430 S.E.2d 188,

208, *cert. denied*, 510 U.S. 1028, 126 L. Ed. 2d 602 (1993). Thus, any prejudice to defendant was cured. Furthermore, the question regarding defendant's prior conviction for trespassing did not result in "substantial and irreparable prejudice to the defendant's case," *State v. Harris*, 145 N.C. App. 570, 576, 551 S.E.2d 499, 503 (2001), in light of the overwhelming evidence of her guilt. Accordingly, the assignments of error are overruled.

Finally, defendant argues that the trial court erred by allowing Smith to testify that someone started damaging her vehicle at the time defendant learned that Smith was pregnant by the father of defendant's children. Defendant contends that there was no foundation to show that Smith had personal knowledge of when defendant learned about this information and that Smith's testimony was speculative. However, even if admission of this testimony was error, there can be no prejudicial error in light of our conclusion, discussed above, that the evidence of defendant's guilt was overwhelming. Accordingly, we find no error.

No error.

Judges WYNN and GEER concur.

Report per Rule 30(e).