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NO. COA07-1098

NORTH CAROLINA COURT OF APPEALS

Filed: 20 May 2008

STATE OF NORTH CAROLINA

v.

Guilford County  
Nos. 05CRS076301  
05CRS078012-14

BRYANT EARNEST HAWKINS

Appeal by defendant from judgments entered 27 April 2006 by Judge Michael E. Helms in Guilford County Superior Court. Heard in the Court of Appeals 2 April 2008.

*Attorney General Roy R. Cooper, III, by Special Deputy Attorney General E. Curte Haywood, for the State.*

*Nancy R. Gaines for defendant-appellant.*

HUNTER, Judge.

Bryant Earnest Hawkins ("defendant") appeals from judgments entered on 27 April 2006 pursuant to jury verdicts finding him guilty of possession of a firearm by a felon, robbery with a dangerous weapon, assault with a deadly weapon inflicting serious injury, and possession with intent to sell or deliver cocaine. Defendant was sentenced to eleven to fourteen months' imprisonment for the conviction of possession with intent to sell or deliver cocaine, twenty to twenty-four months' imprisonment for the conviction of possession of a firearm by a felon, 117 to 150 months' imprisonment for the conviction of robbery with a dangerous

weapon, and forty-six to sixty-five months' imprisonment for the conviction of assault with a deadly weapon inflicting serious injury. All terms were imposed consecutively. After careful consideration, we hold that defendant's trial was free from error.

The State presented evidence tending to show that defendant entered Andrew Lee Anderson, Jr.'s ("Anderson") home on 29 December 2004 between the hours of 7:00 and 8:00 in the morning through an open screen door. Anderson testified that he had never seen defendant before and that defendant entered his home armed with a gun, which he pointed at Anderson's head. Defendant grabbed Anderson by the shirt and asked, "where it's [sic] at[.]" Defendant then physically led Anderson through the rooms of his home, repeatedly asking "where is it[,]" while taking a gold chain, a ring, and engraved earrings belonging to Anderson.

After all rooms had been searched, defendant brought Anderson back to the main room where he removed Anderson's wallet and cell phone. Defendant then lowered the gun from Anderson's head to his side, Anderson then grabbed the gun and it discharged, shooting Anderson in the hand and removing a portion of two of his fingers. Anderson then fled his home and was treated at a hospital for the injuries sustained to his hand. Defendant was not apprehended at that time.

On 26 April 2005, Officer J.B. Tucker of the Greensboro Police Department was on patrol when he noticed a vehicle with an expired registration tag. Officer Tucker initiated a traffic stop and, as he approached the vehicle, detected a strong odor of marijuana

coming from it. Officer Tucker then asked the driver to step out of the vehicle, and defendant presented him with Anderson's driver's license. In court, Officer Tucker identified defendant as the driver of that vehicle. Officer Tucker testified that his search of defendant revealed cocaine and marijuana. The subsequent search of the vehicle revealed that defendant was in possession of a loaded 9mm handgun and additional marijuana.

After transporting defendant to the Guilford County Jail, Officer Tucker remained under the impression that defendant was in fact Anderson, rather than defendant. Officer Tucker later discovered, after meeting Anderson, that defendant had handed him Anderson's driver's license. Upon conferring with detectives, Officer Tucker learned that the person he had arrested was in fact defendant.

While Anderson was at the police station, the police were attempting to verify that Anderson was not the man they had arrested by looking at defendant's mug shot. Anderson then saw that mug shot of defendant and stated that he was "the guy who robbed me." Defendant was thereafter arrested and questioned.

At trial, defendant testified on his own behalf. Defendant admitted to using Anderson's driver's license during the traffic stop, but claimed he received it from someone else. Defendant denied any involvement in the robbery and shooting of Anderson. Defendant also testified, contrary to Anderson's testimony, that at the time of the robbery, defendant had known Anderson for approximately one month. Defendant also testified that he and

Anderson both dealt drugs and frequented the same "drug house" in the neighborhood where defendant claims he received Anderson's identification.

Defendant presents two issues for this Court's review: (1) whether the trial court violated defendant's Fourteenth Amendment rights by admitting testimony over his objection regarding Anderson's identification of defendant; and (2) whether the trial court erred in restricting the scope of defendant's cross-examination of any pending charges Anderson may have had against him at the time of trial.

I.

Defendant first argues that the trial court erred in admitting testimony that defendant was identified by Anderson after Anderson inadvertently saw a copy of defendant's mug shot at the police station. We disagree.

The question presented here is whether an identification of a defendant by the victim of a crime, made inadvertently based on the victim noticing a mug shot of a defendant, "was so 'unnecessarily suggestive and conducive to irreparable mistaken identification' as to deprive defendant of due process under the Fourteenth Amendment. In deciding this question we will look to the 'totality of the circumstances.'" *State v. Haskins*, 278 N.C. 52, 56, 178 S.E.2d 610, 612 (1971) (citations omitted).

In *State v. Wheeler*, 34 N.C. App. 243, 251, 237 S.E.2d 874, 879 (1977), this Court held that an inadvertent identification of a defendant while both the person making the identification and the

defendant were in the police station does not constitute an illegal lineup as proceedings have not yet begun against the defendant. Moreover, this Court held that an inadvertent viewing of a defendant by the testifying witness is not "so impermissibly suggestive that it tainted . . . the in-court identification." *Id.*

Here, the identification was inadvertent and even less suggestive as Anderson was not there to discuss the robbery, but instead, to clear his name of the charges that defendant allegedly committed while representing that he was Anderson. Additionally, as was the case in *Wheeler*, proceedings had not yet begun against defendant for the charges stemming from the robbery or the traffic stop. Finally, even if the photo was intentionally shown to Anderson, this was done in an effort to determine if Anderson and defendant were the same person, not in an effort to identify defendant as the individual who robbed his home. Accordingly, defendant's constitutional rights were not violated and his assignment of error as to this issue is rejected.

## II.

Defendant's final argument is that the trial court committed reversible error in limiting the scope of defendant's cross-examination of Anderson. We disagree.

When the purpose of a cross-examination is character impeachment, the witness may not be asked if he or she has been charged with a crime. *State v. Letterlough*, 53 N.C. App. 693, 698, 281 S.E.2d 749, 752 (1981). "However, inquiry into whether a witness is currently under indictment should be permissible when

the purpose of the inquiry is to show bias. The absolute exclusion of testimony that would clearly show bias may constitute reversible error." *Id.* (citing 1 Stansbury's N.C. Evidence § 45 (Brandis rev. 1973)).

That said, "in order for the propriety of the exclusion to be reviewed on appeal, 'the record must sufficiently show what the purport of the evidence would have been.'" *Id.* at 698, 281 S.E.2d at 753. In *Letterlough*, this Court found that although the cross-examination of the testifying witness concerning any charges brought against him should have been allowed, the error was not prejudicial as the record was "devoid of any clue" as to how the witness would have answered. *Id.*

In this case, it appears as though defendant's counsel was attempting to establish that Anderson may be biased in his testimony. However, even were we to find that the trial court erred in sustaining the State's objection, defendant concedes that "the record does not reflect what pending charges Mr. Anderson had[.]" Accordingly, under *Letterlough*, defendant is unable to establish prejudice.

Moreover, this Court also noted in support of its decision in *Letterlough* that "defense counsel was permitted, without objection, to ask [the witness] if he had been promised anything for his testimony[.]" *Id.* at 699, 281 S.E.2d at 753. Similarly, defendant's counsel asked Anderson if the prosecutor had "discussed a deal in exchange for your testifying in regard to your pending cases[.]" Anderson, like the witness in *Letterlough*, answered in

the negative. Accordingly, because defendant has failed to include in the record what Anderson's response would have been, he is unable to show prejudicial error and defendant's assignment of error as to this issue is therefore rejected.

III.

In conclusion, we hold that defendant's constitutional rights were not violated when Anderson identified him as the individual who committed the robbery as the identification was inadvertent. We also hold that defendant is unable to establish prejudicial error based on the trial court's limiting the scope of his counsel's cross-examination of Anderson.

No error.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).