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NO. COA10-137

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2010

STATE OF NORTH CAROLINA

v.

JEREMY DOUGLAS EDWARDS

Guilford County

Nos. 08 CRS 97426-27;

08 CRS 97429-30;

05 CRS 102097;

09 CRS 24169-70

Appeal by Defendant from judgment entered 23 April 2009 by Judge Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 1 September 2010.

Attorney General Roy Cooper, by Special Deputy Attorney General E. Burke Haywood, for the State.

McCotter, Ashton & Smith, P.A., by Rudolph A. Ashton, III and Kirby H. Smith, III, for Defendant.

BEASLEY, Judge.

Defendant, Jeremy Douglas Edwards, appeals from various drug related convictions. For the reasons stated herein, we conclude there is no error.

In July 2008, Jeffrey Franks contacted local law enforcement officials seeking to negotiate a deal that would afford him relief from "some trouble with the law." On 22 July 2008, police detectives contacted Franks and provided him with an opportunity to assist them in a drug investigation. During an initial interview

with detectives, Franks identified Defendant as a heroin dealer in the Greensboro area. On 24 July 2008, detectives contacted Franks and requested that he arrange to purchase heroin from Defendant. Franks contacted Defendant and the pair agreed to meet to conduct the transaction. Before meeting with Defendant, detectives fitted Franks with a wire to maintain audio surveillance during the drug transaction. Franks participated in the arranged drug deal and was able to purchase 15 bundles of heroin from Defendant for approximately \$900. Following the transaction, detectives retrieved the money and heroin and debriefed Franks. Later, it was determined that the 15 bundles contained 4.8 grams of heroin.

On 7 August 2008, acting at the behest of the investigating detectives, Franks again contacted Defendant in order to purchase more heroin. Franks agreed to meet Defendant at his apartment to purchase 50 bundles of heroin for \$3,500. Franks was once again wired for audio surveillance and went to Defendant's apartment where he purchased 50 bundles of heroin and a small amount of marijuana. Later, it was determined that the 50 bundles purchased from Defendant in the transaction contained 16 grams of heroin.

Detectives sought a search warrant for Defendant's apartment. While the warrant was being drafted, police officers maintained surveillance of Defendant's apartment. Before the search warrant was executed, officers surveilling Defendant's apartment placed him

under arrest as he attempted to exit. Soon thereafter, detectives arrived with a search warrant. While conducting a search of Defendant's apartment, police officers recovered an additional 40 bundles of heroin. It was later determined the 40 bundles of heroin recovered from Defendant's apartment contained 12.3 grams of heroin.

Defendant was convicted of the following drug related offenses: trafficking heroin by possession (28 grams or more), possession of heroin with intent to sell and deliver, possession of a schedule I controlled substance (3,4-Methylenedioxymethamphetamine, known as "MDMA"), trafficking heroin by sale and delivery (between 14 and 28 grams) and trafficking heroin by sale and delivery (between 4 and 14 grams), trafficking heroin by transportation (between 4 and 14 grams), and trafficking heroin by possession (between 4 and 14 grams).

On appeal Defendant argues: I) the trial court erred by denying his motion to continue; II) the trial court erred by denying his motion to suppress the SBI lab reports; III) the trial court erred by denying him the opportunity to confront and cross-examine the witnesses against him; IV) the trial court erred by denying his motion to dismiss the charge of trafficking more than 28 grams of heroin by possession.

I.

Following his arrest and indictment, Defendant received a court appointed attorney. On 9 March 2009, Defendant retained private counsel and his court appointed attorney was allowed to withdraw. During the trial, Defendant's newly hired attorney requested a continuance so that he could find an expert witness to challenge the methods used to weigh the heroin recovered from the police investigation. The trial court denied Defendant's motion. On appeal, Defendant argues that he was denied the effective assistance of counsel as a result of the trial court's decision to deny his motion for a continuance. We disagree.

For a motion for continuance, the trial court must consider, in relevant part:

(1) [w]hether the failure to grant a continuance would be likely to result in a miscarriage of justice; [and]

(2) [w]hether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation[.]

N.C. Gen. Stat. § 15A-952(g) (2009). Typically, a trial court's decision regarding a motion for a continuance will not be overturned on appeal absent an abuse of discretion; however, "if a motion to continue is based on a constitutional right, then the motion presents a question of law which is fully reviewable on appeal." *State v. Covington*, 317 N.C. 127, 129, 343 S.E.2d 524,

526 (1986) (internal quotations and citations omitted). "[T]he denial of a motion to continue, whether a constitutional issue is raised or not, is sufficient grounds for the granting of a new trial only when the defendant is able to show that the denial was erroneous and that he suffered prejudice as a result of the error." *State v. Worrell*, 190 N.C. App. 387, 391, 660 S.E.2d 183, 186, *disc. review denied*, 362 N.C. 688, 671 S.E.2d 531 (2008) (internal quotations omitted).

"It is implicit in the constitutional guarantees of assistance of counsel and confrontation of one's accusers and witnesses against him that an accused and his counsel shall have a reasonable time to investigate, prepare and present his defense." *State v. McFadden*, 292 N.C. 609, 616, 234 S.E.2d 742, 747 (1977). A defendant must "be allowed a reasonable time and opportunity to investigate and produce competent evidence, if he can, in defense of the crime with which he stands charged and to confront his accusers with other testimony." *State v. Thomas*, 294 N.C. 105, 113, 240 S.E.2d 426, 433 (1978) (internal quotations omitted). Accordingly, we will review Defendant's appeal as a question of law.

After a thorough review of the record, we hold that the trial court provided Defendant's counsel with a reasonable opportunity to prepare for trial. Defendant was indicted for trafficking,

possession with intent to sell and deliver, and possession of a schedule I narcotic on 27 October 2008. Defendant was indicted on the remaining trafficking charges on 16 February 2009. On 9 March 2009, Defendant's court-appointed attorney was allowed to withdraw and Defendant retained counsel. On 9 April 2009, Defendant's counsel filed a motion for supplementary discovery, generally seeking additional information about the testing procedures used to analyze the controlled substances that were seized from Defendant. In response to the motion for supplementary discovery, the State delivered the requested information to Defendant's counsel on 17 April 2009. After reviewing the supplementary evidence, Defendant's counsel determined that he would need the assistance of an expert witness to interpret the newly received discovery. On 20 April 2009, Defendant filed a second motion for supplementary discovery and a motion to continue the case. Defendant sought additional time to hire his own expert to review the State's evidence.

The record evidence indicates that Defendant's hired counsel became aware that the weight of the controlled substances following the withdrawal of Defendant's appointed counsel on 9 March 2009. Approximately six weeks is more than adequate time for Defendant's retained counsel to secure an expert to review potential issues as to the weight of the heroin. Moreover, at the hearing on the

motion for a continuance, the State tendered an SBI chemist to address any issues not addressed in the State's previous discovery response. Accordingly, we hold that because Defendant had ample opportunity to secure an expert and Defendant has failed to demonstrate that the trial court's denial of his motion to continue caused him prejudice, the trial court appropriately denied Defendant's motion for a continuance of his trial.

II.

On 21 April 2009, Defendant moved to suppress the lab reports indicating that the substances seized from the police informant and Defendant's apartment contained heroin. The trial court denied Defendant's motion to suppress. On appeal, Defendant argues that the trial court's decision to deny his motion to suppress the lab reports was erroneous. We disagree.

Our General Assembly has provided that a trial court must suppress evidence if:

(1) Its exclusion is required by the Constitution of the United States or the Constitution of the State of North Carolina;
or

(2) It is obtained as a result of a substantial violation of the provisions of this Chapter. In determining whether a violation is substantial, the court must consider all the circumstances, including:

a. The importance of the particular interest violated;

- b. The extent of the deviation from lawful conduct;
- c. The extent to which the violation was willful;
- d. The extent to which exclusion will tend to deter future violations of this Chapter.

N.C. Gen. Stat. § 15A-974 (2009). "On review of a motion to suppress evidence, an appellate court determines whether the trial court's findings of fact are supported by the evidence and whether the findings of fact support the conclusions of law." *State v. Haislip*, 362 N.C. 499, 499, 666 S.E.2d 757, 758 (2008).

In this case, the trial court appropriately denied Defendant's motion to suppress the lab reports. Lab technicians utilized a random sampling technique to determine the weight of the controlled substances. In his motion to suppress, Defendant argued that "the suppression of this evidence is required by the Constitution of the United States and the Constitution of North Carolina, and it was obtained in violation of Chapter 15, Chapter 15A and Chapter 90 of the North Carolina General Statutes." Defendant argued that the State Bureau of Investigation utilized unreliable testing techniques when measuring the controlled substances. However, Defendant fails to identify, nor can we find, any authority in which a Court allowed a motion to suppress based on the reliability of the evidence.

Our courts have generally held that "once the trial court makes a preliminary determination that the scientific or technical area underlying a qualified expert's opinion is sufficiently reliable (and, of course, relevant), any lingering questions or controversy concerning the quality of the expert's conclusions go to the weight of the testimony rather than its admissibility." *State v. Streater*, ___ N.C. App. ___, ___, 678 S.E.2d 367, 375 (quoting *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 461, 597 S.E.2d 674, 688 (2004)), *disc. review denied*, 363 N.C. 661, 687 S.E.2d 294 (2009). A trial court should first look to established precedent to determine whether the precedent underlying an expert's opinion is reliable. *Howerton*, 358 N.C. at 459, 597 S.E.2d at 687. In the present case, because our Courts have recognized that random sampling is a permissible means of identifying large quantities of illegal substances, *see State v. Hayes*, 291 N.C. 293, 302, 230 S.E.2d 146, 151-52 (1976); *State v. Absher*, 34 N.C. App. 197, 200, 237 S.E.2d 749, 752 (1977), Defendant's argument as to the specific random sampling procedures goes to the weight of the testimony rather than its admissibility.

Accordingly, Defendant's contention that the trial court erroneously failed to grant his motion to dismiss is without merit.

III.

Defendant next argues that "the trial court erred by denying

[him] the opportunity to confront and cross-examine the witnesses against him." We disagree.

"Under the Confrontation Clause of the Sixth Amendment to the United States Constitution, an accused is guaranteed the right to be confronted with his adverse witnesses." *State v. Ward*, 354 N.C. 231, 260, 555 S.E.2d 251, 270 (2001). However, "the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20, 88 L. Ed. 2d 15, 19 (1985). Trial court judges maintain their discretion to limit the scope of cross-examination. *State v. McNeil*, 350 N.C. 657, 677, 518 S.E.2d 486, 499 (1999). A trial court's decision to limit cross-examination will not be disturbed on appeal absent a showing that "the verdict [of the jury] was improperly influenced." *State v. Jacobs*, 172 N.C. App. 220, 228, 616 S.E.2d 306, 312 (2005) (citations omitted).

Here, the trial court's decision to limit the scope of the expert witness's cross-examination did not improperly influence the jury's verdict. At trial, witness, Kathryn Kruse, was allowed to testify as an expert in "the field of forensic chemistry and identification analyses of controlled substances." Kruse generally explained the processes by which she weighed and analyzed the

controlled substances recovered from Defendant. Following Kruse's testimony on direct examination, Defendant's counsel sought to cross-examine Kruse, questioning her about a study of forensic labs around the country published by the National Academy of Sciences. Despite Kruse's testimony that she was familiar with the study, the trial court prohibited Defendant's counsel from inquiring as to whether suggestions from the study had been implemented in Kruse's lab. The trial court reasoned that cross-examination on this issue was irrelevant and the proper foundation had not been set.

Assuming *arguendo* that the trial court erroneously prohibited Defendant's counsel from asking questions pertaining to the National Academy of Sciences study, the error was unlikely to have influenced the decision of the jurors. According to Defendant's counsel's offer of proof, the study highlighted problems throughout the industry of forensic testing. However, the study did not offer evidence to suggest that testing in this case was unreliable. Moreover, Kruse provided testified that the testing procedures used in this case were reliable. With reliable testing determining that the substances seized in this case were indeed heroin, it is doubtful that a general report challenging industry methodology would have changed the outcome at trial. Accordingly, Defendant's argument is without merit.

In his final argument, Defendant contends that "the trial court erred by denying [his] motion to dismiss the charge of trafficking more than 28 grams of heroin by possession, when there was no evidence that [he] ever possessed that quantity of heroin at any one time." Specifically, Defendant argues that the trial court erred by combining the total weight of heroin found on 7 August 2008, to reach the statutorily required amount. We disagree.

"In considering a motion to dismiss, it is the duty of the court to ascertain whether there is substantial evidence of each essential element of the offense charged." *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980). "'Substantial evidence' is defined as that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Porter*, 303 N.C. 680, 685, 281 S.E.2d 377, 381 (1981). All evidence, "whether competent or incompetent, must be considered by the trial judge in the light most favorable to the State, giving the State the benefit of every reasonable inference that might be drawn therefrom. Any contradictions or discrepancies in the evidence are for resolution by the jury." *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984).

To convict a defendant of the offense of N.C. Gen. Stat. § 90-95(h)(4)(c) (2009), the State must prove, beyond a reasonable doubt, that Defendant was in possession of 28 grams or more of

heroin. Our Court has held that separate caches of drugs stored in different locations may be used to support a single possession conviction. See *State v. Smith*, 99 N.C. App. 67, 392 S.E.2d 642 (1990). Moreover, "[i]n order for the State to obtain multiple convictions for possession of a controlled substance, the State must show distinct acts of possession separated in time and space." *State v. Rozier*, 69 N.C. App. 38, 316 S.E.2d 893 (1984).

Here, there is substantial evidence in the record that Defendant was in possession of at least 28 grams of heroin. On 7 August 2008, Defendant sold 16 grams of heroin to a police informant. The arranged drug buy occurred inside Defendant's apartment. Several hours later, pursuant to a search warrant, officers recovered an additional 12.3 grams of heroin from Defendant's apartment. During the time between the arranged buy and the execution of the search warrant, officers were positioned outside of Defendant's apartment and did not observe anyone entering or exiting the residence.

The evidence presented at trial suggests that at the time the informant purchased the 16 grams from Defendant, there was an additional 12.3 grams of heroin stored in a dresser upstairs. Though in two separate locations in the apartment, Defendant was in possession of the required statutory amount at the time that he participated in the arranged buy with the police informant.

Defendant argues that there is a possibility that he could have exited through an unmonitored rear entrance and acquired additional heroin following his sale to the informant. However, when viewed in a light most favorable to the State, there is sufficient evidence in the record from which a reasonable juror could find that Defendant was in possession of 28.3 grams of heroin on 7 August 2008.

Accordingly, we hold that the trial court appropriately denied Defendant's motion to dismiss.

No Error.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).