NO. COA10-366

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

STATE OF NORTH CAROLINA

v. Stanly County
No. 08 CRS 55175, 1859

DUKE CLIFFORD WILSON,
Defendant.

Appeal by defendant from judgments entered 30 October 2009 by Judge John L. Holshouser, Jr., in Stanly County Superior Court. Heard in the Court of Appeals 14 October 2010.

Attorney General Roy Cooper, by Assistant Attorney General Charles E. Reece, for the State.

Richard E. Jester for defendant.

ELMORE, Judge.

Duke Clifford Wilson[1] (defendant) appeals his conviction for discharging a weapon into occupied property. After careful review, we find no error.

On 24 June 2008, a man standing on the lawn of Carol Simmons's apartment fired several shots into the apartment. The man was identified as defendant by witnesses, including Ms. Simmons, who is defendant's cousin, and a neighbor, Cheryl Greene. Defendant's

[1]There is some dispute in the record as to whether defendant's name is Duke Clifford Wilson or Clifford Duke Wilson. As the judgment names him as "Wilson, Duke Clifford," we use that name herein.

sister, Princess Wilson, was in the apartment at the time of the shooting; witnesses stated that, before firing the shots, defendant and his sister had an exchange on the porch of the apartment wherein defendant was upset because he had discovered that Ms. Wilson was pregnant by Curtis Robinson, their cousin.[2] When Ms. Simmons arrived home during the exchange and told defendant to leave her property, defendant fired shots into her apartment. He then walked away, eventually breaking into a run. When officers arrived on the scene, Ms. Simmons gave them defendant's name and description, and another witness told them the direction in which he had run. Defendant was seen entering a nearby brick home and was arrested there shortly thereafter. No handgun was ever recovered in connection with the shooting. Among the evidence gathered by the officers were photographs of the exterior and interior of the apartment showing the damage done by the bullets, including to a window, an exterior wall, two interior walls, and a couch.

Defendant's first argument on appeal is that the trial court erred in denying his motion in limine to exclude certain evidence – specifically, a "spent bullet" located at the scene and the photographs of the damage done to the apartment by the shooting.

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[2]There is some conflict in the testimony as to the relationship between Ms. Wilson and Mr. Robinson. Mr. Robinson testified that she was his "family member" but agreed when defendant's attorney classified her as his "cousin"; Ms. Wilson and defendant's other sister also testified that Mr. Robinson was their cousin. However, Ms. Simmons, Mr. Robinson's sister, testified that the mother of Ms. Wilson and defendant was her cousin, and other witnesses term him Ms. Wilson's uncle.

This evidence was not disclosed to defendant until five days before the trial began, apparently due to a miscommunication among the officers who took and processed the photographs and the district attorneys involved in the case.

Defendant argues at length that the evidence in question is the type contemplated by N.C. Gen. Stat. § 15A-902, which requires that the State make available certain types of evidence in discovery. Neither the State nor this Court – nor, indeed, the trial court – disagrees with that statement. Defendant then argues that the trial court's oral ruling made at the time of the motion was inadequate and incomplete. Here again, the trial court agreed: the court made this brief ruling when the motion was made:

> In any event, let the record show that the defendant, through counsel, has filed a motion in limine regarding the introduction of certain physical evidence and officer's testimony. Court has reviewed the North Carolina General Statutes 15A-903, 907, 910 and 975. The court further finds that the evidence in question was tendered to the defendant by the State contemporaneously upon the State's location and realization that that evidence did in fact exist. That the State complied with its continuing obligation to furnish discovery material to the defendant, that the evidence is apparently simply corroborative of the existence of the residence as it is presently – or its condition is presently seen today. And I do not find that it's prejudicial to the extent that the defendant has been placed in a bad position. I find that he has been able to prepare for his defense adequately and that the provisions of the Chapter 15A-975 simply does not apply. So with that finding, I'm going to, Mr. Phillips, respectfully deny that particular motion at this time.

The next day, before the jury was brought in, the trial court made a more thorough statement:

> Gentlemen, let me, before we actually bring our jury back, state that when Mr. Phillips made his motion in limine, I dictated kind of an order from the hip, which was pretty fragmented. I couldn't find my notes. And because of that, I wanted to put that order in a more suitable form with more suitable language. And I have asked the court reporter to enter this as the text of that order. And Melissa, if you'll just take this down for me.
>
> Please note that the defendant moves for an order prohibiting the introduction of physical evidence which was not disclosed 20 days - 20 working days before the trial; further, requesting that no testimony be allowed from an officer who did not disclose his file to the defendant prior to 20 working days before the trial; and further requesting that the testimony of law enforcement officers be limited to those files which were disclosed to the defendant through discovery.
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> The defendant contends that certain evidence was disclosed virtually one week before the trial and should be excluded as not being timely presented in violation of Article 48 of the North Carolina General Statutes. After hearing arguments from the State's attorney and defense counsel, [the] court makes the following findings of fact:
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> One, court finds that the Office of the District Attorney notified defense counsel of the existing evidence in question as soon as it was discovered by the State; that there were other references to the evidence in question and other discovery furnished to the defendant which, in this court's opinion, served to place the defendant on notice that it may very well exist.
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> At no time was any evidence purposely or deliberately withheld from the defendant, but rather was immediately furnished to the defendant upon the State's discovery that it did exist.
>
> There are no facts which show that the State failed to comply with Article 48.
>
> The court finds that the evidence in question simply corroborates the condition of

> the residence as it exists today and is not prejudicial to the defendant's ability to prepare a proper defense in this case.
>
> Court further finds that G.S. 15A-975 is not applicable to the facts before this court.
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> Based upon the foregoing, the defendant's motion in this case - motions, make that plural - in this case, are respectfully denied. And then if you can just enter my name. And I want to thank you for allowing me to enter that again.

Our discovery statutes are intended to "protect the defendant from unfair surprise." *State v. Tucker*, 329 N.C. 709, 716, 407 S.E.2d 805, 809-10 (1991) (citation omitted). "Whether a party has complied with discovery and what sanctions, if any, should be imposed are questions addressed to the sound discretion of the trial court." *Id.* at 716, 407 S.E.2d at 810 (citation omitted). "[The] discretionary rulings of the trial court will not be disturbed on the issue of failure to make discovery absent a showing of bad faith by the [S]tate in its noncompliance with the discovery requirements." *State v. McClintick*, 315 N.C. 649, 662, 340 S.E.2d 41, 49 (1986) (citations omitted).

Defendant argues that, had he known before trial that the State had "proof positive that the home was fired into and that a bullet was found inside[,]" it would have affected his consideration of plea offers and the preparation of his defense. As to the plea offer, the State noted during the motion hearing that plea negotiations took place *after* the information was disclosed and before the trial began. As to the preparation of his defense, defendant does not explain in what way the pictures would have influenced his defense; at trial, his attorney never attempted

to deny that a shooting had taken place, but rather disputed the circumstances of it, including that defendant was the man who had fired the shots.

Defendant has not shown that the trial court's ruling was an abuse of its discretion. As such, this argument is overruled.

Defendant next argues that the trial court erred in curtailing his cross-examination of one witness. This argument is without merit.

Flora Annette Miles, a neighbor of Ms. Simmons, was one of the witnesses who testified as to the events in question. In a statement she made to an assistant district attorney when she was originally questioned about the incident, she stated that, just before the incident occurred, Ms. Simmons arrived home in a car from a baby shower. At trial, she testified that she had seen Ms. Simmons arrive home on foot at the time of the incident. Defendant's attorney questioned Ms. Miles about this discrepancy, and the State objected on the grounds of relevance. Outside the presence of the jury, defendant's attorney conducted voir dire of Ms. Miles, during which she stated that Ms. Simmons's arrival via car had occurred the Saturday previous to the date of the shooting. She reiterated that, on the date of the shooting, she had seen Ms. Simmons arrive on foot. The trial court ruled that any testimony as to the baby shower or events that occurred related to it were excluded, as they were irrelevant.

Defendant argues that he should have been allowed to question Ms. Miles further about this discrepancy, as it called into

question her credibility. Defendant is quite correct that, "'[u]nder certain circumstances[,] a witness may be impeached by proof of prior conduct or statements which are inconsistent with the witness's testimony.'" *State v. Riccard*, 142 N.C. App. 298, 302, 542 S.E.2d 320, 322 (2001) (quoting *State v. Whitley*, 311 N.C. 656, 663, 319 S.E.2d 584, 589 (1984)); N.C. Gen. Stat. § 8C-1, Rule 607 (2009). However, defendant's argument ignores the fact that he *was* allowed to cross-examine Ms. Miles about the contradictory statement, as mentioned above. Defendant does not explain how further repetition of this discrepancy would have made such a difference in the presentation of his case that its denial merits a new trial, and we decline to suggest one. This argument is overruled.

No error.

Judges JACKSON and THIGPEN concur.

Report per Rule 30(e).