NO. COA13-108
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v. Craven County
Nos. 11 CRS 52536-37
12 CRS 330-33

JAMARA WASHINGTON

Appeal by defendant from judgments entered 27 June 2012 by Judge Benjamin G. Alford in Craven County Superior Court. Heard in the Court of Appeals 30 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General Scott A. Conklin, for the State.

Marie H. Mobley for defendant-appellant.

HUNTER, Robert C., Judge.

Jamara Washington ("defendant") appeals from judgments entered upon jury verdicts finding him guilty of two counts each of possession with intent to sell or deliver cocaine, sale and delivery of cocaine, and attaining habitual felon status. After careful review, we find no error.

The State presented evidence tending to show that Sergeant David Daniels of the New Bern Police Department ("NBPD") enlisted a paid confidential informant on 16 March 2011 and 22 March 2011 to purchase drugs from defendant, who was suspected by the NBPD of selling drugs in the town. Prior to each purchase, officers of the NBPD searched the informant's person and vehicle and determined the informant did not have any contraband.

On 16 March 2011 the informant called defendant, whom he knew as a former classmate in school, at a number given to him by defendant and asked to purchase cocaine from defendant. The two arranged to meet by a funeral parlor in the Pembroke section of town. The informant traveled to this location, walked over to a black vehicle defendant was driving, handed defendant $100 in cash, and received bags of cocaine in exchange. After defendant departed, the informant handed the bags to Officer Daniels, who was maintaining surveillance in an unmarked vehicle several hundred yards down the road. The bags were subsequently analyzed as containing 0.8 grams of cocaine. Officer Daniels ran a license plate check of the vehicle driven by the man who met the informant and determined that the vehicle belonged to Enterprise Leasings, a rental car agency.

On 22 March 2011, the informant contacted defendant and arranged another transaction at a store near Trent Court in the Pembroke section of town. As the informant rode with Officer Barry Bryant of the NBPD to this location, he called the officer's attention to a parked white Dodge Charger vehicle. The officer parked his vehicle behind the Dodge Charger, which was occupied by only one person, identified by the informant as defendant. The informant exited the officer's vehicle and got into the front seat of the Dodge Charger. The informant returned and gave Officer David Welch a bag containing a substance subsequently analyzed as 1.7 grams of cocaine. Officer Daniels ran a license plate check of the Dodge Charger and determined that it was registered to Enterprise Leasing.

An agent with Enterprise Holdings, a rental car agency, testified that defendant and his mother came to the agency on 12 March 2011 and rented a black Chevrolet Impala for a period expiring 18 March 2011. Defendant's mother paid for the rental. Defendant was listed as the only authorized driver. Defendant rented a Dodge Charger automobile on 19 March 2011. The telephone number given by defendant in the rental transaction matched the number given to the informant.

Defendant contends the court erred by refusing to permit him to cross examine the informant about prior convictions which were more than ten years old. The record shows that after the jury was selected but before it was impaneled, defendant made an oral request for discovery of the informant's criminal record. In response, the prosecutor handed defendant's counsel a copy of the informant's criminal record. Upon reviewing the document, defendant's counsel expressed a desire to cross examine the informant regarding the informant's felony convictions in the State of New York dating from 1993 to 2000. The prosecutor objected, and after hearing arguments, the court denied defendant's request.

Rule 609(b) of the North Carolina Rules of Evidence provides that a witness may not be cross examined regarding a prior conviction

> if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

N.C. Gen. Stat. § 8C-1, Rule 609(b) (2011). Defendant argued to the trial court that the probative value of the evidence

outweighed its prejudicial effect because the informant's familiarity with drug offenses was related to his own prior convictions of drug offenses and "every criminal conviction goes to a witness's credibility."

The trail court's determination whether to permit cross examination is discretionary and will not be disturbed on appeal absent a showing of manifest abuse of discretion. *State v. Shelly*, 176 N.C. App. 575, 578, 627 S.E.2d 287, 292 (2006). An abuse of discretion occurs when "the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)(citing *State v. Parker*, 315 N.C. 249, 258-59, 337 S.E.2d 497, 503 (1985)). In denying the request at bar, the trial court stated it

> believe[d] that the interest of justice preclude[d] the introduction on cross-examination of any criminal convictions of [informant] prior to ten years prior and preceding March of 2011. The Court cannot find by specific facts and circumstances that substantially outweigh it's [sic] prejudicial effect, that the interest of justice would be served by allowing such. [T. 18]

Because the court made a reasoned decision, we find no abuse of discretion.

Defendant nonetheless argues on appeal that the prosecution opened the door to impeachment of the informant by his prior criminal record when the informant testified that he worked as a paid informant because he was "tired of seeing people just out here on drugs like my family is" and Officer Daniels testified that he reviewed the informant's criminal record before hiring him as a paid informant. *See State v. Albert*, 303 N.C. 173, 177, 277 S.E.2d 439, 441 (1981) ("Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though such latter evidence would be incompetent or irrelevant had it been offered initially.") Defendant, however, never attempted on this basis to cross examine the witness concerning any convictions more than ten years old. Without having given the trial court the opportunity to rule on any such attempt, the defendant must argue plain error, which requires a showing that the alleged error probably impacted the outcome of trial. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). Defendant here does not argue the court committed plain error. Even if defendant had argued plain error, we do not believe the claimed error impacted the outcome.

Defendant also contends the court erred by denying his motion to dismiss for insufficient evidence. Upon a motion to dismiss, the court determines whether there is substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). Defendant argues the evidence is insufficient to identify him as the perpetrator of the offenses because no witness pointed to defendant and identified him in open court as the perpetrator.

In ruling upon a motion to dismiss, the court must consider the evidence in the light most favorable to the State and give it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). Evidence is substantial if it is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). "Substantial evidence must be existing and real, but it does not have to exclude every reasonable hypothesis of innocence." *State v. Lowery*, 318 N.C. 54, 70, 347 S.E.2d 729, 740 (1986).

At the call of the case for trial, the court informed the jury that the defendant is "Mr. Jamara Washington" and asked

defendant to stand up so the jury could see him. The informant testified that the person who sold the cocaine to him was his former school classmate "Jamara Washington." We hold this evidence sufficed to identify defendant as the perpetrator. We reject defendant's argument.

We hold defendant received a fair trial, free of prejudicial error.

NO ERROR.

Judges BRYANT and McCULLOUGH concur.

Report per Rule 30(e).