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NO. COA13-393
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

STATE OF NORTH CAROLINA

v. Guilford County
Nos. 09CRS069536-37

ISAAM MATTAAY CHAPLIN,
Defendant.

Appeal by defendant from Judgments entered on 4 May 2012 by Judge Ronald E. Spivey in Superior Court, Guilford County. Heard in the Court of Appeals 23 September 2013.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Sonya Calloway-Durham, for the State.

Sharon L. Smith for defendant-appellant.

STROUD, Judge.

Isaam Chaplin ("defendant") appeals from judgments entered after a Guilford County jury found him guilty of first degree murder and robbery with a firearm. For the following reasons, we hold that even assuming the trial court erred in limiting defendant's cross examination of the investigating detective any error was not prejudicial and that the trial court did not err in denying defendant's motion to dismiss.

I. Background

Defendant was indicted for first degree murder and armed robbery on 20 July 2009. Defendant pled not guilty and proceeded to jury trial in Guilford County. At trial, the State's evidence tended to show the following:

On 15 December 2008, Brinks employees Juan Salado and Daniel White drove their armored car to the Old Navy Store at Friendly Shopping Center in Greensboro to pick up the store's deposit. When they arrived, Mr. Salado went into the store to retrieve the store's deposit bag, which contained approximately $25,000 in cash. As Mr. Salado was exiting the store, a large black male dressed in a flowery "scrub" top, sunglasses, and a dark wig approached Mr. Salado, drew a .40 caliber handgun, and shot Mr. Salado in the head. When Mr. Salado fell, the perpetrator grabbed some papers he was carrying and the deposit bag. The perpetrator then ran through the store, out the back door, and up a hill to a parking lot behind a gas station. As he was climbing up the hill, the perpetrator dropped the papers, but held onto the bag. When he reached the top of the hill, he "scooted" by six cars parked in the lot "like you would a pew in church when you're trying to get by someone," balancing himself by putting his hands on the cars. Once he cleared the cars, the

perpetrator got into a dirty, dark-colored car with a spoiler and drove away.

When the police responded to the parking lot, they saw five cars still parked in the area the perpetrator had fled through and one empty spot. A sixth car, a gold Lexus, later returned to the scene—the owner of the Lexus testified that his car had been parked in the empty spot and that he left sometime around 10 a.m., though he was not sure. A crime scene investigator recovered partial palm prints from the front hood area of four of the vehicles. A latent print examiner examined the prints, but was unable to match the prints to any of those in her databases.

The primary detective investigating the murder of Mr. Salado was Detective Matthews of the Greensboro Police Department. Detective Matthews inquired about former employees at Old Navy. He discovered that defendant left his job at Old Navy approximately four years prior to December 2008 and that defendant's prints were not in any of the databases. When defendant was arrested on an unrelated traffic offense, Detective Matthews interviewed him for several hours.

Before the interview began, a latent print examiner was called to take defendant's prints. Defendant also consented to

the taking of a cheek swap for a DNA sample. During the interview, defendant denied any involvement in the robbery at Old Navy and claimed to have been in Philadelphia at the time. Defendant told detectives that his Facebook profile would confirm his story. Defendant also told detectives that he drove a faded, dark blue Nissan Maxima, which the police then recovered. As defendant was being interviewed, a latent print examiner compared defendant's palm prints to those found on the gold Lexus. The examiner determined that they matched based on 16 points of comparison. Several days later, the examiner determined that defendant's prints matched those on three of the other cars as well. Her conclusions were confirmed by two other latent print examiners.

Based on this information, detectives arrested defendant for murder and procured a search warrant for his house. In their search, the police found and recovered a MoneyGram receipt from Philadelphia to someone named Tilia Moore, a receipt from the Sunglasses Hut showing a purchase of $283, and several other retail receipts. The police also found a wig in defendant's bedroom that a crime scene investigator described as an Afro "joke wig" with shaggy curls. Ms. Moore testified that she accompanied defendant to a MoneyGram store in Philadelphia and

received a $3,650 transfer for him from defendant's housemate in North Carolina.

At the close of the State's evidence, defendant moved to dismiss all charges for insufficient evidence identifying him as the perpetrator, which the trial court denied. Defendant rested without putting on any evidence and then renewed his motion to dismiss on the same grounds. This motion was again denied.

The jury found defendant guilty of murder in the first degree and armed robbery. Defendant was sentenced to life imprisonment without the possibility of parole for the murder and a consecutive sentence of 64-86 months imprisonment for the robbery. Defendant gave notice of appeal in open court.

II. Exclusion of Testimony

Defendant first argues that the trial court committed prejudicial error by excluding testimony that he attempted to elicit on cross-examination as hearsay. Even assuming it was error, we hold that it was not prejudicial.

"The trial court's determination as to whether an out-of-court statement constitutes hearsay is reviewed de novo on appeal." *State v. Castaneda*, ___ N.C. App. ___, ___, 715 S.E.2d 290, 293, *app. dismissed and disc. rev. denied*, 365 N.C. 354, 718 S.E.2d 148 (2011).

The statements that defendant attempted to elicit on cross-examination were descriptions of the suspect given by eyewitnesses to Officer Raines and Officer Montgomery and recorded in police reports. Defendant intended to offer this information to show that the eyewitnesses gave inconsistent descriptions of the perpetrator and to clarify that Detective Matthews focused on defendant despite contradictory information about the suspect's appearance.

Even assuming that defendant is correct that this information was offered for a non-hearsay purpose and that the trial court therefore erred in excluding it, any error was not prejudicial.

> A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when 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. The burden of showing such prejudice under this subsection is upon the defendant.

N.C. Gen. Stat. § 15A-1443(a) (2011).

The main piece of information that defendant attempted to elicit through this cross-examination was that Detective Matthews did not look for suspects who matched other descriptions given by eyewitnesses. The eyewitness descriptions

of the perpetrator, however, were not central to the State's case. The eyewitness descriptions of the perpetrator were contradictory—a fact emphasized by defense counsel in his closing argument. None of the eyewitnesses purported to identify defendant as the perpetrator. Additionally, the State introduced surveillance video from the Old Navy store so that the jury could see what the perpetrator looked like for themselves.

The only evidence that positively identified defendant as the perpetrator was the forensic evidence recovered from the hoods of the cars. One eyewitness testified that the perpetrator scooted by the front of the cars parked near the closest gas station, balancing himself with his hands on the cars as he went by. The police recovered partial palm prints from five cars in the parking lot. Three latent print examiners testified that defendant's palm prints matched the partial prints found on four of the five cars, based on sixteen points of comparison. The State's examiner testified that sixteen points were sufficient for her to positively identify defendant as the person who put those prints on the cars. Defendant denied being in the area that day or in the weeks prior to 15 December 2008. There was no evidence that defendant would have had an opportunity to touch all four cars at any other point.

We think it is unlikely that additional cross-examination on the varying descriptions given by the eyewitnesses and Detective Matthews' reaction thereto would have changed the jury's verdict. Therefore, we hold that the trial court's exclusion of this testimony was not prejudicial error and that defendant is not entitled to a new trial on this basis.

III. Motion to Dismiss

Defendant next argues that the trial court erred in denying his motion to dismiss all charges. He contends only that there was insufficient evidence identifying him as the perpetrator. We disagree.

> The standard of review for a motion to dismiss is well known. A defendant's motion to dismiss should be denied if there is substantial evidence of: (1) each essential element of the offense charged, and (2) of defendant's being the perpetrator of the charged offense. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The Court must consider the evidence in the light most favorable to the State and the State is entitled to every reasonable inference to be drawn from that evidence. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve.

State v. Johnson, 203 N.C. App. 718, 724, 693 S.E.2d 145, 148 (2010) (citations and quotation marks omitted).

> Whether the evidence presented is direct or circumstantial, the test for sufficiency of the evidence is the same. Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence. Then, it is for the jury to resolve any contradictions or discrepancies in the evidence and decide whether the facts, taken singly or in combination, satisfy it beyond a reasonable doubt that the defendant is actually guilty.
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> Where, as here, defendant does not dispute that the victim died by virtue of a criminal act, asserting only that the evidence presented was insufficient to support a reasonable finding that defendant was the perpetrator of the offense, we review the evidence for proof of motive, opportunity, capability and identity, all of which are merely different ways to show that a particular person committed a particular crime. Where the evidence raises only a suspicion or conjecture as to the defendant's identification as the perpetrator, no matter how strong, the motion to dismiss should be allowed. Evidence of either motive or opportunity alone is insufficient to carry a case to the jury. However, this Court must assess the quality and strength of the evidence as a whole. Whether the State has presented sufficient evidence to identify defendant as the perpetrator of the offense is not subject to an easily quantifiable "bright line" test.

State v. Miles, ___ N.C. App. ___, ___, 730 S.E.2d 816, 822-23 (citations, quotation marks, and brackets omitted), *disc. rev.*

on additional issues denied, 366 N.C. 414, 734 S.E.2d 858 (2012), *aff'd per curiam*, ___ N.C. ___, ___ S.E.2d ___ (2013).

As mentioned above, the only evidence that positively identified defendant as the perpetrator was the palm print evidence recovered from the vehicles in the gas station parking lot.

> Fingerprint evidence, standing alone, is sufficient to withstand a motion for nonsuit only if there is substantial evidence of circumstances from which the jury can find that the fingerprints could only have been impressed at the time the crime was committed. What constitutes substantial evidence is a question of law for the court.
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> Circumstances tending to show that a fingerprint lifted at the crime scene could only have been impressed at the time the crime was committed include statements by the defendant that he had never been on the premises; statements by prosecuting witnesses that they had never seen the defendant before or given him permission to enter the premises; [or] fingerprints impressed in blood.

State v. Irick, 291 N.C. 480, 491-92, 231 S.E.2d 833, 841 (1977) (citations and quotation marks omitted).

Here, there was evidence that the prints on the cars belonged to defendant and there was substantial evidence of circumstances "tending to show that a fingerprint lifted at the crime scene could only have been impressed at the time the crime

was committed." *Id.* The prints recovered were found on four separate vehicles.[1] One of those vehicles—the Lexus—was not normally parked in that area. Three latent print examiners testified that the prints recovered from the vehicles belonged to defendant. Eyewitnesses testified that the perpetrator had touched those vehicles as he fled to a waiting car. The partial palm prints recovered were consistent with the eyewitnesses' testimony that the sides of the perpetrator's hands touched the cars, since he was holding the money bag between his hands. Finally, defendant denied being in the area around the time of the crime, stating initially that he was in Philadelphia the entire month. He claimed that the last time he had been to that mall was perhaps a month prior to the crime. Thus, there was substantial evidence from which a reasonable juror could find that the prints could only have been impressed at the time of the crime.[2]

[1] One of them, a gold Lexus, left the scene at some point and then returned. The owner of the Lexus testified that he thought that he left the scene around 10 a.m., but could not be certain—he was testifying nearly three and a half years later. The palm prints recovered from the Lexus matched those recovered from three of the other vehicles, which had not been moved. Taken in the light most favorable to the State, there was evidence that the Lexus was there at the time the perpetrator was fleeing.

[2] The State also presented DNA evidence taken from the vehicles and shell casings. Only one of the samples—from one of the vehicles—was of sufficient quality to compare to defendant's.

Additionally, there was evidence, taken in the light most favorable to the State, that defendant gave a false and pre-planned alibi to police. When asked where he had been at the time of the crime, defendant claimed to have been in Philadelphia. He instructed the detectives to check his Facebook account to verify his whereabouts. When the detectives checked his account, they saw a status update posted at 10:13 p.m. on 12 December 2008, three days before the crime, that said "Bonus [defendant's nickname] is in Philadelphia...Wat it du?" Facebook's records, which were admitted into evidence, showed that the update had been posted from an IP address in Greensboro, not Philadelphia. The IP address was associated with an unsecured wireless network owned by a man who lived next to one of defendant's friends.

Finally, although the eyewitnesses' descriptions of the perpetrator varied substantially, all described the perpetrator as wearing a wig. Some witnesses described the wig as dark. The surveillance video from Old Navy confirms this description of the perpetrator. When the police searched defendant's

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Given the quality of the sample, the State's analyst could only testify that the predominant DNA profile in the mixed sample was consistent with defendant's DNA profile and gave a random match probability of 1 in 541,000 people. Therefore, the analyst could neither exclude defendant nor testify to any degree of scientific certainty that the DNA came from defendant.

apartment they found a dark wig on defendant's bed consistent with what the perpetrator had been wearing.[3]

In summary, there was evidence that defendant's palm prints were on four vehicles near the crime scene, the perpetrator was seen touching those vehicles in a manner consistent with the palm prints recovered, and—given defendant's statement that he had not been in the area for some time and the number of vehicles involved—that defendant's palm prints could only have been imprinted at the time of the crime. Additionally, defendant gave police an alibi contradicted by the Facebook post to which he directed police. Finally, police found a wig consistent with the one the perpetrator was wearing at the time of the crime in defendant's bedroom. Taking this evidence in the light most favorable to the State and drawing every reasonable inference in the State's favor, as we must, *see Johnson*, 203 N.C. App. at 724, 693 S.E.2d at 148, we conclude that there is sufficient evidence identifying defendant as the perpetrator of the offense to survive a motion to dismiss. Therefore, we hold that the trial court did not err in denying defendant's motion to dismiss the charges against him.

IV. Conclusion

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[3] The wig was noted and photographed by a crime scene investigator, but apparently not collected.

Even assuming the trial court erred in limiting defendant’s cross-examination of Detective Matthews on hearsay grounds, the error was not prejudicial. The trial court did not err in denying defendant’s motion to dismiss because the evidence was sufficient for a reasonable juror to conclude that the State met its burden as to each element of the crimes charged and that defendant was the perpetrator.

NO PREJUDICIAL ERROR.

Chief Judge MARTIN and Judge GEER concur.

Report per Rule 30(e).