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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-700

Filed: 5 January 2016

Wayne County, No. 13 CRS 50396

STATE OF NORTH CAROLINA

v.

EBONY NICOLE PEARSON

Appeal by defendant from judgment entered 18 November 2014 by Judge Kenneth F. Crow in Wayne County Superior Court. Heard in the Court of Appeals 28 December 2015.

Attorney General Roy Cooper, by Assistant Attorney General Cathy Hinton Pope, for the State.

Amanda S. Zimmer for defendant-appellant.

BRYANT, Judge.

Where defendant cannot show that there is a reasonable possibility that, had alleged improper testimony not been admitted, a different result would have been reached at trial, we find no error.

On 23 January 2013, defendant Ebony Nicole Pearson and two friends went to Camron's Clubhouse, a nightclub located in Goldsboro. Defendant testified she

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arrived about 1:00 AM and had one beer around 1:30 AM or quarter to 2:00 AM before leaving the club.

After leaving the club, defendant rode with one of her friends to the friend's house where she planned to spend the night. Her friend's mother did not want defendant and her other friend, Jovanta, to spend the night so defendant and Jovanta left the house. Defendant and Jovanta left in a vehicle driven by defendant.

At approximately 2:45 AM, Officer James Holland III of the Goldsboro Police Department responded to a call regarding a possible injury as a result of an accident. Upon arriving at the accident scene, he observed a vehicle lying on its roof with the passenger side door open. No other vehicles were in the vicinity. Almost immediately, he encountered defendant, who identified herself as the driver of the vehicle and began to tell him about the accident. Defendant told Officer Holland, and she testified as to the same at trial, that she was driving down the street when a vehicle entered into her lane of traffic, causing her to swerve to the right, go off the road, and tip the car over. Shortly thereafter, however, defendant changed her account of the accident, claiming to Officer Holland that her vehicle had actually been hit from the rear and pushed off of the road, causing the vehicle to roll over. Officer Holland inspected the rear of the vehicle for damage but found none.

While speaking with defendant, Officer Holland noticed a strong odor of alcohol coming from defendant's person. Officer Holland twice administered a portable

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breath testing device, which showed a positive result both times. He did not perform any field sobriety tests because defendant had been in a vehicle that had rolled over. Officer Holland arrested defendant and transported her to the Wayne County Jail. Officer Holland performed an Intoximeter test which disclosed that defendant had a blood alcohol concentration of .11.

Defendant was tried in Wayne County District Court before the Honorable Kenneth F. Crow, Judge Presiding. On 18 November 2014, the jury returned a guilty verdict finding defendant guilty of driving while impaired. The trial court sentenced defendant to a suspended term of sixty days imprisonment and placed her on supervised probation for twenty-four months. Defendant appeals.

On appeal, defendant argues that the trial court improperly permitted Officer Holland to offer his expert opinion that defendant's blood alcohol content had decreased between the time she drove her vehicle and the time the sample was taken. We disagree.

“The admission of evidence which is technically inadmissible will be treated as harmless unless prejudice is shown such that a different result likely would have ensued had the evidence been excluded.” *State v. Taylor*, 154 N.C. App. 366, 372, 572 S.E.2d 237, 242 (2002) (quoting *Sate v. Gappins*, 320 N.C. 64, 68, 357 S.E.2d 654, 657 (1987)). “To establish prejudice based on evidentiary rulings, [the] defendant bears

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the burden of showing that a reasonable possibility exists that, absent the error, a different result would have been reached.” *State v. Lynch*, 340 N.C. 435, 458, 459 S.E.2d 679, 689 (1995), *cert. denied*, 517 U.S. 1143, 134 L.Ed.2d 558 (1996) (citations omitted). “If there is overwhelming evidence of defendant’s guilt or an abundance of other evidence to support the State’s contention, the erroneous admission of evidence is harmless.” *State v. Williams*, 164 N.C. App. 638, 644, 596 S.E.2d 313, 317 (2004) (quoting *State v. Crawford*, 104 N.C. App. 591, 598, 410 S.E.2d 499, 503 (1991)).

Here, even assuming *arguendo* that admission of Officer Holland’s testimony should have been excluded, we conclude there was no prejudice in light of the overwhelming evidence of defendant’s guilt. First, defendant admitted to being the driver of the vehicle and that she had consumed alcohol prior to driving the car. Second, Officer Holland testified that he had seven years of experience dealing with intoxicated drivers, it was his “specialty,” and he dealt with it every day that he was at work. Officer Holland testified that the odor of alcohol on defendant was “pretty apparent” and “strong,” and that based on his experience, defendant was appreciably impaired by alcohol. Finally, defendant’s blood alcohol concentration twice tested at .11, over the legal limit of .08. *See* N.C. Gen. Stat. § 20-138.1(a)(2) (2013).

Thus, even if Officer Holland’s testimony regarding diminishing blood alcohol concentration over time was improper, defendant cannot show that “there is a reasonable possibility that, had the error in question not been committed, a different

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result would have been reached at the trial” N.C. Gen. Stat. § 15A-1443(a) (2013). Accordingly, we find no error.

NO ERROR.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).