IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-454

Filed: 20 December 2016

Mecklenburg County, No. 15 CRS 006239

STATE OF NORTH CAROLINA

v.

LEANDROS CROSBY

Appeal by Defendant from judgment entered 12 November 2015 by Judge Todd Pomeroy in Superior Court, Mecklenburg County. Heard in the Court of Appeals 12 December 2016.

Attorney General Roy Cooper, by Assistant Attorney General Lora C. Cubbage, for the State.

Jarvis John Edgerton, IV for Defendant-Appellant.

McGEE, Chief Judge.

Leandros Crosby ("Defendant") appeals from a judgment imposing an active prison sentence of a minimum of 90 months and a maximum of 120 months upon a jury verdict finding him guilty of trafficking in heroin. Defendant contends the court erred by denying his request for submission of a jury instruction regarding consideration of testimony of an interested witness. For the reasons that follow, we conclude the court did not commit prejudicial error.

The State presented evidence tending to show that, at approximately 9:00 p.m. on 10 September 2014, Officer Ryan Buckler ("Officer Buckler") of the Charlotte-Mecklenburg Police Department, while in uniform and on routine patrol, drove his marked patrol car into the driveway of a motel in Mecklenburg County. Officer Buckler testified he saw two men walking toward him and, when the men saw his vehicle, they turned around and headed back in the direction from which they had come. Officer Buckler identified one of the men as Defendant and Officer Buckler could see that Defendant was holding a green object in his hand. Officer Buckler observed Defendant "stoop down or bend down with his left hand and go down to the ground" and then continue to walk. Officer Buckler parked his vehicle, walked over to the area where he had seen Defendant stoop down, and found a green and white cigarette pack under some shrubs. Officer Buckler picked up the cigarette package, opened it, and saw a "large chunk of a white substance" that he believed was crack cocaine. Officer Buckler called for assistance from another police unit, and observed Defendant go in and out of a room at the motel. He approached Defendant and arrested him.

Officer Buckler subsequently submitted the white substance for chemical analysis. An analyst in the Charlotte-Mecklenburg Police Department Crime Lab analyzed the white substance and determined it to be 27.56 grams of heroin.

During the charge conference after the close of the evidence, Defendant's counsel inquired: "Your Honor, I don't know if this would apply, but would you consider the testimony of interested witness [instruction]?" Counsel argued that Officer Buckler was an interested witness because he was "interested in the outcome of this trial." The court responded that Defendant could argue to the jury that Officer Bucker was an interested witness but that it was denying Defendant's request for the instruction.

We note Defendant never made a written request for an interested witness instruction. When a request for an instruction regarding scrutiny of the testimony of an interested witness is not made in writing, we review the court's decision for abuse of discretion. *State v. Freeman*, 185 N.C. App. 408, 417, 648 S.E.2d 876, 883 (2007), *appeal dismissed,* 362 N.C. 178, 657 S.E.2d 663, *reconsideration denied*, 362 N.C. 178, 657 S.E.2d 666 (2008). Under this standard of review, a defendant "is entitled to a new trial only if there is a reasonable probability that, had the abuse of discretion not occurred, a different result would have been reached at trial." *State v. Mewborn*, 178 N.C. App. 281, 292, 631 S.E.2d 224, 231 (2006).

Defendant argues on appeal that the court should have submitted the pattern instruction for interested witnesses, which states:

> You may find that a witness is interested in the outcome of this trial. In deciding whether or not to believe such a witness, you may take his interest into account. If, after doing so, you believe his testimony in whole or in part, you

> should treat what you believe the same as any other believable evidence.

N.C.P.I. – Crim. 104.20 (2015). A court is required to submit this instruction if it is justified by the evidence and properly requested. *See State v. Williams*, 98 N.C. App. 68, 73, 389 S.E.2d 830, 833 (1990). However, when "there is nothing in the record to cast doubt upon the truthfulness and objectivity of the witness," submission of the instruction is inappropriate. *State v. Williams*, 333 N.C. 719, 733, 430 S.E.2d 888, 895 (1993). If there is no evidence to indicate a police officer has "any particular interest in the case that would cloud his credibility," the trial court does not err by refusing to submit the instruction. *State v. McQueen*, 181 N.C. App. 417, 420, 639 S.E.2d 131, 133 (2007).

We are not persuaded by Defendant's argument that Officer Buckler was an interested witness because his investigative style of relying upon his observations without further corroboration impinged upon his credibility as a witness in this case and others. This Court has held that a police officer is not an interested witness as a matter of law. *State v. Richardson*, 36 N.C. App. 373, 375-76, 243 S.E.2d 918, 920 (1978). Our Supreme Court has also stated that "[a] party to a criminal case is not entitled to an instruction on witness credibility which focuses on law enforcement officers as a class[,]" *State v. Hunt*, 345 N.C. 720, 726, 483 S.E.2d 417, 421 (1997), and that for an interested witness instruction to be warranted, there must be some evidence to suggest that a law enforcement officer has an "interest in the outcome of

[the] case which would cast doubt on his truthfulness or credibility as a witness." *Id.* We do not find any evidence to suggest that Officer Buckler had any particular interest in the outcome of this case that would reflect on his credibility or cast doubt upon his objectivity.

Even if we were to accept Defendant's argument, we conclude that the failure to submit the instruction was not prejudicial error. The court instructed the jury:

> You are the sole judges of the believability of the witnesses. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, any part, or none of a witness's testimony. In deciding whether to believe a witness, you should use the same tests of truthfulness that you use in your everyday lives. Among other things, these tests may include the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; the manner and appearance of the witness; any interest, bias, prejudice, or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony is reasonable, and whether the testimony is consistent with other believable evidence in the case.

Because this instruction left "no doubt that it was the jury's duty to determine whether the witness was interested or biased[,]" and addressed Defendant's concerns in the instruction, we conclude Defendant has not carried his burden of showing that the court's failure to submit the pattern instruction on interested witnesses affected the jury's verdict. *State v. Singletary*, ___ N.C. App. ___, ___, 786 S.E.2d 712, 719 (2016).

By not bringing forward his second proposed issue regarding the sentence, Defendant has abandoned it. N.C.R. App. P. 28(a). Defendant received a trial without prejudicial error.

NO PREJUDICIAL ERROR.

Judges CALABRIA and DILLON concur.

Report per Rule 30(e).