

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-430
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v.

Martin County
No. 99-CRS-2182

WILLIAM SPRUILL

Appeal by Defendant from judgment entered 6 July 2000 by Judge J. Richard Parker in Superior Court, Martin County. Heard in the Court of Appeals 8 November 2011.

Attorney General Roy Cooper, by Assistant Attorney General Patrick S. Wooten, for the State.

Paul M. Green for Defendant-Appellant.

McGEE, Judge.

William Spruill (Defendant) was arrested 22 October 1999 for the 20 August 1999 armed robbery of John Stalls (Mr. Stalls). Defendant was found guilty after a jury trial on 29 June 2000. The trial court sentenced Defendant on 6 July 2000 in the aggravated range of 146 months to 185 months in prison. The trial court found the presence of an aggravating factor without submitting the question to the jury. Defendant gave

notice of appeal in open court. Defendant's appeal was dismissed by this Court in an order filed 11 May 2001, due to Defendant's failure to file a brief. Defendant filed a petition for a writ of certiorari on 25 January 2011, which this Court granted in an order entered 14 February 2011.

I. Factual Background

The evidence at trial tended to show that, on the morning of 20 August 1999, Mr. Stalls was working in his pumpkin patch. Mr. Stalls testified that a car passed by him and then turned around and stopped about sixty yards away from him. Mr. Stalls testified that a man exited the car and approached him, asking Mr. Stalls if he had any pumpkins for sale. As Mr. Stalls bent over to pick a pumpkin, the man hit Mr. Stalls in the back of the head with a crowbar. The man then hit Mr. Stalls again, breaking Mr. Stalls' arm. The man stole \$237.00 from Mr. Stalls' pocketbook. Mr. Stalls was 79 years old at the time of trial. Mr. Stalls identified Defendant as his assailant in a photo array and also identified Defendant in court.

Latasha Mayo (Ms. Mayo) testified that, at the time of the robbery, Defendant was her boyfriend. Ms. Mayo's half-brother, James Gorham, Jr. (Mr. Gorham), was suspected of participating in the robbery of Mr. Stalls. Ms. Mayo made three pretrial statements. In her first statement, Ms. Mayo told police

officers that Defendant committed the robbery and that Ms. Mayo was the driver of the car. In her second statement, Ms. Mayo told officers that Defendant and Mr. Gorham borrowed her car and that Mr. Gorham was the robber. Finally, in her third statement, Ms. Mayo told officers that Defendant and Mr. Gorham had borrowed her car and that Defendant committed the robbery.

Ms. Mayo was questioned at trial about her three statements, and she testified that her third statement was the truth. Ms. Mayo testified that Defendant and Mr. Gorham borrowed her car on the morning of 20 August 1999. Ms. Mayo further testified that Defendant later told her that something had been bothering him and that he needed "to get it off [his] chest." Defendant then told Ms. Mayo that he "knocked the old man out."

Defendant testified at trial that he was driving Ms. Mayo's car on 20 August 1999 and that Mr. Gorham was a passenger in the car. Defendant testified that, at one point, Mr. Gorham asked him to pull over so that Mr. Gorham could relieve himself by some bushes. Defendant testified that Mr. Gorham exited the car and took "a little stick" from under his seat with him. When Mr. Gorham returned eight or nine minutes later, he was breathing hard and had money stuffed into his pants. Defendant

testified that he saw Mr. Stalls through the bushes and denied having assaulted him.

II. Issues on Appeal

Defendant raises the following issues on appeal: (1) whether the trial court erred "by allowing the prosecutor to insinuate through cross-examination that . . . Defendant had committed other uncharged armed robberies[;]" and (2) whether the trial court committed constitutional error by finding an aggravating circumstance and imposing an aggravated sentence without considering evidence and without findings by a jury.

III. Cross-Examination

Defendant argues that the trial court erred by allowing the State, over objection, to ask him the following questions during cross-examination:

Q. Isn't it true that the day you went over with Ms. Mayo to see J.D. that you robbed him, too?

A. No.

[Defense Counsel]: Objection, Your Honor.

THE COURT: Overruled

Q. You didn't steal a red box with jewelry and some change from Mr. J.D.?

A. No. I don't even know no J.D. - - I mean, know him like know the J.D. that you're talking about. I heard something about a case resembling to that, a J.D.

.

Q. You just answer my questions, Mr. Spruill. Isn't it true that you went to J.D.'s house with some kind of long, stick-like object and some mace and a stun gun and robbed Mr. J.D. - -

[Defense Counsel]: Objection, Your Honor.

A. No, sir

THE COURT: Overruled.

Q. And isn't it true that after you took the stuff from Mr. J.D. that you went and bought crack and smoked crack with whatever you had gotten from Mr. J.D.?

A. No, sir.

[Defense Counsel]: Objection.

THE COURT: Overruled.

Q. Ever been to a place called Temperance Hall, Mr. Spruill?

A. No, I never heard of it.

Q. Isn't it true that you assaulted an older white man in that area with a tire iron and robbed him and took his money?

A. No, sir, I never heard of that case.

Q. Got two cartons of Newport cigarettes, a wallet full of credit cards, and about \$200 cash that you counted right in front of Ms. Mayo; isn't that right?

A. No, sir. I mean, where you getting' this information from, to ask me questions about some stuff that I don't even really know nothin' about?

Defendant contends that the State's questions regarding uncharged criminal acts were not admissible pursuant to N.C. Gen. Stat. § 8C-1, Rule 608, nor were they admissible pursuant to N.C.G.S. § 8C-1, Rule 404. Assuming, *arguendo*, it was error for the trial court to permit the State to cross-examine Defendant as quoted above, we find that it was not prejudicial error.

In order "[t]o receive a new trial based upon a violation of the Rules of Evidence, a defendant must show that the trial court erred and that there is a 'reasonable possibility' that without the error 'a different result would have been reached at the trial.'" *State v. Ray*, 364 N.C. 272, 278, 697 S.E.2d 319, 322 (2010) (citation omitted). The evidence at trial included the following: (1) Mr. Stalls testified that he was certain Defendant was the man who attacked him; (2) Ms. Mayo testified that Defendant admitted to her that he had committed the robbery; and (3) Mr. Stalls identified Defendant from a photo line-up immediately following the robbery. The evidence of Defendant's guilt presented at trial was sufficient that the State's asking Defendant several questions about other crimes, all of which Defendant answered in the negative, were not likely to affect the jury's decision. We are not persuaded that, without the cross-examination of Defendant, there is a

reasonable possibility that a different result would have been reached at the trial.

IV. Sentencing

Defendant next argues that the trial court erred in sentencing him in the aggravated range based on the finding of an aggravating factor not presented to the jury. Citing *Blakely v. Washington*, 542 U.S. 296, 159 L.Ed.2d 403 (2004), Defendant argues that the aggravating factor involved in his case should have been submitted to the jury and not decided by the trial court. Defendant contends that "[p]ost-trial developments in constitutional law are retroactively applicable to cases still on direct review." However, we note that Defendant's case is before this Court as a result of the issuance of a writ of certiorari, and not on direct appeal.

Our Court recently addressed this issue in *State v. Coleman*, 181 N.C. App. 568, 640 S.E.2d 784 (2007). We noted:

Before reaching the issue of whether *Blakely* error has occurred, however, it first is necessary to determine whether defendant is entitled to *Blakely* review. This is significant because "[a]pplication of constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system." As this Court recently held, defendants entitled to *Blakely* review are only those whose cases were pending on direct review or were not yet final as of the date the *Blakely* opinion

was issued.

Id. at 571, 640 S.E.2d at 786 (citations omitted). This Court determined that the *Coleman* defendant's case was final on 7 April 2004, because that was the point at which his opportunity to appeal expired. We then concluded that:

Although we granted defendant's 31 May 2005 petition for writ of certiorari, defendant's case still was final as of 7 April 2004, prior to the *Blakely* decision on 24 June 2004. It is well-established that a "writ of certiorari is used . . . as a substitute for an appeal," but this Court has held that the granting of a petition for writ of certiorari does not alter the determination of when a case becomes final.

Id. at 572, 640 S.E.2d at 786 (citation omitted).

In the present case, Defendant gave oral notice of appeal at trial. However, Defendant never filed an appellant's brief and his appeal was dismissed on 11 May 2001. Defendant petitioned for a writ of certiorari on 25 January 2011. Thus, as in *Coleman*, Defendant's case was final when *Blakely* was decided on 24 June 2004. *See id.* This argument, therefore, is without merit.

No prejudicial error.

Judges HUNTER, Robert C. and CALABRIA concur.

Report per Rule 30(e).