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NO. COA11-872
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v.

Surry County
Nos. 07 CRS 53598-53601

DALE ROBERT SWARTZ, SR.,
Defendant.

Appeal by defendant from judgments entered 16 March 2011 by Judge Judson D. DeRamus in Surry County Superior Court. Heard in the Court of Appeals 17 January 2012.

Attorney General Roy Cooper, by Assistant Attorney General Katherine A. Murphy, for the State.

J. Clark Fischer for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant was found guilty of trafficking in methamphetamine by possession of 28 grams or more but less than 200 grams of the substance, possession of methamphetamine with the intent to sell or deliver, intentionally maintaining a building used for the purpose of unlawfully keeping controlled substances, and possession of drug paraphernalia with the intent to use. He was sentenced to a minimum term of 70 months and a

maximum term of 84 months for trafficking in methamphetamine. The other convictions were consolidated for judgment and defendant was sentenced to a term of ten to twelve months, to run at the expiration of the other sentence imposed.

The State presented evidence tending to show that on 18 August 2007, several law enforcement officers came to defendant's residence to execute a search warrant. After reading the search warrant to defendant, a detective asked defendant whether he had any drugs in the house. Defendant responded he had about two ounces of methamphetamine. Defendant agreed to show the detective where he kept the substance. Defendant led the officers to the attached garage and showed them a paint buffer cover which held two bags containing a total of 51.3 grams of a substance subsequently determined to be methamphetamine. The officers searched defendant's person and found a glass device used to smoke methamphetamine and \$1,865 in U.S. currency. The officers searched the garage and found a water bottle with a false bottom containing a substance subsequently determined to be 6.7 grams of methamphetamine and another glass smoking device.

The officers then searched inside of defendant's residence and found in a desk next to the bed in the master bedroom more

smoking pipes, a plastic straw, two sets of scales measured in grams, a metal container holding green vegetable material and a smoking pipe, plastic baggies beside and inside a Pepsi can containing a total of 4.9 grams of methamphetamine, another plastic bag containing 0.2 grams of methamphetamine, bills, and an envelope and a tax return bearing defendant's name. On top of the desk, the officers found a wooden box which contained a smoking pipe.

After completing the search, the officers offered defendant the opportunity to "help himself" by providing information about other drug dealers or users. Defendant accompanied the officers to the sheriff's office and told them that he had purchased two ounces of methamphetamine the previous night from a Hispanic male, whom he identified by name, for \$950 per ounce.

The only evidence presented by defendant was the testimony of his mother-in-law, who testified that she was present at defendant's residence when the officers arrived to execute the search warrant and that she never heard defendant talk to the officers or answer any questions.

Defendant contends the trial court erred by allowing the prosecutor to make improper closing arguments to the jury. Defendant challenges the following arguments:

MR. WATSON: Somebody ought to do something about drugs in Surry County. Have you ever heard anybody say that? Have you ever said it? These deputies there in Surry County, they ought to do more about drugs. Ever heard anybody say that? Have you ever said it? Those D.A.'s ought to stop making plea bargains with drug traffickers.

MR. BRIGGS: Objection to that, Your Honor.

THE COURT: Sustained.

MR. WATSON: Yeah, somebody ought to do something about drugs in Surry County. I've heard it. I've said it, and I agree. Somebody ought to do something about drugs in Surry County. And today, in Dobson, North Carolina, in this courthouse, in this very courtroom, that somebody is you.

Later, the prosecutor stated:

And methamphetamine is far more dangerous than we can probably even comprehend. The cost, the cost of methamphetamine is tremendous. But I don't mean this. I don't mean this, as the cost of methamphetamine. I mean the cost in lost wages, and in hospital treatment, and in doctors and in rehab centers -

MR. BRIGGS: Objection, Your Honor.

THE COURT: Sustained, no evidence.

Further, the prosecutor argued:

MR. WATSON: Let me say this. The cost is a lot more than this. I believe you can infer that from the evidence, even if I can't say it. I contend to you that the real cost of this is not dollars and cents at all. It's the destroyed lives that it causes, and the

breakdown of our society.

The prosecutor concluded his argument by stating:

That will be up to you. Yeah, somebody ought to do something about drugs in Surry County. Yeah, they ought to. My feeling is, if the law abiding citizens of Surry County can't be protected from drug traffickers like Dale Swartz, then there is no justice in Surry County.

If we cannot hold drug traffickers accountable and protect people from them, there is no justice in Surry County. If we cannot do justice in this case, with all this, if we can't do justice in this case, we might as well tear down this courthouse, because there's not any justice in Surry County.

MR. BRIGGS: Objection to that, Your Honor.

THE COURT: Sustained.

MR. WATSON: Yeah, somebody ought to do something about drugs in Surry County. What I'm asking you to do today, what I'm asking each one of you to do, is to send a message to nobody else, but send a message to Dale Swartz.

Send Dale Swartz the message that we're tired of it here and that we're not going to take it anymore. Send Dale Swartz that message. Send him the message that if you traffic in drugs in Surry County, you get caught red-handed, that there are consequences to pay. Send Dale Swartz that message. And please hold him accountable for his actions. I believe you've heard enough, I believe you've seen enough. I believe you know the truth. I don't know what else to say. Yeah, somebody ought to

do something about drugs in Surry County.
And today, that somebody is you.

Defendant argues these arguments were improper because they went outside the record and appealed to community sentiment against certain crimes.

The scope of jury arguments is left largely to the control and discretion of the trial court, and trial counsel will be granted wide latitude. *State v. Soyars*, 332 N.C. 47, 60, 418 S.E.2d 480, 487 (1992). However,

[d]uring a closing argument to the jury an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice.

N.C. Gen. Stat. § 15A-1230(a) (2009). Even if improper arguments are made by a prosecutor, a defendant is not entitled to a new trial unless he can show "in the totality of the trial and closing arguments, that the jury would have reached a different result had the trial court sustained defendant's objection or instructed the jury in a broader manner so as to preclude consideration of the improper argument." *State v. Peterson*, 361 N.C. 587, 609, 652 S.E.2d 216, 231 (2007).

Assuming, *arguendo*, the prosecutor's arguments were improper, we conclude that defendant has not carried his burden of showing prejudicial error given the overwhelming and virtually uncontradicted evidence of his guilt of the offenses. "Improper argument at the guilt-innocence phase, while warranting condemnation and potential sanction by the trial court, may not be prejudicial where the evidence of defendant's guilt is virtually uncontested." *State v. Jones*, 355 N.C. 117, 134, 558 S.E.2d 97, 108 (2002). Moreover, the court did sustain defendant's objections to certain statements made by the prosecutor. A defendant suffers no prejudice when his objections are sustained. *State v. Call*, 349 N.C. 382, 413, 508 S.E.2d 496, 515 (1998); *State v. Pulley*, 180 N.C. App. 54, 68, 636 S.E.2d 231, 242 (2006), *disc. review denied*, 361 N.C. 574, 651 S.E.2d 375 (2007).

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

No error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).