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IN THE COURT OF APPEALS OF NORTH CAROLINA

2023-NCCOA-18

No. COA22-513

Filed 17 January 2023

Pitt County, Nos. 16 CRS 57635–38

STATE OF NORTH CAROLINA

v.

DANIEL DESHAUN THOMAS

Appeal by defendant from judgments entered 24 March 2021 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 2 November 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Joshua Abram, for the State.

Cooley Law Office, by Craig M. Cooley, for defendant-appellant.

ZACHARY, Judge.

¶ 1

Defendant Daniel Deshaun Thomas appeals from judgments entered upon a jury's verdicts finding Defendant guilty of possession of drug paraphernalia, simple possession of marijuana, trafficking in heroin by possession, trafficking in heroin by transportation, felonious operation of a motor vehicle to elude arrest, and felonious possession of heroin with intent to sell or deliver. After careful review, we conclude

that Defendant failed to preserve his sole argument for appellate review, and dismiss his appeal.

I. Background

¶ 2 On 29 June 2020, a Pitt County grand jury returned true bills of indictment charging Defendant with possession of drug paraphernalia; maintaining a vehicle for use in keeping or selling controlled substances; simple possession of marijuana; felonious operation of a motor vehicle to elude arrest; possession of heroin with intent to sell or deliver; and two counts of trafficking heroin, by possession and by transportation.

¶ 3 On 23 March 2021, the matter came on for jury trial in Pitt County Superior Court. At trial, the State introduced the testimony of two Pitt County Sheriff's deputies, as well as the testimony of Nancy Gregory, a forensic drug chemist and the technical leader of the drug chemistry section of the Pitt County Sheriff's Office ("PCSO") Forensic Services Unit. Ms. Gregory testified that she analyzed State's Exhibit 9, "a plastic bag corner, tied with a knot[,] that had tan powder" in it. She identified the tan powder as heroin.

¶ 4 When asked about the State's Exhibit 13, a substance that appeared to be marijuana, Ms. Gregory testified that she did not conduct the analysis on that exhibit, which had been analyzed by Joseph Taub, another chemist who no longer worked for the PCSO lab. Ms. Gregory explained that she had been working for the State Crime

Lab in Raleigh and had not yet joined the PCSO lab when Mr. Taub analyzed State's Exhibit 13. Based on "a copy of [Mr. Taub's] notes and his laboratory report[,]" Ms. Gregory testified that "he did his standard analysis" and that "he made the determination, and I agree with him, that the substance was marijuana."

¶ 5 At the close of the State's evidence, Defendant moved to dismiss the charges against him. The State did not oppose the motion as to the charge of maintaining a vehicle for use in keeping or selling controlled substances, and the trial court granted Defendant's motion as to that charge. However, the trial court denied Defendant's motion as to the remaining charges.

¶ 6 Defendant opted not to offer any evidence, and the jury returned verdicts finding Defendant guilty of each remaining charge. The trial court consolidated the offenses into two judgments and sentenced Defendant to consecutive terms of 90 to 120 months in the custody of the North Carolina Division of Adult Correction. Defendant gave notice of appeal in open court, and also timely filed notice of appeal.

II. Discussion

¶ 7 Defendant argues that the trial court erred by allowing Ms. Gregory to testify as to Mr. Taub's determination that the State's Exhibit 13 was marijuana, in violation of Defendant's federal and state constitutional right to confront witnesses against him. However, the State contends that Defendant failed to preserve this issue for appellate review. We agree.

¶ 8

“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1). “It is well settled that an error, even one of constitutional magnitude, that [a] defendant does not bring to the trial court’s attention is waived and will not be considered on appeal. As a result, even constitutional challenges are subject to the same strictures of Rule 10(a)(1).” *State v. Jones*, 382 N.C. 267, 2022-NCSC-103, ¶ 18 (citation omitted). Moreover, in *Melendez-Diaz v. Massachusetts*, one of the landmark Confrontation Clause cases upon which Defendant relies, the Supreme Court of the United States reiterated that “[t]he defendant *always* has the burden of raising his Confrontation Clause objection[.]” 557 U.S. 305, 327, 174 L. Ed. 2d 314, 331 (2009).

¶ 9

In the present case, Defendant generally objected to that portion of Ms. Gregory’s testimony that he now challenges on appeal:

[THE STATE:] Now, were you able to – what is generally done to analyze a substance to determine whether it is marijuana?

[MS. GREGORY:] I have a copy of his notes and his laboratory report and he did his standard analysis. We recorded the weight of the material without any of the packaging present. Then he has done a visual examination, I have his notes here. And then there’s a color test that we use called a Duquenois-Levine, and that will change color when cannabinoids are present in the sample. So the

combination of that color test and his visual examination, macroscopic and microscopic, he made the determination, and I agree with him, that the substance was marijuana.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

¶ 10 However, Defendant’s general objection was not sufficient to preserve this issue for appellate review. Although Defendant objected to Ms. Gregory’s testimony at trial, he “stated no grounds for the objection. Accordingly, we decline to address Defendant’s [confrontation] argument, because constitutional error will not be considered for the first time on appeal.” *State v. Hewson*, 182 N.C. App. 196, 208, 642 S.E.2d 459, 468 (citation and internal quotation marks omitted), *disc. review denied*, 361 N.C. 572, 651 S.E.2d 229 (2007); *see also State v. Rainey*, 198 N.C. App. 427, 433, 680 S.E.2d 760, 766–67 (concluding that the defendant did not properly preserve his Confrontation Clause issue where, even though he “object[ed] on constitutional and due process grounds at several points during the redaction hearing, [he] did not specifically object on Confrontation Clause grounds”), *disc. review denied and appeal dismissed*, 363 N.C. 661, 686 S.E.2d 903 (2009).

III. Conclusion

¶ 11 Defendant’s sole argument on appeal, a Confrontation Clause issue, was not properly preserved for appellate review. Thus, Defendant’s appeal is dismissed.

DISMISSED.

STATE V. THOMAS

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Opinion of the Court

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).