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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-264

Filed 07 February 2023

Guilford County, No. 14 CRS 88609

STATE OF NORTH CAROLINA

v.

GREGORY CHARLES BASKINS

Appeal by defendant from judgments entered 30 August 2021 by Judge Nathan H. Gwyn, III, in Guilford County Superior Court. Heard in the Court of Appeals 19 October 2022.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Joseph L. Hyde, for the State.*

*Richard J. Costanza for defendant-appellant.*

ZACHARY, Judge.

Defendant Gregory Charles Baskins appeals from judgments entered upon a jury's verdicts finding him guilty of trafficking by possession of 28 grams or more of heroin and trafficking by transportation of 28 grams or more of heroin. On appeal, Defendant challenges the trial court's denial of his motion to strike the testimony of a State's witness who allegedly feigned memory loss during portions of the State's

direct examination and Defendant's cross-examination. After careful review, we conclude that Defendant received a fair trial, free from prejudicial error.

***Background***

On 4 October 2014, Defendant and his traveling companion, Tomekia Bone, took a bus from Greensboro to New York City. They returned from New York to Greensboro on 6 October 2014 at approximately 6:30 a.m. on a bus line that the Greensboro Police Department referred to as "the China bus route" (the "China Bus").

At the time of Defendant's arrival in Greensboro, Sergeant Marcus McPhatter of the Greensboro Police Department was conducting surveillance of the China Bus stop as part of an interdiction team. The China Bus was known by the interdiction team because of its use by drug traffickers. According to Sergeant McPhatter, "New York is a source city or hub for narcotics" and the China Bus "travels direct . . . from Greensboro to New York and then back"; China Bus passengers are not required to provide identification in order to purchase tickets, which allows passengers to "avoid detection by law enforcement." Moreover, the China Bus accepts cash payments for bus fare.

Sergeant McPhatter was watching when Defendant and Ms. Bone exited the China Bus. Defendant and Ms. Bone "only had a few items with them[,] which Sergeant McPhatter believed was an additional indication of drug trafficking—"a short stay, just a quick trip up, quick return." Sergeant McPhatter saw Defendant and Ms. Bone enter the Shell gas station at which Sergeant McPhatter was parked

in an unmarked vehicle. After a few minutes, Defendant left the Shell station and “peeked inside” Sergeant McPhatter’s vehicle; Defendant then reentered the Shell station. Sergeant McPhatter could not determine whether Defendant was trying to ascertain whether a police officer was inside the car or whether the unmarked vehicle was his ride. Shortly thereafter, a Buick pulled into the Shell station lot and picked up Defendant and Ms. Bone.

Sergeant McPhatter ran the Buick’s registration on the laptop in his vehicle and learned that the Buick had an expired registration and an inspection violation. Concerned that his identity may have been compromised, Sergeant McPhatter relayed the information regarding the traffic violations to the other detectives in the interdiction unit and asked them to follow the Buick.

After verifying the traffic violations, Detective Matthew O’Hal initiated a traffic stop of the Buick in response to Sergeant McPhatter’s communication. Defendant was in the front passenger seat of the car, Ms. Bone was in the right-side back seat, and Defendant’s brother was in the driver’s seat. As Detective O’Hal spoke with Defendant’s brother, he noticed that Defendant and Ms. Bone appeared very anxious and were sweating heavily. Detective O’Hal asked Defendant’s brother for permission to search the vehicle. Defendant’s brother consented, and the three exited the vehicle. Detective O’Hal conducted a walkabout and sniff of the vehicle with his drug-trained canine, Leo. Leo alerted to the possible recent presence of illegal narcotics at both the front and rear right-side passenger seats.

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Upon noticing that Ms. Bone’s pants were buttoned but unzipped, the officers on the scene called a female law enforcement officer to search Ms. Bone. Corporal Monique Starling arrived at the scene to conduct the search. According to Corporal Starling, Ms. Bone stated that Defendant and his brother had “told her to hide” a package of drugs, and she “admitted that she had drugs down the front of her pants[.]” Ms. Bone then produced from her pants “a medium-sized white plastic bag that had been knotted.” The substance in the bag was later determined to be 168.95 grams of heroin. Officers arrested Defendant, his brother, and Ms. Bone.

On 1 December 2014, a Guilford County grand jury returned a true bill of indictment charging Defendant with conspiracy to traffic in heroin, trafficking by possession of 28 grams or more of heroin, and trafficking by transportation of 28 grams or more of heroin.

The instant case is Defendant’s third appeal arising out of his arrest on 6 October 2014. In *Baskins I*, Defendant appealed from the judgment entered upon his *Alford* plea<sup>1</sup> after the trial court denied his motion to suppress the evidence obtained from the traffic stop. *State v. Baskins (Baskins I)*, 247 N.C. App. 398, 786 S.E.2d 433, 2016 WL 1743400, at \*3 (2016) (unpublished). This Court affirmed “the denial of

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<sup>1</sup> An *Alford* plea is a guilty plea in which the defendant does not admit to any criminal act, but admits that there is sufficient evidence to convince the judge or jury of the defendant’s guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171 (1970); *State v. Baskins (Baskins II)*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018), *disc. review denied*, 372 N.C. 102, 824 S.E.2d 409 (2019).

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Defendant’s motion to suppress based solely upon the trial court’s determination that an inspection violation justified the initial stop of the Buick.” *Id.* at \*4.

Thereafter, Defendant filed a Motion for Appropriate Relief, arguing that he received ineffective assistance of appellate counsel in *Baskins I*; after the trial court denied his Motion, Defendant appealed. *State v. Baskins (Baskins II)*, 260 N.C. App. 589, 594–95, 818 S.E.2d 381, 388 (2018). In *Baskins II*, we concluded that had appellate counsel challenged the trial court’s pertinent findings of fact, “there is a reasonable probability that . . . Defendant would have been successful in his appeal in *Baskins I*.” *Id.* at 608, 818 S.E.2d at 396. We therefore reversed the trial court’s order denying Defendant’s Motion for Appropriate Relief, and remanded the matter “for entry of an order granting Defendant’s Motion for Appropriate Relief and vacating his convictions.” *Id.*

On remand, this matter came on for retrial in Guilford County Superior Court on 2 August 2021. Ms. Bone testified as a witness for the State. During direct examination, the State asked Ms. Bone several questions concerning the handwritten statement that she provided to law enforcement officers two days after her arrest. Ms. Bone authenticated the statement, and the trial court admitted it into evidence without objection. In the handwritten statement, Ms. Bone explained: “[W]hen I seen [sic] the blue lights[,] that’s when [Defendant] throws me a bag[,] tells me to stuff it[,] and I put the bag in my pants.” When the State inquired further regarding this

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portion of the statement, Ms. Bone invoked her Fifth Amendment privilege against self-incrimination.

The trial court then conducted a voir dire hearing regarding Ms. Bone's asserted Fifth Amendment privilege. Ms. Bone's attorney argued that Ms. Bone was "under no obligation to testify for the State, and as such, she should not be able to be compelled to answer any questions." The prosecutor asserted that Ms. Bone was "claiming a privilege that does not exist[.]" in that she had completed her probation and thus could not "be placed in jeopardy for the[ ] same . . . offenses again[.]" Defense counsel responded:

I do think that she has invoked her privilege at this point, which creates an issue on my part with regard to her testimony that . . . at this point, if she's invoked her privilege, . . . I can't cross-examine her, and that's an issue there on -- or effectively cross-examine her, Your Honor.

I don't know why she would have asserted the privilege. I don't think I can get that far into that, but I would move to strike any testimony that she's had thus far. I would move to strike her statement, and I would move to strike any mention of her statement to the Court, Your Honor.

The trial court concluded that Ms. Bone was not entitled to assert the privilege in the instant proceeding.

Ms. Bone was placed under oath once again, and Defendant renewed his "objection for the motion to strike." The State then resumed its examination of Ms. Bone in the presence of the jury. Yet Ms. Bone was unable to provide the State with further information regarding the events preceding Defendant's arrest. At one point

during the State’s examination, she stated, “I don’t want to be here. I’m done. This ain’t about me.” When the State inquired concerning the circumstances by which she came into possession of the heroin, Ms. Bone repeatedly asserted that she “d[id]n’t recall”; she testified similarly on cross-examination. However, during cross-examination, Ms. Bone was able to answer questions regarding the terms of her plea arrangement with the State.

At the close of the State’s evidence, and again at the close of all evidence, Defendant moved to dismiss all charges due to insufficient evidence. The trial court denied the motion on both occasions.

On 6 August 2021, the jury returned its verdicts finding Defendant not guilty of conspiracy to traffic 28 grams or more of heroin; guilty of trafficking by possession of 28 grams or more of heroin; and guilty of trafficking by transportation of 28 grams or more of heroin. The trial court entered judgments upon the jury’s verdicts, sentenced Defendant to consecutive terms of 225 to 282 months in the custody of the North Carolina Division of Adult Correction for each conviction, and imposed a \$500,000.00 fine for each conviction. Defendant gave notice of appeal in open court.

### ***Discussion***

On appeal, Defendant argues that “the trial court committed reversible error when it denied defense counsel’s motion to strike [Ms.] Bone’s testimony after she asserted her Fifth Amendment privilege[.]” in violation of his right to confront witnesses at trial.

*I. Standard of Review*

A trial court's denial of a motion to strike is reviewed on appeal for an abuse of discretion. *State v. Smith*, 291 N.C. 505, 518, 231 S.E.2d 663, 672 (1977); *see also State v. Moses*, 205 N.C. App. 629, 635, 698 S.E.2d 688, 694 (2010) ("The trial court's denial of a motion to strike will not be disturbed on appeal absent an abuse of discretion."). An abuse of discretion occurs when the trial court's "ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Elliott*, 360 N.C. 400, 419, 628 S.E.2d 735, 748 (citation omitted), *cert. denied*, 549 U.S. 1000, 166 L. Ed. 2d 378 (2006).

*II. Analysis*

Defendant argues that the trial court abused its discretion by denying his motion to strike Ms. Bone's testimony, in that the trial court's refusal to allow Ms. Bone to assert her Fifth Amendment privilege resulted in her feigned memory loss, which impeded Defendant's ability to conduct cross-examination, to his prejudice. We disagree.

Alleged "[e]videntiary errors are harmless unless a defendant proves that absent the error a different result would have been reached at trial." *State v. Ferguson*, 145 N.C. App. 302, 307, 549 S.E.2d 889, 893, *disc. review denied*, 354 N.C. 223, 554 S.E.2d 650 (2001); *see also, e.g., State v. Jones*, 292 N.C. 255, 258, 232 S.E.2d 707, 708 (1977) ("[A]ssuming [*a*]rguendo that [the] defendant's motion to strike should have been allowed, it is incumbent upon him to show error positive and



tangible, that has affected his rights substantially and not merely theoretically, and that a different result would likely have ensued.” (citation and internal quotation marks omitted)).

In the instant case, assuming, *arguendo*, that the trial court erred by denying Defendant’s motion to strike Ms. Bone’s testimony, such error was not prejudicial. Defendant fails to show that “a different result would have been reached at trial” absent Ms. Bone’s testimony, *Ferguson*, 145 N.C. App. at 307, 549 S.E.2d at 893, as ample other evidence established Defendant’s guilt. For example, Sergeant McPhatter testified concerning his observations of Defendant’s suspicious behavior upon exiting the China Bus and during his time at the Shell station. Detective O’Hal testified that Defendant appeared “[e]xtremely nervous” during the traffic stop, to the point that Detective O’Hal “even noticed from outside the vehicle beads of sweat pouring down his face.” Leo, Detective O’Hal’s drug-trained canine, alerted to the possible presence of narcotics in the front and rear right-side passenger seats, where Defendant and Ms. Bone had been sitting just prior to the dog sniff of the vehicle. Corporal Starling testified regarding her conversation with Ms. Bone, during which Ms. Bone divulged that Defendant and his brother “told her to hide” the drugs and admitted that she had concealed them “down the front of her pants.” And finally, Ms. Bone’s handwritten statement that she provided to law enforcement officers—which directly implicated Defendant—was admitted into evidence without objection.

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“Under these circumstances, we are unable to find prejudicial error in the trial judge’s denial of [D]efendant’s motion to strike.” *State v. Cox*, 296 N.C. 388, 391, 250 S.E.2d 259, 261 (1979). Assuming without deciding that the trial court erred by denying Defendant’s motion to strike, we conclude that the error was not prejudicial because Defendant has not, and cannot, demonstrate that a different result would have been reached at trial absent Ms. Bone’s testimony. *Ferguson*, 145 N.C. App. at 307, 549 S.E.2d at 893. Accordingly, we conclude that Defendant received a fair trial, free from prejudicial error.

NO PREJUDICIAL ERROR.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).