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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-626

Filed 18 April 2023

Onslow County, Nos. 17 CRS 50321, 22

STATE OF NORTH CAROLINA

v.

WILLIAM ANTHONY BRYANT, SR., Defendant.

Appeal by defendant from judgments entered 14 December 2021 by Judge Imelda J. Pate in Onslow County Superior Court. Heard in the Court of Appeals 25 January 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Michael T. Wood, for the State.*

*J. Clark Fischer for the Defendant.*

DILLON, Judge.

Defendant William Anthony Bryant appeals from judgments entered upon a jury verdict convicting him of several assault crimes, including possession of a firearm by a felon, based on evidence that he fired multiple shots at an occupied vehicle. On appeal, he challenges the admission of statements he made while in custody. We

conclude Defendant received a fair trial, free of reversible error, but remand for resentencing.

## I. Background

On the evening of 18 January 2017, Defendant fired multiple gunshots at two individuals who were riding in a vehicle. The vehicle was struck five times. The passenger was struck near his left armpit. The driver quickly drove away from the scene, and law enforcement responded shortly after.

Upon interviewing the driver, law enforcement learned that a man driving a dark-colored Nissan Frontier shot the two men. The driver identified the shooter as Defendant and called him by his alias, Anthony “Amp” Sinclair.

The following day, law enforcement arrested Defendant and transported him to the sheriff’s office.

When law enforcement interviewed Defendant, Defendant admitted that he was known by his alias, Amp. For the first 25 minutes of the interview, he denied his involvement in the shooting, but then changed his story and said, “I did it.” Defendant then explained that he shot at the men because one had called him a name.

Defendant was convicted by a jury of several assault charges and for possession of a firearm by a felon. The trial court entered judgments in accordance with the verdict and sentenced Defendant to two consecutive sentences. Defendant timely appealed.

## II. Analysis

Defendant raises three issues on appeal. We address each in turn.

A. Law Enforcement Testimony

Defendant first argues that the trial court erred by allowing various law enforcement officers to give their personal opinions regarding Defendant's guilt.

"[E]videntiary error does not necessitate a new trial unless the erroneous admission was prejudicial." *State v. Delau*, 381 N.C. 226, 237, 872 S.E.2d 41, 48 (2022). Prejudice occurs when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at trial. N.C. Gen. Stat. § 15A-1443(a) (2021).

Assuming there was error in the testimonies of these law enforcement officers, Defendant failed to present any facts or argument in his brief to show that such error was prejudicial. As a result, it could be argued that Defendant's mere claim of prejudicial error, without any supporting argument or authority, is waived. N.C. R. App. Pro. 28(b)(6) (2021).

Regardless, we conclude that any error was not prejudicial, based on the overwhelming evidence of Defendant's guilt. For instance, the jury heard Defendant admit, "I did it," in a recording of Defendant's interview with law enforcement. Defendant also explained how the shooting occurred, and that he shot the two individuals because he was angry that one of the men had called him a name. Defendant further admitted that he was known as Amp, which was the alias identified by the driver. Additionally, there was evidence that Defendant voluntarily

wrote out an apology letter while in custody to both victims. This letter was admitted into evidence:

Smokey, Charles, man I want to say I took it too far. I wasn't trying to hurt you or Charles. I was not in my right mind. All I wanted to do you is why you called me a crack smoking mother fucker... I just wanted you to know you hurt my feelings man that is all...

Defendant signed the letter with his alias, "Amp." Defendant also admitted to owning the firearm used in the shooting. The State additionally produced the following evidence showing that Defendant's firearm had been used: (1) the shell casing recovered from the scene of the shooting, (2) the shell casing recovered from outside Defendant's residence, and (3) the projectile recovered from the trunk of the driver's vehicle.

#### B. Officer's Testimonial Hearsay

Defendant next argues that the trial court erred when it admitted testimony an investigating officer that was inadmissible hearsay. Defendant contends that this error violated his Sixth Amendment right to confrontation.

When preserved by an objection, as applicable here, we review *de novo* a trial court's determination of whether an out-of-court statement is admissible. *State v. Gabriel*, 207 N.C. App. 440, 445, 700 S.E.2d 127, 130 (2010). The same applies to cases where constitutional rights are implicated. *Piedmont Triad Airport Auth. v. Urbine*, 354 N.C. 336, 338, 554 S.E.2d 331, 332 (2001). Defendant bears the burden of showing a reasonable probability that the jury would have reached a different

verdict had the evidence not been admitted. N.C. Gen. Stat. § 15A-1443(a); *State v. Wilkerson*, 363 N.C. 382, 415, 683 S.E.2d 174, 195 (2009). However, if the error relates to a right arising under the Constitution of the United States, the error is prejudicial unless it is found to be harmless beyond a reasonable doubt. N.C. Gen. Stat. § 15A-1443(b) (2021).

Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” N.C. R. Evid., Rule 801(c) (2021).

Here, Defendant cites three examples of testimony that he contends were inadmissible hearsay. Defendant’s objections have been omitted from the excerpts below.

[The State]: Can you tell us when you got there what you first observed and what you did, please?

[Officer]: So I was informed that [] there were two parties involved. One party was transported to Vidant, and the other party was still on scene. I observed the vehicle that was struck. I could see the holes on the side, on the left side of it. The information I got regarding one of the victims was that they were struck on the left side.

...

[Officer]: That they were struck on the left side underneath their armpit as they were sitting on the passenger side of the vehicle.

[The State]: Were you able to identify that individual by name?

[Officer]: Yes, ma’am.

[The State]: What name was that?

...

[Officer]: [identifying the passenger by name].

Despite Defendant's contention, the challenged testimony here does not constitute inadmissible hearsay. Our Supreme Court has explained that "[o]ut-of-court statements that are offered for purposes other than to prove the truth of the matter asserted are not considered hearsay. Specifically, statements are not hearsay if they are made to explain the subsequent conduct of the person to whom the statement was directed." *State v. Gainey*, 355 N.C. 73, 87, 558 S.E.2d 463, 473 (2002) (citations omitted).

Here, the officer's testimony merely described the information she received upon arriving at the scene of the crime, which informed and influenced her subsequent actions during the investigative process. Therefore, this testimony was properly admitted because it was not offered for a hearsay purpose, but rather, was the officer's explanation of her response to the crime and actions during the investigation.

The second portion of the officer's testimony that Defendant challenges reads as follows:

[The State]: If I can draw your attention to approximately 12:30 that morning on January 19th; did there come a time where you received information about the status of [the passenger]?

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[Officer]: Yes, ma'am.

[The State]: Based on the course of your investigation what information did you receive?

...

[Officer]: Based on the information that was told to me -- explained to me was that [the passenger] because of where the entry wound of where the bullet went through he was possibly paralyzed.

[The State]: That was the information you originally received, correct?

[Officer]: Yes, ma'am.

[The State]: Did you later receive additional information about his status?

[Officer]: Yes, ma'am.

[The State]: Did you learn that he was not paralyzed.

[Officer]: Yes, ma'am.

Even if this testimony were admitted for the hearsay purpose of proving the truth of the matter asserted (the severity of the passenger's injuries), any error did not prejudice Defendant. First, details regarding the extent of these injuries were admitted through other sources including testimony from two other officers and from one of the passenger's treating physicians. Second, the challenged testimony does not prejudice Defendant because although it first raised the suggestion that the passenger's wound had left him paralyzed, the testimony was negated immediately when the officer stated that she later learned that the passenger had not been

paralyzed. Accordingly, Defendant was not prejudiced.

Defendant challenges one final portion of the officer's testimony:

[The State]: Thank you, [Officer]. During the course of your investigation was it learned that the location of the shooting that you were investigating occurred at 538 Spring Hill Road in Maysville?

...

[Officer]: Yes, ma'am.

[The State]: Is that location in Onslow County, ma'am?

[Officer]: Yes, ma'am.

[The State]: During the course of your investigation was it also determined that the identity of the shooter was an "Amp" Sinclair?

...

[The State]: Lieutenant Hernandez, were you able to determine an AKA of the defendant William Bryant?

[Officer]: Yes, ma'am.

[The State]: How were you able to determine [the] nickname [of] Mr. Bryant?

[Officer]: With the information obtained in the investigation the nickname Amp was ... written on the mirror during the search warrant... [i]t also indicated the location which Mr. "Amp" Sinclair lived, and then on top of the background information obtained when investigating the case; it was learned that "Amp" Sinclair was an alias for Mr. William Bryant.

Like the first excerpt Defendant challenges, this portion of the officer's testimony is admissible because it describes the facts and evidence that led her and her colleagues



to connect Defendant with his alias. Additionally, this same information was relayed through the testimony of other officers. As a result, Defendant cannot show that any prejudice occurred, and we conclude that the trial court did not commit reversible error when it allowed the officer's testimony to be admitted.

C. Defendant's Prior Record Level

Lastly, Defendant contends that the trial court erred in its determination of sentencing points based on Defendant's prior criminal record.

On appeal, we consider whether the sentence entered is supported by evidence introduced at the trial and the sentencing hearing. *State v. Brewer*, 321 N.C. 284, 285, 362 S.E.2d 261, 261 (1987).

Defendant argues that the trial court erred by including Defendant's past conviction for felony possession of cocaine in his prior record level. Defendant contends that this was error because the same conviction was identified in the State's superseding indictment as a predicate felony to his charge for felon in possession of a firearm.

In making this argument, Defendant relies on case law from our Court stating the general rule that a prior conviction used to establish a person's eligibility for a punishment enhancement does not count toward his or her prior record level. *State v. Gentry*, 135 N.C. App. 107, 519 S.E.2d 68 (1999) (holding that three-prior misdemeanor DWIs underlying a felony habitual DWI charge should not be included in the defendant's prior record level); *see also State v. Snyder*, 246 N.C. App. 353, 782

S.E.2d 910 (2016).

However, unlike in *Gentry*, Defendant's underlying felony conviction here does not operate as a sentencing enhancement. Rather, because possession of a firearm alone is not a crime, Defendant's prior felony charge operates as a prerequisite to his conviction of possession of a firearm by a felon. Our case law instructs that because "the mere possession of a firearm, unlike driving while impaired, is not a criminal offense, the sort of 'double-counting' condemned in *Gentry*... simply does not occur." *State v. Best*, 214 N.C. App. 39, 54, 713 S.E.2d 556, 566 (2011). Accordingly, Defendant's prior felony charge is a substantive offense rather than a sentencing enhancement as addressed by this Court in *Gentry*. The trial court did not err when it calculated Defendant's felony possession conviction into his prior record level.

Defendant next argues that the trial court erred by including six misdemeanor points on Defendant's prior record. In total, regarding Defendant's non-habitual felon record, the trial court calculated Defendant's prior record to have 12 felony points, 6 misdemeanor points, and one additional point because the offenses were committed while Defendant was on probation. This calculation resulted in a total of 19 prior record points. Although the State concedes that Defendant should only have 5 misdemeanor points, bringing this total down to 18, Defendant was not prejudiced by this error. He was sentenced as a prior record level VI, which is appropriate when the total prior record points exceed 17. Thus, Defendant's sentence was based on the correct level despite the error. *See State v. Posner*, 277 N.C. App. 117, 123, 857 S.E.2d

870, 874 (2021) (“If the trial court sentences a defendant under the proper record level, despite the improper calculation, the defendant suffers no prejudice and the error is harmless.”); *see also State v. Smith*, 139 N.C. App. 209, 220, 533 S.E.2d 518, 524 (2000) (“[B]ecause [the] defendant was correctly found to have nine prior record points, the erroneous finding of a tenth point . . . was harmless and [the] defendant was correctly determined to have a prior record level of IV.”)

Finally, Defendant argues, and the State concedes, that Defendant was improperly sentenced for his conviction for possession of a firearm by a felon. Both parties agree that Defendant should have been sentenced under prior record level IV instead of level V, and both Defendant and the State request that the matter be remanded for another sentencing hearing to correct this issue. As a result, we remand this matter for resentencing.

### III. Conclusion

In conclusion, we find no reversible error during the guilt phase of Defendant’s trial. However, we remand the issue of Defendant’s prior record level, as it relates to his conviction for felony possession of a firearm, for further proceedings regarding sentencing, not inconsistent with this opinion.

NO ERROR IN PART; REMANDED FOR RESENTENCING IN PART.

Judges MURPHY and FLOOD concur.

Report per Rule 30(e).