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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-783

Filed 02 May 2023

Greene County, Nos. 17 CRS 322, 329, 333, 336; 21 CRS 423

STATE OF NORTH CAROLINA

v.

MITCHELL DEANGELO HOLMES

Appeal by defendant from judgments entered 9 December 2021 by Judge Joshua W. Willey, Jr., in Greene County Superior Court. Heard in the Court of Appeals 7 March 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Teresa M. Postell, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant.

ARROWOOD, Judge.

Mitchell Deangelo Holmes (“defendant”) appeals from judgments entered following convictions of: (1) first-degree murder of Tyrone Robinson, Jr. (“Tyrone”); (2) conspiracy to commit robbery with a dangerous weapon against Tyrone; (3) robbery with a dangerous weapon; (4) first-degree kidnapping of Regina Witherspoon (“Regina”); and (5) attempted first-degree murder of Regina. For the following

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reasons, we find defendant received a fair trial free from error.

I. Background

On 21 August 2017, defendant was indicted by a Greene County Grand Jury on counts of: (1) first-degree murder; (2) conspiring with Julius Mumford (“Julius”), Hernandez Mumford (“Hernandez”), and Haddie Jones (“Haddie”) to commit robbery with a dangerous weapon against Tyrone; (3) robbery with a dangerous weapon; and (4) first-degree kidnapping of Regina. Defendant was indicted with additional counts of attempted first-degree murder of Regina and assault with a deadly weapon with intent to kill inflicting serious injury (“AWDWIKISI”) by a Lenoir County Grand Jury on 23 August 2017. Venue for these two charges was transferred to Greene County on 27 October 2021.

The matters came on for trial on 29 November 2021, Judge Willey presiding. The evidence at trial tended to show as follows.

On the evening of 27 October 2015, Tyrone and Regina traveled to Haddie’s residence in Hookerton as Tyrone “had fronted [Haddie]” some cocaine. During the drive, Regina observed a car “c[o]me out of the [Family Dollar] parking lot” with its lights off, but “didn’t think [anything] of it.” They arrived around 9:00 p.m., and Tyrone entered the residence while Regina remained in the vehicle. Regina testified that Tyrone’s cellphone number was 252-***-****.

Suddenly, a man with a gun began “knocking on [Regina’s] window” and opened her car door. Another individual “turned the car off” and removed the car

keys. Two more individuals were present, and they each went inside Haddie's residence except for the individual "with the gun on [Regina]." The individual with the gun forced Regina to put on zip ties.

Next, Regina heard "rumbling" coming from inside Haddie's residence and then the sound of a gunshot. Regina saw two of the perpetrators "tak[e] Tyrone out by his hands" and feet and place him in the backseat of his gray Nissan Altima, but she "couldn't tell" the extent of his injuries. She testified that, in total, there were four black males involved and she observed three of them go into Haddie's residence before hearing a gunshot. She was then removed from the Nissan Altima and "passed off" to a guy with a New York accent. She did not notice an accent or "anything unusual" from the other individuals involved. She was then placed in the front seat of a black Dodge Avenger, with her eyes covered by duct tape and her hands zip tied.

The other individual involved was driving Tyrone's car while the group in the Dodge Avenger followed behind. They drove to a "rocky, dirt road" and left Tyrone's car in a ditch and the individual driving Tyrone's car got into the Dodge Avenger. During the ride, the driver told Regina "he had been following [her and Tyrone] for two weeks[,] " called her names, and said "they [were] going to throw [her] in [a] ditch[.]" Regina confirmed that Tyrone's car "was in good condition" when they dropped it off.

Next, they stopped to get gas at The Marathon before driving to Tyrone's residence "[t]o see if he had . . . money or drugs[.]" They went up to the porch, were

“spooked[.]” and ran back to the car. After leaving Tyrone’s house, they began to discuss “what [to] do with [Regina][.]” They drove to “a random road[.]” removed her from the vehicle, and forced her to lie in the ditch. As “they were standing over [her],” someone directed everyone to shoot. Regina testified that she heard two gunshots, someone’s gun jam, and then two more gunshots. She sustained gunshot wounds to her shoulder and hand.

Regina continued to lie there until the suspects were out of sight before running in the opposite direction. She ran to a neighbor nearby where a woman was able to call the Lenoir County Sheriff’s Office. Patrol Officer Josh Burrus (“Officer Burrus”) arrived, and Regina explained “that people shot her[.]” tied her up, and “put duct tape over her eyes[.]” Officer Burrus observed a “wound on her left hand, . . . [and] left shoulder, . . . a black zip tie on her left wrist and duct tape on her cheek.”

Major Brad Hatch¹ (“Major Hatch”) arrived at the scene and Regina was able to give him a detailed description about the incident. She explained to Major Hatch that earlier in the evening she went to a “residence located on a corner near Family Dollar” in Hookerton with her boyfriend, Tyrone. She stated that Tyrone was shot, “placed in the backseat of his” gray Nissan Altima, “driven to a remote area off of a dirt road” and left in the car while she was taken to Tyrone’s residence in Lenoir

¹ At the time of the incident, Brad Hatch was employed as a patrol sergeant at the Lenoir County’s Sheriff’s Office. At the time of trial, Brad Hatch was working as a major at the Greene County Sheriff’s Office.

County. At the hospital, Regina told law enforcement she could not identify the individuals as they were all “wearing masks[,]” but one was about six feet tall and “weighed about 230 to 240 pounds” and one was “short, about [five foot five] and talked with a New York accent.”

Major Hatch then contacted the Greene County Sheriff’s Office as the incident occurred in their jurisdiction. Major Hatch was familiar with that part of Greene County and was able to use his personal knowledge of the area along with Google Maps to determine where Tyrone’s car was located. On Edwards Road in Greene County, he discovered a “burned-out” Nissan Altima and “the charred remains of a person” suspected to be Tyrone. Dental records eventually confirmed the remains as belonging to Tyrone. The medical examiner testified that Tyrone died of “a perforating gunshot wound” to the chest.

Sheena Tabron (“Ms. Tabron”), Haddie’s neighbor, testified that during the evening on 27 October 2015 she heard “shots” coming from the direction of Haddie’s residence but assumed it was “kids shooting firecrackers[.]” Then “two or three minutes” later she heard “car doors . . . slamming[.]” and “cars leaving.” Ms. Tabron also testified that she observed a dark-colored Audi parked “close to [her] mailbox.”

Grantia Grant (“Ms. Grant”),² testified that she allowed Haddie to borrow her black Dodge Avenger on 27 October 2015. Sandra Ormond (“Ms. Ormond”), who was

² Grantia’s last name changed from Robinson to Grant by the time of trial.

in a relationship with Haddie in October 2015, also testified and her cellphone's contact sheet was admitted into evidence as State's Exhibit 35. Ms. Ormond testified that in 2015, she had two numbers for Haddie, one being 252-***-**** and the other as 919-***-****. She also identified Julius's phone number as 252-***-**** and had Hernandez's contact information saved under his nickname, "Fruit."

Julius, Hernandez, and Haddie each testified. Haddie and Julius did not have plea agreements with the State, but Hernandez testified in exchange for pleading guilty to conspiracy to commit robbery with a dangerous weapon and accessory after the fact of robbery with a dangerous weapon. Hernandez participated in the planning of the robbery, but on the day of, "tr[ied] to call the robbery off" because "he didn't feel right[.]" He called Julius to try to prevent the robbery, and asked Haddie to come with [him][,]" but with no one listening, decided to leave. A fifth individual, Mr. Williams, was also involved in the robbery but was not arrested by the time of trial.

Julius and Hernandez testified that prior to the night of 27 October 2015, there was a plan to commit a robbery with Haddie, Mr. Williams, and defendant, and Tyrone was identified as a potential target. Haddie and Tyrone had a type of "business relationship[,]" and because Haddie owed Tyrone money, invited him to his residence that night. Julius was given the role of placing a tracker on Tyrone's car, which he did a few days prior, and Hernandez and Haddie "were going to play the victims" in order to portray the incident as a "fake robbery."

The testimony from Julius generally matched Regina's account of the events that night and he confirmed that on 27 October 2015, he, Haddie, defendant, and Mr. Williams were involved. He confirmed that Tyrone was shot and placed in the back of his Nissan Altima before they drove to Tyrone's house in search of more drugs or money. He also confirmed that he shot Regina, along with Mr. Williams and defendant, and left her "in the middle of nowhere" before going to light Tyrone's car on fire. Julius also testified that defendant drove a dark, either "[b]lue [or] [black]" colored Audi.

The surveillance video from The Marathon was also obtained and Hernandez identified defendant as the individual in the video. Hernandez and Julius also testified that defendant was from New York, and as their cousin, he would travel from New York for family reunions and holidays.

Haddie's cellphone records from Verizon Wireless were admitted into evidence as State's Exhibit 37 without objection. Agent Christopher Dawson ("Agent Dawson") of the State Bureau of Investigation testified that in November 2015, he uploaded the records into the PenLink database to put the information into chronological format and make the data "easier to read[.]" The State moved to admit Agent Dawson's consolidated report as State's Exhibit 42 and defense counsel objected.

During *voir dire*, counsel argued that the fifth column containing the names of the individuals in contact with Haddie violated defendant's constitutional rights to due process and confrontation as the names were based on altered information

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derived “from another source” and not simply the business records of Verizon. Counsel argued, in part, that when the document was created by Agent Dawson in 2015, three of the individuals included in the report (Hernandez, Haddie, and Julius) had not been interviewed by law enforcement so the inclusion of their numbers was based on unreliable information obtained by investigators in the course of other investigations. Counsel further argued that the inclusion of the names was hearsay as it was based on information collected when no one was under oath.

The State argued that the report included information from witnesses testifying at trial. Regina testified to Tyrone’s number and Ms. Ormond’s contact list identified numbers for Hernandez, Julius, and Haddie. Additionally, Julius’s cellphone number was admitted in State’s Exhibit 36 without objection. Accordingly, the trial court admitted a truncated portion of State’s Exhibit 42 for calls and text messages received on the 26th, 27th, and 28th of October 2015. State’s Exhibit 42 was offered to corroborate a portion of Julius’s testimony.

The jury returned verdicts of guilty for first-degree murder, conspiracy to commit robbery with a dangerous weapon, robbery with a dangerous weapon, first-degree kidnapping, and attempted first-degree murder on 9 December 2021. Defendant was found not guilty of robbery with a dangerous weapon against Regina or AWDWIKISI against Regina. Judgment was arrested on the conviction of robbery with a dangerous weapon. Defendant was sentenced to life imprisonment and received concurrent sentences for the other convictions. Defendant timely appealed.

II. Discussion

Defendant's only argument on appeal is that it was error to admit State's Exhibit 42 identifying the names of the individuals in contact with Haddie as they were not from the business records obtained by Verizon. Specifically, defendant contends the "sources of the reported names were from statements made by unidentified witnesses to law enforcement investigators" and consisted of "testimonial hearsay" in violation of defendant's "constitutional right to confrontation." We find defendant's contention to be without merit.

This Court reviews alleged errors of constitutional rights *de novo*. *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009) (citation omitted), *appeal dismissed*, 363 N.C. 857, 694 S.E.2d 766 (Mem) (2010). Defendant does not contest the entirety of State's Exhibit 42 but only column five identifying the individuals in contact with Haddie. Defendant's assertion that the list included "hearsay from persons not shown to be unavailable and not shown to have been subject to cross-examination" is misplaced. As illustrated above, Ms. Ormond, Haddie, Julius, Hernandez, Ms. Grant, as well as Regina's testimony identifying Tyrone's number, testified and verified the names and numbers included in State's Exhibit 42. The only number not verified by testimony at trial was the number for Haddie's mother, Ms. Jones.

Defendant relies on *Crawford v. Washington* to support his contention but fails to explain how the opportunity for cross-examination was not satisfied in the case *sub judice*. *Crawford v. Washington*, 541 U.S. 36, 158 L. Ed. 2d 177 (2004).

Agent Dawson’s testimony included explaining the process for creating State’s Exhibit 42 and he acknowledged that he did not have personal knowledge about each individual phone number in column five. Yet, this same information was admitted and verified by witnesses testifying at trial and subject to cross-examination. Each individual listed in column five, with the exceptions of the victim Tyrone, and testimony verifying the name and number for Haddie’s mother, testified at trial. Thus, the original report may have included information from a police database, but identification and additional verification of the names and phone numbers were presented to the jury by the witnesses at trial, as the numbers were their own.

The “ultimate goal” of the Sixth Amendment right to confrontation consists of a procedural protection “to ensure the reliability of evidence[.]” *Crawford*, 541 U.S. at 61, 158 L. Ed. 2d at 199. “It commands, not that evidence be reliable, but that reliability be assessed” by the “crucible of cross-examination.” *Id.* That procedural guarantee was met in this case. Any error in admitting the name of Haddie’s mother was harmless error as she was not connected to this case in any respect. Defendant’s argument is overruled.

III. Conclusion

Based on the foregoing reasons, we conclude defendant received a fair trial free

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from prejudicial error.

NO ERROR.

Judges MURPHY and RIGGS concur.

Report per Rule 30(e).