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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-501

Filed 16 April 2025

Wake County, Nos. 19CR215611-910, 19CR215613-910

STATE OF NORTH CAROLINA

v.

DEMONTE TYQUAN DUNCAN

Appeal by defendant from judgment entered 5 June 2023 by Judge A. Graham Shirley in Wake County Superior Court. Heard in the Court of Appeals 11 February 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Marissa K. Jensen, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Franke, for defendant-appellant.*

ZACHARY, Judge.

Defendant Demonte Tyquan Duncan appeals from the judgment entered upon the jury's verdicts finding him guilty of first-degree murder, three counts of attempted first-degree murder, and possession of a firearm by a felon. Defendant's appeal concerns the admissibility of certain hearsay evidence regarding a photo

identification lineup conducted as part of the investigation. After careful review, we discern no error.

### **I. Background**

In the early morning of 18 August 2019, Jamel Campbell, Christopher Myers, Arlo Ramsey, and Victor Sloan left a bar in Raleigh, North Carolina, and got into a black pickup truck. As Campbell drove the truck onto I-440, he noticed a light-colored compact car that was following them “a little close.” Thinking that the car intended to pass them, Campbell changed lanes; instead, the car pulled up to the truck’s passenger side.

The men in the truck heard a “loud noise” and wondered “if one of the tires popped.” As Ramsey, the front passenger, rolled down his window, the men realized that they were being shot at. Sloan, who was sitting behind Ramsey, and Campbell saw that the shots were being fired from the rear window of the car. A bullet struck Ramsey in his chest and he could barely respond when Campbell asked whether he had been hit. Sloan sustained a minor injury to his arm.

Campbell exited I-440 into downtown Raleigh to locate a hospital. One of the truck’s occupants called 9-1-1, and Senior Officer Kevin Hubal of the Raleigh Police Department responded to the call. Senior Officer Hubal located the truck pulled over on the side of a road with its hazard lights on. The truck’s occupants frantically requested assistance getting Ramsey to the hospital. Ramsey was transported to WakeMed Hospital, where he died later that morning.

An extensive investigation ensued, involving law enforcement officers from the Raleigh Police Department, the City-County Bureau of Information, and the State Crime Laboratory. Through a combination of physical evidence recovered from I-440, surveillance footage, and social media, three suspects were identified and arrested: Xavier Alston, Raekwon Williams, and Defendant. Defendant's father's car—a white Chevrolet Sonic—was seized. Gunshot residue was found on the rear driver's-side door of the Sonic.

Detective Stephen Snowden of the Raleigh Police Department interviewed Campbell, Myers, and Sloan. During the course of the investigation, Detective Privet<sup>1</sup> conducted a photo lineup with Campbell, showing him photographs of Alston and five others. Detective Snowden was not present for this procedure. He later spoke with Detective Privet about the lineup and reviewed his written report, which indicated that Campbell displayed verbal and visible interest in photos of two men in the lineup, including Alston. However, Detective Privet reported that Campbell did not positively identify any individual from the lineup.

Detective Snowden also interviewed Alston and Williams. Both men stated that Alston had been driving the Sonic; Williams had been in the front passenger seat and Defendant in the back seat. Both men identified Defendant as the shooter.

On 23 September 2019, a Wake County grand jury returned indictments

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<sup>1</sup> Detective Privet is not identified by his full name in the record on appeal.

charging Defendant with first-degree murder, three counts of attempted first-degree murder, and possession of a firearm by a felon. The matter came on for jury trial in Wake County Superior Court on 22 May 2023.

On 5 June 2023, the jury returned its verdicts finding Defendant guilty as charged. The trial court consolidated the convictions and entered judgment, sentencing Defendant to life imprisonment without the possibility of parole in the custody of the North Carolina Department of Adult Correction. Defendant gave notice of appeal in open court.

## **II. Discussion**

This appeal concerns two out-of-court statements—one admitted into evidence during the State’s direct examination of Detective Snowden without objection from Defendant, and one excluded from Defendant’s cross-examination of Detective Snowden via the State’s sustained objection—concerning the photo lineup conducted by Detective Privet. Defendant argues on appeal that he should have been allowed to impeach the first statement by introducing the second statement, and that the trial court thus erred by sustaining the State’s objection during his cross-examination of Detective Snowden. We disagree.

### **A. Standard of Review**

“When preserved by an objection, a trial court’s decision with regard to the admission of evidence alleged to be hearsay is reviewed de novo.” *State v. Cromartie*, 257 N.C. App. 790, 792, 810 S.E.2d 766, 769 (2018) (citation and italics omitted). “But,

even if the trial court admits hearsay in error, the erroneous admission of hearsay testimony is not always so prejudicial as to require a new trial, and the burden is on the defendant to show prejudice.” *Id.* (cleaned up); see N.C. Gen. Stat. § 15A-1443(a) (2023). “Evidentiary errors are harmless unless a defendant proves that absent the error a different result would have been reached at trial.” *Cromartie*, 257 N.C. App. at 792, 810 S.E.2d at 769 (citation omitted).

## **B. Analysis**

As stated above, this appeal concerns the application of Rule 806 of the North Carolina Rules of Evidence to two out-of-court statements related to Detective Snowden’s testimony concerning the photo lineup conducted by Detective Privet. The first is Detective Snowden’s statement that he “was told that [Campbell] did not” identify anyone from the lineup. The second is the statement that “Detective Privet put in his report that . . . Campbell did not make a positive indication but made verbal and visible interest in photos” of two men in the lineup, including Alston. The first statement was admitted into evidence, without objection from Defendant, during Detective Snowden’s direct-examination testimony; Defendant attempted to elicit the second statement during his cross-examination of Detective Snowden, but the trial court sustained the State’s objection and excluded the statement from evidence.

“‘Hearsay’ is 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. Gen. Stat. § 8C-1, Rule 801. “Hearsay is not admissible except as

provided by statute or by” the Rules of Evidence. *Id.* § 8C-1, Rule 802. “When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if [the] declarant had testified as a witness.” *Id.* § 8C-1, Rule 806.

Defendant contends that the trial court erred by preventing him from asking Detective Snowden whether Campbell “showed ‘visible and verbal interest’ in Alston’s photo when attempting to identify the shooter in a lineup.” Defendant claims that Detective Snowden’s testimony on direct examination—to which Defendant did not object—that he “was told [Campbell] did not” identify anyone from the lineup was hearsay. Consequently, Defendant argues that, under Rule 806, he should have been “allowed to impeach the hearsay declarants”—Detective Privet and Campbell—“by eliciting from [Detective] Snowden the prior-inconsistent statement [that Detective] Privet wrote in his police report.”

In response, the State posits that Detective Snowden’s statement regarding the lineup was not hearsay, as it was not offered for the truth of the matter asserted. The State contends that therefore Rule 806 was inapplicable, and the trial court properly denied Defendant’s attempt to introduce Detective Privet’s written statement. Alternatively, in the event that Rule 806 does apply to Detective Privet’s statement, the State argues that “the statement from [Detective] Privet’s report does not constitute impeachment evidence nor is it a prior inconsistent statement that

would be admissible under Rule 806.” We agree with the State that Detective Snowden’s statement was not hearsay.

“Out-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 (citation omitted), *cert. denied*, 537 U.S. 896, 154 L. Ed. 2d 165 (2002). This principle permits the admission of testimony concerning out-of-court statements “used to explain [a law enforcement officer]’s subsequent conduct” in investigating a crime. *State v. Stanley*, 213 N.C. App. 545, 553, 713 S.E.2d 196, 202 (2011).

According to the State, Detective Snowden’s testimony that Detective Privet informed him that Campbell did not identify a suspect from the photo lineup “was offered to show the course of [Detective] Snowden’s investigation and what investigative steps he took next.” We agree. The transcript reveals that the line of questioning during which Detective Snowden testified to Detective Privet’s photo lineup was part of his testimony setting forth the chronology of the investigation.

By the time of the photo lineup, law enforcement officers had identified the three occupants of the white car from, *inter alia*, video-surveillance footage and social media accounts. Detective Snowden explained that “once all three [suspects] were identified, we kind of discussed what we had, and it appeared that we were on the right track.” He then “started thinking of things that [he] could probably do . . . to

forward the investigation a little bit, because [they had] kind of exhausted looking for video in the area at that point.” Detective Snowden explained that he determined that conducting a photo lineup was one of the next potential steps available in their investigation.

After Detective Snowden testified that he “was told [that Campbell] did not” identify anyone, the State inquired about the next step in the investigation: “[Y]ou indicated that you were thinking, kind of, of what to do next because you had exhausted the video surveillance. So did you do anything specifically with [Williams] at that point?” Detective Snowden detailed the next phase of the investigation, in which he determined that Williams’s driver’s license was revoked and obtained an arrest warrant for Williams so that he could be interviewed.

Viewed in full context, it is manifest that Detective Snowden’s statement was merely “used to explain [his] subsequent conduct” in the chronology of investigating the three suspects. *Id.* Accordingly, it was not hearsay under Rule 801, and Rule 806 did not apply to permit the admission of the statement that Defendant sought to introduce as impeachment evidence.

Moreover, even assuming, *arguendo*, that the statement was hearsay and Rule 806 applied, Defendant has not demonstrated that the excluded evidence would amount to impeachment. Defendant claims that if Detective Snowden’s testimony were hearsay, Defendant’s “questions would be admissible to impeach [Detective] Snowden’s misleading testimony on direct examination that [Campbell] did not pick



anyone out of the lineup.” However, as the State notes, “the fact that Campbell showed interest in two photos in the lineup, does not change or ‘impeach’ the fact that [he] did not actually positively identify anyone as the shooter out of the lineup.” The two statements—that Detective Privet reported that Campbell “made verbal and visible interest” in Alston and another man but Detective Snowden “was told [Campbell] did not” identify anyone from the lineup—are not inconsistent and do not implicate the credibility of either Detectives Snowden or Privet as declarants. Thus, Defendant has not shown that the latter statement would have impeached the former had it been admitted into evidence.

This brings us to the final, and most significant, flaw in Defendant’s argument: he fails to demonstrate prejudice. Even assuming, *arguendo*, that the trial court erred in sustaining the State’s objection to his attempt to cross-examine Detective Snowden on this basis, Defendant is unable to show that “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” N.C. Gen. Stat. § 15A-1443(a).

Defendant alleges that “[t]here is a reasonable possibility the jury’s verdict would have been different with evidence corroborating [Campbell]’s identification.” However, Campbell testified at trial and Defendant cross-examined him about his identification of the shooter, including his belief that the shooter “was shooting out the back with dreads hanging out” of the car window—a description that approximately matched Alston’s hairstyle. Additionally, Defendant specifically asked

Campbell about the photo lineup and elicited testimony from Campbell suggesting that he may have, in fact, provided a positive identification during the lineup: “The photo that I saw of the gentleman that fit the description based upon what I told [Detective] Snowden, and I picked the picture closest to the identity of the person closest to the person I thought it was.”

The evidence that Defendant sought to introduce through Detective Privet’s report was already before the jury in the form of Campbell’s testimony. Therefore, Defendant cannot show prejudice in this appeal because “any error was harmless, as substantially the same information as that contained in the excluded testimony was presented to the jury in answers given by [Campbell] to other questions.” *State v. Holston*, 134 N.C. App. 599, 605, 518 S.E.2d 216, 221 (1999), *cert. denied*, 353 N.C. 389, 547 S.E.2d 30 (2001).

In sum: Detective Snowden’s testimony regarding Detective Privet’s statement that Campbell did not make an identification from the photo lineup was not hearsay; as such, Rule 806 did not apply. But, even if the statement were hearsay, Defendant has not shown that the line of questioning that he contends was erroneously excluded during his cross-examination of Detective Snowden would have had the desired effect—that is, impeachment of Detective Privet’s statement. And finally, even if the trial court erred by sustaining the State’s objection, Defendant has not shown prejudice.

### **III. Conclusion**

STATE V. DUNCAN

*Opinion of the Court*

For the foregoing reasons, we conclude that Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges CARPENTER and MURRY concur.

Report per Rule 30(e).