Cite as 2012 Ark. App. 586

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 12-175

	Opinion Delivered OCTOBER 24, 2012
KURION K. HUGHES, JR. APPELLANT	APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, OSCEOLA DISTRICT, [NO. CR-11-10]
V.	HONORABLE VICTOR LAMONT HILL, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Kurion K. Hughes, Jr., was tried to a jury in Mississippi County Circuit Court and was found guilty of the first-degree murder of Debbie Ann Hooks. He was given a fifty-year prison sentence for this crime. Appellant was also convicted of using a firearm to commit the murder, resulting in an additional fifteen years of imprisonment.[1] On appeal, appellant contends that the trial court erred in permitting the State to present hearsay evidence through a police detective who identified appellant as the person who shot Ms. Hooks. Appellant contends that this was inadmissible hearsay, and further, that permitting this hearsay violated his constitutional right to confront the witness against him. We affirm.

At this jury trial, the State sought to prove that in the early morning hours of January 16, 2011, appellant, Ms. Hooks, and Adrian Norris were passengers in Robert Lee Alexander,

[1]Appellant was charged with theft by receiving as well, but the State agreed that there was insufficient evidence to send that allegation to the jury.

Sr.'s vehicle when appellant shot Ms. Hooks in the face. Ms. Hooks ran to a nearby house seeking help, and she was taken by ambulance to the hospital, but she died two days later. Defense counsel sought to prevent two lay witnesses and one detective from testifying that Ms. Hooks stated that appellant was the person who shot her. The trial court permitted the two lay witnesses to reveal what Ms. Hooks said to them before she was taken to the hospital. Appellant does not contest that ruling on appeal. Appellant's argument focuses on the testimony given by Osceola Police Detective Jennifer Ephlin. This detective stated that at the emergency room, Ms. Hooks said that appellant shot her. He contends that this was inadmissible hearsay, and even if this testimony fit into an exception to the prohibition against hearsay, it violated his rights under the Confrontation Clause. In sum, appellant asserts that the trial court committed reversible error in allowing Detective Ephlin to make that statement before the jury.

The State responds that even if there was evidentiary error of constitutional proportion, it was rendered harmless beyond a reasonable doubt. The State points to (1) the lay witnesses who testified that Ms. Hooks reported that appellant shot her, (2) the eyewitness testimony of the two other persons in the vehicle, and (3) the fact that unspent ammunition of the same caliber and brand used to kill Ms. Hooks was recovered from appellant during his arrest. We agree with the State.

To understand our holding, we must outline the testimony and evidence presented to the jury. Adrian Norris testified that he had known appellant all his life and that appellant went by the nickname, "Hulk." Norris said that on this night, he was riding around with

Robert Lee Alexander, Sr., whom he called "L.A." At some point, appellant asked L.A. for a ride, so Norris moved to the back seat and appellant entered and sat in the front-passenger seat. Norris said appellant wanted L.A. to take him to "Debra Ann's house," and so they did. Norris testified that when Debra Ann was asked to come along, she got in the back passenger-side seat next to him (Norris). Norris said that when Debra Ann indicated to him later that she wanted to go home, he told L.A. to take her home. He said that appellant turned around and shot Debra Ann in the face, telling her, "Bitch, that is what you get for all that snitching." L.A. and "Hulk" fought over the gun and control of the vehicle, and Debra Ann ran for help. Appellant ran away in the darkness. L.A. and Norris then drove to the police station to get help. Norris was "positive" that it was not L.A. who shot Debra Ann.

L.A. (Robert Lee Alexander, Sr.) testified that he was driving Norris and appellant that night and that appellant wanted him to pick up "Debbie Ann." L.A. said that she got in the back with Norris, and appellant rode in the front. He described appellant as "acting weird" that night, and he said he saw appellant turn in his seat, point a gun at Debbie Ann, who was directly behind appellant, and shoot her. He heard appellant accuse Debbie Ann of being a snitch. L.A. said he fought with appellant to get the gun away from him, but appellant ran away. L.A. said he wanted to get Debbie Ann to the hospital but she was gone, so he and Norris drove to the police station to report that "a girl got shot in my car." Photographs of the interior of L.A.'s vehicle were entered into evidence; they showed blood stains on the back seat and back-passenger door.

Harry Lee Beacham, Sr., lived at a house on Chestnut Street, where "Debbie Ann" ran for help. He said Debbie Ann was bleeding from her face, she thought she was going to die, and she pleaded for help. Beacham's mother-in-law, Daisy Fowler, drove up to the residence at about that time, and she observed blood on Debbie Ann's face. Fowler testified that Debbie Ann was hurting, scared she was going to die, and said that "Hulk shot her." Fowler stayed with Debbie Ann until an ambulance arrived.

Jennifer Domingeez, who was engaged to Fowler's son at the time, testified that she was with Fowler when they drove up to the house and saw a lady with blood pouring out of her mouth. Domingeez was the one who called 911 from her cell phone. She testified that the lady was scared, she told them she was shot, she kept asking for help because she was afraid she was going to die, and she said "Huck" or "Hulk" shot her. Domingeez was unfamiliar with the names of people in Osceola, so she did not know who Huck or Hulk was.

Police officers recovered a .380 Kel Tec pistol behind a house near the location where L.A. said the shooting took place. A paramedic retrieved a shell casing from the victim's clothing and gave it to police. This shell casing was matched to the .380 Kel Tec pistol. Police found unspent bullets of the same caliber and brand when they arrested appellant.

Detective Jennifer Ephlin testified that she went to the emergency room to see the victim, she took pictures of her, and the victim could communicate at that time. Ephlin testified, over objection, that the victim told her that "Hulk's the one that shot her."

The medical examiner from the Arkansas State Crime Laboratory testified to his findings on autopsy. Dr. Konzelmann opined that the victim died of a gunshot wound to the

head and neck; he ruled it a homicide. He described her injury as a penetrating bullet to the left of her nose that traveled through her nasal cavity, hard palate, tongue, right-neck tissues, right jugular vein, and that came to rest near her cervical spine. This damaged bullet was removed, tested, and determined to have come from the .380 Kel Tec pistol. Photographs taken during the autopsy were admitted into evidence. It is upon this evidence that the jury rendered a guilty verdict on the charge of first-degree murder.

Appellant argues that the trial court erred in allowing the State to ask the detective what the deceased victim said, over his objection based upon hearsay and violation of his right to confront the witness against him. As a general rule, an evidentiary ruling is reviewed on appeal to determine if the trial court abused its discretion. *Brunson v. State*, 368 Ark. 313, 245 S.W.3d 132 (2006). Constitutional issues, such as those concerning the Confrontation Clause, are reviewed under a de novo standard. *Vankirk v. State*, 2011 Ark. 428, 385 S.W.3d 144. There can be no dispute that this statement, made to a detective as part of this criminal investigation, was "testimonial" as contemplated by the Confrontation Clause. *See id.* Assuming for the sake of argument that permitting Detective Ephlin to relay the victim's statement was in error, the inquiry does not end there. A Confrontation Clause violation is subject to harmless-error analysis, meaning harmless beyond a reasonable doubt. *Id.*

Whether denial of the right to confront a witness is harmless error depends upon a host of factors, including the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination

otherwise permitted, and the overall strength of the prosecution's case. *See Delaware v. Van Arsdall*, 475 U.S. 673 (1986); *Vankirk v. State*, *supra*; *Winfrey v. State*, 293 Ark. 342, 738 S.W.2d 391 (1987). We hold that any error in permitting the detective to relate the victim's statement was rendered harmless beyond a reasonable doubt.

The victim's identification of "Hulk" as the shooter was already in evidence by the testimony of Ms. Fowler and Ms. Domingeez, who heard the victim say this while they waited with her for an ambulance to arrive. The detective's testimony was merely cumulative to that of these two witnesses. Additionally, the State presented two eyewitnesses to the shooting, both of whom identified appellant as the person who shot the victim in the face, and both of whom heard appellant call the victim a "snitch" at the time he shot her. Lastly, when appellant was arrested, he possessed unspent ammunition compatible with the Kel Tec pistol and the bullet found in the victim's body, which corroborated these four witnesses' accounts. The detective's objectionable statement was merely cumulative to a very strong prosecution case. We hold that any potential error was harmless in this instance. *See Roston v. State*, 362 Ark. 408, 208 S.W.3d 759 (2005).

Appellant's convictions are affirmed.

WYNNE and HOOFMAN, JJ., agree.

John H. Bradley, Chief Public Defender, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel Kemp*, Ass't Att'y Gen., for appellee.