NO. COA01-676

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v. Randolph County
No. 98CRS011370, 11373

PAUL JUNIOR HEADEN

Appeal by defendant from judgments entered 11 January 2001 by Judge W. Douglas Albright in Randolph County Superior Court. Heard in the Court of Appeals 16 April 2002.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Thomas B. Wood, for the State.

Robert T. Newman, Sr. for defendant-appellant.

HUNTER, Judge.

Paul J. Headen ("defendant") appeals a judgment sentencing him to twenty-four to thirty-eight months in prison upon his conviction for discharging a firearm into an occupied dwelling. Defendant assigns error to the admission of certain exhibits, to the trial court's failure to instruct the jury on self-defense, and to the denial of his motion for appropriate relief. We find no error.

The State's evidence tended to show that on 2 August 1998, defendant was visiting Steven Thorne at his trailer in the Cedar Lane Trailer Park in Ramseur, North Carolina. Defendant's estranged wife, Phyllis Headen ("Headen"), also lived in the same

trailer park. Headen's trailer was within sight of Thorne's trailer, and the trailers were approximately one hundred feet from each other. Defendant and Thorne spent the morning sitting outside on the tailgate of defendant's truck drinking beer. At some point during the day, defendant walked from Thorne's trailer to Headen's trailer and knocked on the door. Headen answered, and defendant began questioning her as to whether she had one of his guns. David Laughlin, who lived in Headen's trailer and was home at the time, testified that he heard Headen and defendant exchanging words, and that Headen would not permit defendant to enter the trailer. Laughlin testified that he observed defendant walking back towards Thorne's trailer.

Moments later, Laughlin heard Headen fire a warning shot, and he looked out the window to see defendant approaching the Headen trailer armed with a shotgun. Laughlin testified that he obtained his own rifle, opened the trailer door, pointed the rifle at defendant, and instructed him to put the shotgun down. Defendant did not do so, and instead pointed the shotgun at Laughlin. Laughlin stated that he stepped to one side, and defendant fired, hitting the trailer door. Laughlin attempted to close the trailer door, and defendant fired a second shot which hit the inside of the door and caused a shotgun pellet to strike and injure Laughlin's chin. Laughlin thereafter fired three warning shots and struck defendant in the stomach with a fourth shot. Defendant walked back to Thorne's trailer and laid on the tailgate of his truck for a few

minutes. He then got into his truck and laid on the seat for a few moments before Thorne transported him to the hospital.

Defendant testified on his own behalf, stating that after he initially approached the Headen trailer to inquire about his gun, Headen followed him outside and began shooting a gun in the air. Defendant testified that he began walking towards Headen because he "wanted to know what she was shooting at." He testified that Laughlin then opened the trailer door and fired about four shots from a rifle, striking defendant in the stomach. Defendant testified that he was unarmed at this time, and standing near the driver's side of his truck. He stated that he got onto the tailgate of his truck and laid there "for a few minutes" before retrieving his own gun from the passenger side of his truck. Defendant stated that he then shot at the Headen trailer so that Laughlin would shut the door and he could get to the hospital.

On 11 January 2001, the jury convicted defendant of discharging a firearm into an occupied dwelling and domestic criminal trespass. The trial court continued judgment on the trespass conviction but sentenced defendant on the firearm conviction. Defendant appeals.

Defendant first argues on appeal that the trial court erred in admitting as evidence State's Exhibits 1-4, 6-8, 10, and 11, which are various photographs of the scene, including the Headen trailer, the Thorne trailer, defendant's truck, and shotgun pellet holes in the door of the Headen trailer, as well as a picture of Laughlin's injured chin. Specifically, defendant contends the State failed to

establish a proper foundation for admission of the photographs. We disagree.

As our Supreme Court has observed, it is well-established that a photograph is admissible when authenticated by the witness' testimony that (1) the photograph represents "'a correct portrayal of conditions observed by the witness'"; and (2) the photograph will be useful in illustrating the witness' testimony. *State v. Lee*, 348 N.C. 474, 493, 501 S.E.2d 334, 346 (1998) (citation omitted).

In this case, Laughlin described the content of each photograph, testified that they fairly and accurately depict the scene on the day of the crime, and stated that they would assist him with his testimony. The State informed the trial court that it was offering the exhibits for illustrative purposes. This is a sufficient foundation for admission of the photographs. *See State v. Vick*, 341 N.C. 569, 583, 461 S.E.2d 655, 663 (1995) (witness' testimony that photograph of defendant's vehicle accurately depicted vehicle on night of crime and that photograph would assist her in illustrating her testimony sufficient foundation for admission of photograph). This argument is overruled.

Defendant next argues that the trial court erred in admitting State's Exhibit 9, the shotgun purportedly used by defendant to shoot at the Headen trailer. Again, defendant argues that the State failed to lay a proper foundation for its admission because Laughlin did not explain how he was able to recognize the gun and because the State failed to establish a chain of custody.

Real evidence, properly identified, is freely admissible. *State v. Williamson*, 146 N.C. App. 325, 335, 553 S.E.2d 54, 61 (2001), *disc. review denied*, 355 N.C. 222, 560 S.E.2d 366 (2002). Such evidence "must simply '"be identified as the same object involved in the incident in order to be admissible"' and as not having undergone any material change." *Id.* (citations omitted). "Authentification of real evidence '"can be done only by calling a witness, presenting the exhibit to him and asking him if he recognizes it and, if so, what it is."'" *Id.* at 336, 533 S.E.2d at 61 (citations omitted). The trial court has sound discretion in determining whether an object of real evidence has been sufficiently identified. *Id.*

In this case, Laughlin identified Exhibit 9 as the same shotgun used by defendant to perpetrate the crime. Laughlin testified that it was "[w]ithout a doubt" the same shotgun used by defendant. When asked how he recognized the gun, Laughlin testified that he recognized its rusted condition, and that "you don't quite forget when somebody is pointing it at you." Defendant argues that Laughlin failed to adequately explain how he could recognize the gun; however, the law does not require such an explanation. Laughlin was merely required to identify the shotgun as being the same gun used by defendant during the crime. Although Laughlin did not explicitly testify that the shotgun had not undergone any "material change," it was within the trial court's sound discretion to determine whether Laughlin had sufficiently identified the shotgun for its admission. Defendant has failed to

point to any evidence which would suggest the shotgun had been materially altered, and we therefore find no abuse of discretion in the trial court's ruling.

Moreover, with respect to chain of custody, "the trial court need not make a finding as to whether a detailed chain of custody was established unless the items offered were not readily identifiable or were susceptible to alteration and there was some reason to believe that they had been altered." *State v. Owen*, 130 N.C. App. 505, 516, 503 S.E.2d 426, 433, *appeal dismissed*, 349 N.C. 372, 525 S.E.2d 187, *and disc. review denied*, 349 N.C. 372, 525 S.E.2d 188 (1998). A shotgun is not readily susceptible to alteration, nor was there any evidence tending to show that the item had been altered in any way. In any event, Laughlin readily identified the shotgun as being the one used by defendant "[w]ithout a doubt." Therefore, the State was not required to prove chain of custody, nor was the trial court required to make findings in this regard. These arguments are rejected.

In his final argument, defendant maintains the trial court erred in failing to instruct the jury on self-defense and to include in the charge to the jury that defendant must have acted "'without justification or excuse,'" and that the trial court also erred in denying his motion for appropriate relief on these grounds.

The trial court need only instruct a jury on self-defense where there is evidence to support the charge and from which a jury could infer that the defendant acted in self-defense. *State v.*

Allred, 129 N.C. App. 232, 235, 498 S.E.2d 204, 206 (1998). "The trial court has broad discretion in presenting issues to the jury." *State v. Jackson*, 145 N.C. App. 86, 92, 550 S.E.2d 225, 231 (2001). "'The right to kill in self-defense is based on the necessity, real or reasonably apparent, of killing an unlawful aggressor to save oneself from *imminent* death or great bodily harm at his hands.'" *Id.* at 91-92, 550 S.E.2d at 230 (citation omitted).

> "The law of perfect self-defense excuses a killing altogether if, at the time of the killing, these four elements existed:
>
> (1) it appeared to defendant and he believed it to be necessary to kill the deceased in order to save himself from death or great bodily harm; and
>
> (2) defendant's belief was reasonable in that the circumstances as they appeared to him at the time were sufficient to create such a belief in the mind of a person of ordinary firmness; and
>
> (3) defendant was not the aggressor in bringing on the affray, *i.e.*, he did not aggressively and willingly enter into the fight without legal excuse or provocation; and
>
> (4) defendant did not use excessive force, *i.e.*, did not use more force than was necessary or reasonably appeared to him to be necessary under the circumstances to protect himself from death or great bodily harm."

Id. at 92, 550 S.E.2d at 230 (citation omitted).

Defendant argues that he presented evidence of each and every element of perfect self-defense. We disagree. Even taking defendant's rendition of the facts as true, the evidence fails to show that defendant could have had a reasonable belief that it was

necessary to use deadly force in order to avoid death or great bodily harm. Defendant testified that after Laughlin shot him, he walked to his truck where he laid down on the tailgate for several minutes. After resting in his truck, defendant then got up, got into the front seat of the truck, retrieved his gun, and shot at the Headen trailer. There was no evidence that Laughlin ever came out of the Headen trailer, ever made any movement towards defendant, or even threatened defendant after he was shot.

The evidence simply fails to show that defendant reasonably believed that deadly force was necessary at that point to protect himself from *imminent* danger. *See Jackson*, 145 N.C. App. at 92, 550 S.E.2d at 230 (defendant must have reasonable belief that death or great bodily harm is imminent). Even according to defendant's version of the facts, after he was shot, defendant had plenty of opportunity to get into his truck and drive away, or to simply walk back to Thorne's trailer for assistance. Had defendant reasonably believed he was in imminent danger of great bodily harm or death, he would have acted immediately and not laid on the tailgate for several minutes and only a few feet from, and within full view of, Laughlin. Moreover, by defendant's own testimony, he did not shoot at Laughlin because he believed it necessary to use deadly force, but because he wanted Laughlin to shut the trailer door.

Defendant also argues that the trial court erred in failing to add the words "'without justification or excuse'" to the jury charge. Defendant's argument is based on the fact that his actions were excused because he was acting in self-defense. However, where

the evidence fails to support an instruction on self-defense, the trial court is not required to add the words "without justification or excuse" to the jury charge. *State v. Hall*, 89 N.C. App. 491, 495, 366 S.E.2d 527, 529-30 (1988). The trial court did not err in failing to give the requested instructions, or in denying defendant's motion for appropriate relief on these grounds.

No error.

Judges GREENE and TIMMONS-GOODSON concur.

Report per Rule 30(e).