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NO. COA01-915

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

Guilford County
No. 92 CRS 67848

BERNARDO ORAMAS

By Writ of Certiorari review of judgment entered 10 January 1994 by Judge Julius A. Rousseau, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 13 May 2002.

Attorney General Roy Cooper, by Assistant Attorney General Michelle B. McPherson, for the State.

Mark E. Hayes for defendant-appellant.

TYSON, Judge.

I. Facts

Bernardo Oramas ("defendant") was charged with assault with a deadly weapon with intent to kill inflicting serious injury. The State's evidence tended to show that Franklin Santos ("the victim") met friends, Hugo Estrada, Ramone Torres, and defendant at Estrada's apartment in Greensboro, North Carolina on 11 October 1992. The men rode together in Estrada's automobile to a soccer game in Winston-Salem. On the way back to Estrada's apartment, the automobile broke down. Defendant called a taxi to return them to

Greensboro. A disagreement between the victim and defendant ensued over who would pay for the taxi. When the men arrived at Hugo's apartment complex, defendant again started to argue with the victim about payment of the taxi. The taxi fare was paid by Torres.

Torres drove Estrada, defendant, and the victim back to the disabled automobile. During the ride, defendant grabbed the victim by the neck, but Estrada and Torres prevented any further fighting. The men towed Estrada's automobile back to his apartment complex. Estrada, Torres, and the victim walked to Estrada's apartment to watch a movie. Defendant left the area. Estrada, Torres, and the victim later decided to play billiards. After the men exited the apartment complex, defendant stabbed the victim with a knife. Torres eventually pulled defendant off of the victim. The victim was stabbed five times and was treated for his wounds at Moses Cone Hospital.

Defendant testified that when he left another friend's apartment, the victim and the others attacked defendant. Defendant stated that he grabbed an object near the garbage dumpster and struck the victim until he retreated.

A jury found defendant guilty as charged. The trial court sentenced defendant to twenty years imprisonment. Defendant's appointed appellate counsel failed to perfect defendant's appeal. This Court allowed defendant's petition for writ of certiorari on 13 March 2001 to review defendant's judgment.

II. Issues

A. Excluded Testimony

Defendant contends the trial court erred in sustaining the State's objection to a portion of the victim's testimony. Defendant argues the trial court erred by excluding evidence that the victim was the aggressor which tended to support his claim of self-defense. This Court cannot review the propriety of the trial court's exclusion of evidence when the record fails to disclose the significance of the excluded evidence.

Through the use of an interpreter, the following exchange occurred during cross-examination of the victim:

Q. You deny you hit him with a crowbar?

I. He says he did not hit him.

Q. Were you afraid of Bernardo?

I. No.

Q. Did you feel like you could beat him up?

[THE STATE]: Objection.

THE COURT: Sustained.

For this Court to rule on the trial court's exclusion of evidence, a specific offer of proof is required unless the significance of the excluded evidence is clear from the record. *State v. King*, 326 N.C. 662, 674, 392 S.E.2d 609, 617 (1990). Here, defendant failed to make any offer of proof and the record fails to disclose the significance of the excluded evidence. Defendant failed to preserve this issue for appellate review.

B. Repetitive Question

Defendant next contends the trial court erred in sustaining its own objection to defendant's question about the victim's

reaction when defendant had called him an "SOB." Defendant argues the victim's answer was admissible under Rule 402 because it would show why the victim was the aggressor. During cross-examination of the victim, the following exchanged occurred:

Q: So you wanted to fight?

I: In my country, when you're called SOB, in -
- it signifies that the other man will -- it's
an invitation to a fight.

Q. So that made you mad, didn't it?

I: We have -- in my country, to call a man
SOB, it is the biggest offense that can be
said to a person.

Q. So that really made you mad and made you want to
fight?

I: I asked him if that made him mad. He says,
well, I'm not sure I would say mad.

Q: But in your country, when somebody calls
you an SOB, that's a big insult, right?

I: It's a big insult.

Q: And you're a very proud man, right?

[THE STATE]: We object, please.

THE COURT: Overruled.

A. No.

Q. You're not? So it didn't upset you at all
that he called you an SOB, and in your
country, that's a big insult?

THE COURT: Well, he's answered that.
Sustained.

A trial court "has the duty to ensure that time is not wasted in useless and repetitive presentation of the evidence." *State v. Long*, 113 N.C. App. 765, 771, 440 S.E.2d 576, 579 (1994). "When the trial court sustains its own objection, the determination of prejudice must be made not by counting the number of occurrences 'but by reviewing the record with an awareness of the appropriateness of the ruling and the likelihood that the judge's action created an appearance to the jury of partiality on the trial judge's part.'" *Id.* at 771, 440 S.E.2d at 579-80 (quoting *State v. Paige*, 316 N.C. 630, 343 S.E.2d 848 (1986)). Absent a showing of manifest abuse, this Court will not interfere with the trial court's exercise of its duty to control the conduct and course of a trial. *Id.*

Defendant's counsel asked the victim whether he was mad when defendant called him an "SOB" twice before the trial court sustained its own objection. The trial court properly exercised its discretion in controlling the conduct of the trial by sustaining its own objection.

C. Prior Record

Defendant finally contends the trial court erred by overruling his objection to the State's question concerning his prior criminal record. Defendant argues evidence of his 1983 trespassing conviction was inadmissible under N.C.R. Evid. Rule 609. Rule 609 allows a witness, including a defendant, to be cross-examined with

respect to prior convictions for purposes of impeachment. *State v. Gallagher*, 101 N.C. App. 208, 398 S.E.2d 491 (1990). This rule limits admissible evidence of prior convictions to those convictions less than ten years old and punishable by more than sixty days confinement. N.C. Gen. Stat. § 8C-1, Rule 609(b) (1999). A conviction outside this ten-year rule is admissible, however, if the trial court makes "findings as to the specific facts and circumstances which demonstrate the probative value outweighs the prejudicial effect" of the evidence. *State v. Hensley*, 77 N.C. App. 192, 195, 334 S.E.2d 783, 785 (1985), *disc. review denied*, 315 N.C. 393, 338 S.E.2d 882 (1986).

The record does not reveal that the trial court complied with Rule 609 by identifying any fact or circumstance indicating that this evidence was probative of defendant's credibility. The error, however, was harmless. Here, the victim and Torres testified that after they exited the apartment building, defendant stabbed the victim. The substantial evidence of defendant's guilt made it unlikely that the jury relied on the evidence of the earlier trespassing conviction rather than the substantive evidence of defendant's guilt. There is no reasonable possibility that a different result would have been reached at trial had the court excluded this prior conviction. See N.C. Gen. Stat. § 15A-1443(a) (1999). This assignment of error is overruled.

No error.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).