NO. COA02-243

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v. Wake County
No. 00 CRS 68967

TIMOTHY BELCHER

Appeal by defendant from judgment entered 19 July 2001 by Judge Henry W. Hight, Jr. in Wake County Superior Court. Heard in the Court of Appeals 9 December 2002.

Attorney General Roy Cooper, by Assistant Attorney General J. Philip Allen, for the State.

Paul Pooley, for defendant-appellant.

CAMPBELL, Judge.

Defendant was found guilty of assault inflicting serious injury upon a person employed by a state detention facility. He was sentenced to a minimum of 25 months and a maximum of 30 months to run at the expiration of the sentence defendant was serving.

The State presented evidence tending to show that on 23 March 2000 defendant, an inmate at Central Prison, pulled Correctional Officer Calvin John MacLeod ("Officer MacLeod") into his cell, locked the door, removed Officer MacLeod's glasses, poked his fingers in Officer MacLeod's eyes, and beat the officer's face and eyes with the officer's flashlight. Officer MacLeod suffered

temporary blindness. Officer MacLeod continued to suffer from blurred vision as of the time of trial.

Defendant testified that Officer MacLeod forcibly moved him into the cell and that he struck the guard in self-defense.

The sole issue presented by defendant is whether the court erred by allowing the State to cross examine defendant regarding his prior prison disciplinary record. Defendant contends that the evidence should have been excluded by Rules 608(b), 404(b), 403 and 405.

The scope of cross-examination is within the broad discretion of the trial judge, whose discretion is not limited by the Rules of Evidence. *State v. Cummings*, 352 N.C. 600, 618, 536 S.E.2d 36, 50 (2000), *cert. denied*, 532 U.S. 997, 121 S. Ct. 1660, 149 L. Ed. 2d 641 (2001). Ordinarily, specific instances of conduct of an accused, other than convictions of crimes, are not admissible to impeach or bolster the credibility of a witness. N.C. Gen. Stat. § 8C-1, Rule 608(b) (2001). Similarly, under Rule 404(b), evidence of other crimes, wrongs or acts is not admissible to show that a person has a propensity to commit a wrong or act. Notwithstanding, the law recognizes the principle that when a party introduces evidence as to a particular fact or transaction, the opposing party is entitled to introduce evidence in explanation or rebuttal even though the evidence would have been incompetent or inadmissible if it had been offered initially by the opposing party. *State v. Albert*, 303 N.C. 173, 177, 277 S.E.2d 439, 441 (1981). This rule is commonly referred to as "opening the door." *State v. Brown*, 310

N.C. 563, 571, 313 S.E.2d 585, 590 (1984). Another settled principle of law is that when evidence of similar import to evidence introduced by the defendant is admitted without objection, the benefit of an objection is lost. *State v. Morgan*, 315 N.C. 626, 641, 340 S.E.2d 84, 94 (1986).

Here, the transcript shows that defendant opened the door for cross-examination regarding prior instances of his misconduct in prison. Defendant testified that Officer MacLeod pulled him into the cell, shoved him, and pushed him to the floor. Defendant stated that Officer MacLeod "likes to abuse inmates," and that defendant "would have let [MacLeod's pulling him into the cell] go" or "let that slide, you know, just let it go because some guys are like that." He also declared, "I don't want to get any more write-ups than I have to." He further testified that he would have ignored Officer MacLeod's shoving him, but when Officer MacLeod pushed him over a chair and fell on him, defendant defended himself. By the foregoing testimony, defendant sought to portray himself as peaceable and exercising restraint.

Moreover, defendant lost the benefit of his objection by giving similar testimony without objection. Defendant testified that he was in segregation at the time because of "an altercation with another inmate." Although the court had heretofore sustained objections to the State's attempts to question defendant regarding his prison disciplinary record, defendant waived his objection by volunteering that "they can do them 79 write-ups because they can write you up for anything because anything they say, that's the way

it is." When the prosecutor sought to confirm that defendant had 79 write-ups, defendant responded, "I don't know how many I've had. I've never counted them." The prosecutor subsequently proceeded to question defendant, without objection, regarding multiple convictions in the prison system of assaulting other inmates, assaulting a staff person, and assaulting a guard. Defendant acknowledged that he pled guilty to many of the charges.

We hold defendant received a fair trial, free of prejudicial error.

No error.

Judges WYNN and McGEE concur.

Report per Rule 30(e).