NO. COA05-121

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

STATE OF NORTH CAROLINA

v.

CHRISTOPHER M. RAGLAND

Mecklenburg County
Nos. 02 CRS 202974
02 CRS 202975
02 CRS 202978

Appeal by defendant from judgment entered 31 March 2004 by Judge Albert Diaz in Mecklenburg County Superior Court. Heard in the Court of Appeals 27 February 2006.

Attorney General Roy Cooper, by Assistant Attorney General W. Wallace Finlator, Jr. for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Matthew D. Wunsche for defendant-appellant.

ELMORE, Judge.

Defendant appeals his convictions for second degree sexual offense, misdemeanor breaking and entering, and communicating threats. We find no error and affirm the judgment of the trial court.

Complainant, Monique Dolson (Dolson), testified that she was awakened by defendant breaking through her locked bedroom door and armed with a crowbar at approximately 2:00 a.m. on 17 December 2001. At the time of the break-in, she was living with her two young children in a duplex in Charlotte, North Carolina. She had

dated defendant since the beginning of 2000, and he had lived with her in the duplex from May of 2000 to November of 2001. Dolson ended their relationship in October of 2001, and defendant had vacated and removed all of his possessions from Dolson's residence by November of 2001. He did not have a key.

After entering her bedroom, defendant threatened to hit Dolson with the crowbar, saying that he would kill her and that her "kids were going to be orphans" if she did not either "move out of town" or "let him move back in" with her. He then grabbed Dolson by the hair, brandished a pair of scissors, and threatened to cut her hair. Defendant told Dolson not to try to use the telephone, because he had cut the phone lines. He also let the air out of her vehicle's tires. Defendant told Dolson that "he was going to rape [her]." When she told him that she was menstruating, he replied he wouldn't leave until she performed fellatio on him. Defendant then forced Dolson to her knees and held the crowbar to her head while she performed fellatio on him. Defendant exited the residence while Dolson was in the bathroom. When she went downstairs, she saw that her front door was open. Believing defendant was outside, Dolson remained on her couch until a neighbor, Melissa Walker, came to her door at 7:30 or 8:00 in the morning. After the police arrived, Dolson also noticed that her front door was "pried open[,]" the "wires from the phone in the phone box w[ere] pulled out[,]" her kitchen window had been broken from the outside, and her "porch light was busted out."

Dolson's neighbor, Melissa Walker (Walker), testified that she

went to Dolson's house before going to work between 7:00 a.m. and 8:00 a.m on 17 December 2001; and noticed that the tires to Dolson's vehicle were flat and that her front door was open. Dolson immediately told Walker that defendant "had assaulted her." After her children left for school, Dolson told Walker that defendant "made her perform oral sex on him. And, he was saying things to her like, 'You my b----; you my [whore]; you my s---.' And he wasn't going anywhere until she performed oral sex on him." They walked to a neighbor's house and called the police. Walker's testimony regarding Dolson's prior statements was admitted only as corroborative evidence.

Over objection, the State adduced evidence that defendant previously assaulted Dolson at her residence on 15 December 2001. Dolson testified that defendant grew upset after she refused to give him her car keys. As defendant "kept pressuring [her] . . . to give him the keys[,]" Dolson "ran upstairs" to her bedroom. Defendant followed her into her bedroom, punched her twice in the head, and tore her phone out of the wall. Dolson's children ran to a neighbor's house and called the police. Again, immediately following this testimony, the trial court gave a limiting instruction, restricting the jury's consideration of the evidence to the issues of (1) Dolson's belief that defendant would carry out the threats made on 17 December 2001, and (2) "defendant's alleged use of force and Ms. Dolson's lack of consent, with respect to the first-degree sexual offense."

Charlotte Mecklenburg Police Officer Keith Ray Early testified

that as he was obtaining a DNA sample from defendant, defendant said, "I'm glad you're doing this. It will prove it wasn't me; but her boyfriend." DNA analysis ultimately revealed that the semen stains found at the crime scene were defendants.

Defendant testified that he and Dolson were still dating when he went to her house on 17 December 2001, that he let himself into her house with his key, and that her bedroom door was unlocked. After they discussed some "problems" in the relationship, Dolson "grabbed [defendant's] zipper" and performed fellatio on him consensually. When she asked defendant if he "was going to leave when she finished[,]" he replied "that [he] didn't want her any more. And . . . she wasn't nothing but a b---- and a s---." As he left her house, Dolson threatened to call the police on him. Defendant then "pulled the phone cord out [of] the wall" and "let some air out of her front tires of her truck" out of spite. He insisted he never hit Dolson or threatened her with a crowbar.

Defendant first claims the trial court erred in allowing Dolson to testify about his prior act of punching her on 15 December 2001, inasmuch as a charge of assault on a female stemming from this incident was dismissed by the superior court due to a defect in the warrant. Noting that he had been found guilty of the charge in district court before it was dismissed on appeal to superior court, defendant argues the dismissal was "tantamount to an acquittal[.]" Having been effectively acquitted of the 15 December 2001 assault on Dolson, defendant avers he was unfairly prejudiced by the introduction of evidence of this offense.

Initially, we note that the admission of "other acts" evidence under N.C.R. Evid. 404(b) does not require a prior adjudication of guilt for crimes based on those actions. *See State v. Jones*, 322 N.C. 585, 588, 369 S.E.2d 822, 824 (1988); *State v. Weldon*, 314 N.C. 401, 333 S.E.2d 701 (1985). Under N.C.R. Evid. 403, however, "evidence that defendant committed a prior alleged offense for which he has been tried and acquitted may not be admitted in a subsequent trial for a different offense when its probative value depends . . . upon the proposition that defendant in fact committed the prior crime." *State v. Scott*, 331 N.C. 39, 42, 413 S.E.2d 787, 788 (1992).

Evidence of defendant's prior assault of Dolson was admissible "to show that [her] will had been overcome by her fears for her safety where the offense in question requires proof of lack of consent or that the offense was committed against [her] will . . ." *State v. Young*, 317 N.C. 396, 413, 346 S.E.2d 626, 636 (1986) (citing *State v. See*, 301 N.C. 388, 392, 271 S.E.2d 282, 285 (1980); *State v. Taylor*, 301 N.C. 164, 172-73, 270 S.E.2d 409, 415 (1980)). Here, the State bore the burden of proving both that defendant obtained oral sex from Dolson against her will, an essential element of second degree sexual offense under N.C. Gen. Stat. § 14-27.5(a) (2005), and that Dolson actually believed defendant's threat to kill her, an essential element of communicating threats under N.C. Gen. Stat. § 14-277.1(a)(4) (2005). Therefore, evidence of his prior assaults upon her was relevant and admissible under N.C.R. Evid. 410, 403, and 404(b).

See Young, 317 N.C. at 413-14, 346 S.E.2d at 636; accord *State v. Scarborough*, 324 N.C. 542, 379 S.E.2d 857 (1989), *adopting dissenting opinion in* 92 N.C. App. 422, 429, 374 S.E.2d 620, 624 (1988) (*Greene, J., dissenting*).

Defendant also assigns error to the trial court's failure to intervene *ex mero motu* during portions of the prosecutor's closing argument in which she "repeatedly attempted to surmise what [defendant] was thinking at the time he allegedly committed the offenses in this case." Defendant accuses the prosecutor of mis-characterizing the State's evidence so as to ascribe an unsubstantiated "psychological significance" to his actions. Defendant further avers that the prosecutor's speculative account of his thoughts and intentions violated his "right to a fair and impartial tribunal." Having failed to raise a timely objection at trial, defendant must demonstrate to this Court that the challenged argument was "so grossly improper" as to undermine the essential fairness of the proceeding and to require *ex mero motu* intervention by the trial court. *State v. Campbell*, 359 N.C. 644, 685, 617 S.E.2d 1, 27 (2005) (quoting *State v. Davis*, 305 N.C. 400, 421-22, 290 S.E.2d 574, 587 (1982)).

Defendant cites three portions of the prosecutor's argument which he claims were improper. In the first instance, the prosecutor recounted defendant's statements to Dolson as follows:

> . . . He let the air out of [her] tires.
>
> He left her with no phone; because, he checked it when he got to her bedroom to make sure it didn't work. . . . He checked it before he said, "Don't worry about the phone. Don't

> worry about going anywhere. I control you. You can't leave this house without me letting you." The false imprisonment, she couldn't leave the bedroom.
>
> "You can't get help. You can't go for help. You can't call for help. You're mine, completely. You're *my* bitch; you're *my* slut; you're *my* ho[]."

(emphasis added). While acknowledging the derogatory statements, defendant avers that the prosecutor "added the word 'my' in front of the crude insults" thereby imbuing them with a "psychological purpose" unsupported by the record. Defendant also claims the prosecutor distorted the evidence of his threat to cut Dolson's hair as follows:

> Cutting her hair. What does that do to a woman? A lot of things; but, that's one of the very deep things to get to a woman. "I will cut your hair. I will destroy your appearance."

Defendant avers the phrasing used by the prosecutor "strongly suggested that [he] actually cut [Dolson's] hair" and misquoted him as threatening to "destroy [her] appearance." Finally, defendant objects to remarks by the prosecutor regarding the evidence that the door to Dolson's house remained open after he left the premises:

> The door is open. You know, may be it wasn't because he didn't lock it when he left; and, the door just swung open. May be it was just one more thing to show her, "You don't know where I am. Am I in or am I out? You're not safe. I can make you be not safe. I can leave your front door open, in the middle of the night."

Defendant avers the State adduced no evidence that he intentionally

left the door open and that the prosecutor again "inserted a psychological motive that fit with her theory of the case."

In making a closing argument to the jury, the prosecutor enjoys "wide latitude" to argue both the facts in evidence and any reasonable inferences drawn therefrom. *State v. Brown*, 39 N.C. App. 548, 553, 251 S.E.2d 706, 710-11 (citing *State v. Seipel*, 252 N.C. 335, 113 S.E.2d 432 (1960)), *cert. denied*, 297 N.C. 302, 254 S.E.2d 923 (1979). However, the prosecutor "may not 'travel outside of the record'" by introducing facts not found in the evidence or statements of personal opinion. *Id.* at 553-54, 251 S.E.2d at 711 (quoting *State v. Phillips*, 240 N.C. 516, 82 S.E.2d 762 (1954)); *see also* N.C. Gen. Stat. § 15A-1230 (2005). Individual statements made in the course of a closing argument "should not be viewed in isolation but must be considered in the context in which the remarks were made and the overall factual circumstances to which they referred." *State v. Augustine*, 359 N.C. 709, 725-26, 616 S.E.2d 515, 528 (2005) (quotations omitted).

We find neither gross impropriety by the prosecutor or error by the trial court. In her closing argument, the prosecutor adopted a theme responding to defense counsel's depiction of Dolson's testimony as unsupported by even a "shred" of evidence and as "completely inconsistent" with her statements to police on 17 December 2001. Dismissing the implication that the charges against defendant arose from the false accusations of a "scorned" and "vindictive" ex-girlfriend, the prosecutor urged the jury to view the case as "a tale of total control, domination and degradation"

of Dolson by defendant after she ended their romantic relationship. In support of her theme, the prosecutor recounted for the jury the various actions and statements of defendant toward Dolson on 17 December 2001, which displayed his control and "physical dominance" over her. During her summary, she employed the rhetorical device of articulating the implicit messages conveyed to Dolson by defendant's actions. Thus, after citing evidence that defendant invaded Dolson's home in the middle of the night, broke into her locked bedroom, removed the air from her tires, cut her phone lines and told her that her phone would not work, the prosecutor suggested the following meaning conveyed by these actions:

> ["]Don't worry about going anywhere. I control you. You can't leave this house without me letting you. . . . You can't get help. You can't go for help. You can't call for help. You're mine, completely. You're my bitch; you're my slut; you're my hoe."

We hold that the prosecutor's slight modification of Dolson's testimony to be part of the prosecutor's overall concept of presenting the jury with a reasonable interpretation of the purpose or effect of defendant's treatment of Dolson.

Contrary to defendant's claim on appeal, the prosecutor did not indicate to the jury that defendant actually cut Dolson's hair or explicitly stated, "I will destroy your appearance." Rather, she gleaned from defendant's threat to cut Dolson's hair a broader message to Dolson that she was completely at his mercy. In light of both the circumstances and nature of these offenses, as well as the relationship of the parties, the suggestion that defendant's assault on Dolson carried within it a subtext of dominance and

control–whether intended by him or perceived by Dolson–was neither unreasonably speculative nor inflammatory.

Finally, we find the prosecutor's proffer of two possible explanations for the fact that Dolson's front door was left open following the assault to be neither improper nor of sufficient significance to require *ex mero motu* action by the trial court.

The record on appeal contains additional assignments of error not addressed by defendant in his brief to this Court. By rule, we deem them abandoned. N.C.R. App. P. 28(b)(6).

No error.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).