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NO. COA06-1320

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

Wake County
No. 04 CRS 86060

DANNY DALE HUFF

Appeal by defendant from judgment entered 28 February 2006¹ by Judge Michael R. Morgan in Wake County Superior Court. Heard in the Court of Appeals 30 April 2007.

Attorney General Roy Cooper, by William M. Polk, for the State.

Allen W. Boyer for defendant-appellant.

LEVINSON, Judge.

Danny Dale Huff (defendant) was found guilty in Wake County District Court on 8 August 2005 of violating a domestic violence protective order. Defendant gave notice of appeal the same day to the superior court. He was found guilty of the charge by a jury in Wake County Superior Court on 1 March 2005. He was sentenced to incarceration for 75 days. The sentence was suspended and defendant was placed on supervised probation for 24 months.

¹The judgment contains a typewritten date of entry of "2/28/2006." The signed and dated jury verdict sheet reflects the jury returned its verdict on 1 March 2006. The transcript, notice of appeal and appellate entries indicate entry of judgment occurred on 1 March 2006. It therefore appears the judgment contains a clerical error and should be corrected.

The State's evidence tends to show the following: On 20 September 2004 Wake County District Judge Shelley Desvousges issued a domestic violence protective order directing defendant not to contact Brenda Huff², his spouse, including by telephone. On 16 October 2004, Mrs. Huff called defendant's residence and left a message informing him that she was selling the property where she had been residing with defendant and was offering defendant the option of purchasing the land. Two days later defendant returned the telephone call. The conversation began cordially but deteriorated as defendant became angry and started "ranting and raving . . . screaming into the phone." Defendant also threatened her. Mrs. Huff called the Wake County Sheriff's Department and reported the incident.

Defendant did not present any evidence.

Defendant's sole assignment of error is to the admission of the entire protective order into evidence and publication of it to the jury without redacting portions of the order that described the acts of domestic violence perpetrated by defendant against Mrs. Huff. Specifically, he sought redaction of the portion of the order describing the acts of domestic violence as "ranting & raving about her not borrowing money for him against her property, & he kicked coffee table & knocking lamp off & putting her in fear for her safety. The week before def[endant] got mad at her & threw a coffee cup into the wall." Defendant has preserved the issues of

² At the time of trial, Mrs. Huff had resumed her maiden surname of "Flowers." At the time of the incident, she went by the surname of "Huff," and we refer to her by that name.

whether these portions were relevant and/or "unduly prejudicial" to defendant.

"Evidence is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' N.C. Gen. Stat. § 8C-1, Rule 401 [2005]. . . . '[T]he trial court's rulings on relevancy technically are not discretionary and therefore are not reviewed under the abuse of discretion standard applicable to Rule 403, such rulings are given great deference on appeal.'" *Dunn v. Custer*, 162 N.C. App. 259, 266, 591 S.E.2d 11, 17 (2004) (quoting *State v. Wallace*, 104 N.C. App. 498, 502, 410 S.E.2d 226, 228 (1991)).

Rule 404(b) of the North Carolina Rules of Evidence provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

N.C. Gen. Stat. § 8C-1, Rule 404(b) (2005). Appellate decisions interpreting Rule 404(b) "state a clear general rule of **inclusion** of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but **one exception** requiring its exclusion if its **only** probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *State v. Coffey*, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990) (emphasis added). "Thus, even though evidence may

tend to show other crimes, wrongs, or acts by the defendant and his propensity to commit them, it is admissible under Rule 404(b) so long as it also 'is relevant for some purpose **other than** to show that defendant has the propensity for the type of conduct for which he is being tried.'" *State v. Bagley*, 321 N.C. 201, 206-07, 362 S.E.2d 244, 247 (1987) (quoting *State v. Morgan*, 315 N.C. 626, 637, 340 S.E.2d 84, 91 (1986)) (emphasis added).

Evidence which is otherwise admissible may nonetheless be excluded pursuant to Rule 403 if the trial court determines the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. N.C. Gen. Stat. § 8C-1, Rule 403 (2005). The decision whether or not to exclude evidence pursuant to Rule 403 is addressed to the sound discretion of the trial court. *State v. Mason*, 315 N.C. 724, 731, 340 S.E.2d 430, 435 (1986). A discretionary decision of the trial court will not be disturbed unless it is shown the decision is manifestly unsupported by reason. *State v. Wilson*, 313 N.C. 516, 538, 330 S.E.2d 450, 465 (1985).

Here, the challenged evidence tended to establish the facts and circumstances leading to the charged offense. *See, e.g., State v. White*, 340 N.C. 264, 284, 457 S.E.2d 841, 853 (1995) (bad acts may be admissible under Rule 404(b) if the evidence establishes the chain of circumstances or context of the charged crime) (citation omitted). Moreover, the transcript reveals the trial court gave careful consideration to defendant's objection in passing on defendant's objection. On this record, we conclude the trial court did not err in holding the evidence was relevant, and did not abuse its discretion by admitting the evidence.

No error in trial; remanded for clerical correction.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).