NO. COA06-501

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

STATE OF NORTH CAROLINA

v. Rowan County
No. 04 CRS 10320

LONNIE RAY CARPENTER, SR.,
Defendant.

Appeal by defendant from a judgment dated 11 January 2006 by Judge W. David Lee in Rowan County Superior Court. Heard in the Court of Appeals 30 October 2006.

Attorney General Roy Cooper, by Assistant Attorney General Edwin Lee Gavin II, for the State.

J. Clark Fischer for defendant-appellant.

BRYANT, Judge.

Lonnie Ray Carpenter, Sr. (defendant) appeals from a judgment dated 11 January 2006, entered consistent with a jury verdict finding defendant guilty of assault with a deadly weapon inflicting serious injury. For the reasons below we hold defendant received a trial free of error.

Facts and Procedural History

At trial, Pamela Reid testified that she and defendant were involved in an ongoing seventeen-year romantic relationship but had never married. On the morning of 26 September 2004, she and defendant had an argument while lying in bed. After defendant

slapped her in the face, she kicked him off of the bed into her dresser and "proceeded to come off the bed to attack him." Reid struck defendant with her fist, and he pushed her away from him, defending himself. She "came toward" defendant a second time and "ended up getting nicked" in the neck by a knife. Although she kept a kitchen knife under her pillow, she did not use it in her exchange with defendant. Reid did not see the knife in defendant's hand and did not know where he had obtained it. She did not know she had been cut until she saw the blood on her clothes. Her fourteen-year-old daughter came into the bedroom, asked if she was okay, and called 911. An ambulance transported Reid to Rowan Regional Hospital. She was transferred by ambulance to Baptist Hospital for exploratory surgery. She did not recall speaking to police at the hospital. Since the incident, she and defendant had "talked about getting married[.]"

Dr. Pertrand Fote testified that he treated Reid for a stab wound to the neck in the emergency room of Rowan Regional Medical Center on 26 September 2004. Based on her complaints of difficulty breathing and swallowing, Dr. Fote contacted a trauma surgeon at Baptist Hospital and arranged for her to be transferred there for treatment.

Salisbury Police Officer Mark Shue testified that he responded to the scene of Reid's stabbing on the morning of 26 September 2004. As soon as he arrived, he was approached by defendant, who was "distraught and crying" and smelled strongly of alcohol. Without prompting, defendant said, "I cut her. I cut her." Shue

handcuffed defendant and asked where the weapon was. Defendant told Shue that it was in his pocket. Shue then found "a small folding lock-blade knife" in defendant's front pocket. The knife was in the locked position with the blade folded into the handle. Shue interviewed Reid at the hospital and observed "a single puncture type laceration in her throat area."

Defendant testified that on the morning of 26 September 2004, Reid began striking him with her head while they were in bed together. As he got out of the bed, Reid kicked him with both feet and "threw [him] across the room into the dresser[.]" Aware that she kept a knife under her pillow, defendant grabbed a pocketknife from the top of the dresser and told Reid that he was not going to allow her to hurt him. As he was putting on his clothes to leave, "Reid rushed" defendant. He blocked her punches and pushed her away from him. Reid came at defendant a second time but drew back suddenly with "a weird look on her face and touched her neck[.]" Seeing that she was bleeding, defendant brought her a towel and suggested that she go to the hospital. He told Reid's daughter to call 911 and was helping Reid get dressed when the police officer arrived. Defendant "told [the officer] we was having sex, things went wrong and she accidentally got cut." He did not intend to cut Reid and was upset to see her injured, because "[w]e really and truly loved each other and it hurt." On cross-examination, defendant conceded that the blade of the pocketknife was folded into the handle when he picked it up. He had opened the knife and was holding it in his hand when it "nicked" Reid.

The State then recalled Officer Shue, who rebutted defendant's account of their exchange on 26 September 2004, as follows:

> Q. Can you describe whether or not what he described as telling you is accurate?
>
> A. No, ma'am.
>
> Q. Describe for the jury again what he told you, the entirety of what he told you.
>
> A. He was crying, strong odor of alcohol, and he said, "I cut her. I cut her. I cut her." Basically just, you know, giving himself to me. "I cut her. I cut her." . . .

According to Shue, defendant made no mention of an accident.

The trial court instructed the jury on assault with a deadly weapon with intent to kill inflicting serious injury and the lesser included offenses of assault with a deadly weapon with intent to kill, assault with a deadly weapon inflicting serious injury, and assault with a deadly weapon. The court also instructed the jury on the law of self-defense. The jury found defendant guilty of assault with a deadly weapon inflicting serious injury. The trial court subsequently entered a judgment consistent with the jury verdict, sentencing defendant to an active prison term of thirty-four to fifty months. Defendant appeals.

Defendant argues the trial court: (I) committed plain error by allowing the State to cross-examine defendant regarding the number of children defendant had fathered out of wedlock; and (II) erred in denying defendant's motion to dismiss. We disagree.

I

In his first argument on appeal, defendant claims the trial

court committed plain error by failing to intercede during his cross-examination when the State elicited his acknowledgment that he had children with five different women and had never been married. Defendant concedes that he failed to raise a timely objection to the State's inquiry. He argues, however, that the evidence of his other relationships was irrelevant and was so inflammatory as to taint the jury's deliberations, due to the stigma attached to "'deadbeat dads'" and illegitimacy.

Having failed to object at trial, defendant correctly identifies the standard of review on appeal as plain error. *See* N.C. R. App. P. 10(c)(4). Plain error will be found in those rare cases where a defendant can show error so fundamental as to "'seriously affect the fairness, integrity or public reputation of judicial proceedings or where it can be fairly said the . . . mistake had a probable impact on the jury's finding that the defendant was guilty.'" *State v. Scott*, 343 N.C. 313, 339, 471 S.E.2d 605, 620-21 (1996) (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (quotations omitted)).

"[T]he scope of cross-examination rests largely within the trial court's discretion and is not ground for reversal unless the cross-examination is shown to have improperly influenced the verdict." *State v. Woods*, 345 N.C. 294, 307, 480 S.E.2d 647, 653 (citing *State v. Carver*, 286 N.C. 179, 209 S.E.2d 785 (1974)), *cert. denied*, 522 U.S. 875, 139 L. Ed. 2d 132 (1997). Here, defendant portrayed himself to the jury as a loving and devoted partner to Reid with matrimonial ambitions. By inquiring more

generally into his marital history, the State apparently sought to undermine defendant's characterization of his relationship with Reid and to suggest that he discussed marriage with Reid only after the assault, in order to influence her testimony.

Our Supreme Court has declined to find plain error where the State's cross-examination of a defendant "revealed that the defendant had a live-in relationship with two women, that he had three illegitimate children and that he paid no support for the children or their mothers." *State v. Murray*, 310 N.C. 541, 551, 313 S.E.2d 523, 530 (1984), *overruled on other grounds by State v. White*, 322 N.C. 506, 369 S.E.2d 813 (1988). In *Murray*, the defendant was on trial for first degree capital murder, armed robbery and larceny. He was convicted of all three offenses and sentenced to life imprisonment. After reviewing the evidence, the Court concluded that there was no "reasonable probability that the testimony concerning his relationship with women and his illegitimate children 'tilted the scales' in favor of his conviction." *Id.* at 552, 313 S.E.2d at 530 (citing *State v. Black*, 308 N.C. 736, 303 S.E.2d 804 (1983)).

We likewise find no plain error here. At the time of defendant's cross-examination, the jury was already aware that he had nine children, that none of his children were Reid's, and that he and Reid had been in a romantic relationship for seventeen years without marrying. Although the jury did learn that defendant had his children with five different women and had never been married, the State adduced no evidence that he was a "'deadbeat dad'" or

otherwise failed to support his offspring. Defendant testified that three of his children were living with him, and he had taken in his youngest child's mother after she was laid off from her job. Therefore, we believe the State's cross-examination of defendant carried less risk of unfair prejudice than in *Murray*. "[A]ssuming *arguendo* that the prosecutor's questions were improper and that the trial court erred in not intervening *ex mero motu* to limit the scope of the prosecutor's cross-examination of defendant, we conclude that the court's error did not amount to plain error and did not result in manifest injustice." *Scott*, 343 N.C. at 339, 471 S.E.2d at 621. This assignment of error is overruled.

II

Defendant next claims that the court erred in denying his motion to dismiss at the conclusion of the evidence, absent evidence that he intentionally assaulted Reid. As shown below, however, defendant confined his motion to dismiss at trial to challenging the evidence of his "intent to kill" Reid. At the conclusion of the State's case in chief, defense counsel made a motion to dismiss, as follows:

> THE COURT: . . . [Counsel], I understand you have a motion.
>
> [DEFENSE COUNSEL]: I do, Your Honor. I won't waste the court's time arguing about the assault with a deadly weapon inflicting serious injury, but I will argue that there is insufficient evidence to continue on the issue of intent to kill. The only evidence is that there was an injury. . . . We think that it is an insufficient basis upon which to continue on the intent to kill.

The court denied the motion. After the State's rebuttal, defense

counsel "renew[ed her] motion to dismiss at the close of all the evidence regarding intent to kill."

"In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(b)(1). Defendant presented the trial court with a challenge to the sufficiency of the State's evidence of his intent to kill. Moreover, he expressly declined to "waste the court's time arguing about the assault with a deadly weapon inflicting serious injury[.]" Inasmuch as the jury found him guilty only of assault with a deadly weapon inflicting serious injury, his assignment of error is not properly before this Court. *See generally State v. Benson*, 323 N.C. 318, 321-22, 372 S.E.2d 517, 519 (1988) ("Defendant may not swap horses after trial in order to obtain a thoroughbred upon appeal."); *State v. Baldwin*, 117 N.C. App. 713, 717, 453 S.E.2d 193, 195, *cert. denied*, 341 N.C. 653, 462 S.E.2d 518 (1995).

No error.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).