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NO. COA08-1182

NORTH CAROLINA COURT OF APPEALS

Filed: 4 August 2009

STATE OF NORTH CAROLINA

v.

Durham County
No. 05 CRS 53932

MICHAEL OLANDERS WILLIAMS

Appeal by defendant from judgment entered 21 April 2008 by Judge Thomas D. Haigwood in Durham County Superior Court. Heard in the Court of Appeals 21 May 2009.

Attorney General Roy Cooper, by Assistant Attorney General Ebony J. Pittman, for the State.

J. Clark Fischer for defendant-appellant.

BRYANT, Judge.

On 17 January 2006, defendant Michael Olanders Williams ("defendant") was indicted for assault with a deadly weapon with intent to kill inflicting serious injury, an offense which occurred on 30 September 2005. Following a mistrial on 15 December 2006, the case was tried at the 16 April 2008 Criminal Session of Durham County Superior Court. On 21 April 2008, a jury found defendant guilty of the lesser included offense, assault with a deadly weapon inflicting serious injury. On the same day, the trial court entered judgment imposing a sentence of 29 to 33 months

imprisonment, which was in the presumptive range for defendant's Class E felony and record level of II.

Facts

The State's evidence tended to show that the victim, Zachary Curry, had a relationship with Cathy Ford, his former fiancée, from approximately 1996 to 2004. The two ended their relationship in 2004, after Curry discovered that Cathy Ford was dating defendant. After the relationship ended, Curry began receiving phone calls from defendant. During one call, Curry and defendant began arguing, and defendant stated, "I got a .45 I'm ready to use." During another call, defendant said "there's a new sheriff in town." On one occasion, Curry and defendant got into an argument at Cathy Ford's house. Curry had gone to Ford's house to pick up his personal belongings. During the argument, defendant pulled a gun on Curry, and, in response, Curry said, "[w]hen I see you, . . . I'm going to beat your ass, you pulling a gun on me." Curry left and was later arrested, but released the same day.

After this incident, Curry and Cathy Ford continued to see each other occasionally. Curry described this contact as "secret rendezvous." Curry testified that the continued contact between Curry and Cathy Ford caused "bad blood" between Curry and defendant.

On 30 September 2005, Curry was "hanging out" with his friend, Terence Andrews, when the two decided to go to the home of LaToya Ford, Cathy Ford's daughter. Curry walked into the apartment, unexpectedly saw defendant, and the two began to fight. Curry

admitted hitting defendant first. During the fight, Cathy Ford came up to Curry and hit him in the back of his head. When Curry turned around, he saw defendant approaching and holding a gun in his right hand. Curry tried to grab the gun, and the two began fighting for the weapon. Defendant then began shooting "wildly" through the house and shot Curry in the arm. Defendant eventually dropped the gun and said, "yeah, we got you," and then he and Cathy Ford ran out the door. Defendant's friend, Andrews, did not stay to help Curry, leaving the apartment at some point before or during the fight.

When officers arrived at the scene, they found Curry alone lying on the floor with a gunshot wound to his upper left arm. Curry identified defendant as the shooter, and told the officer that the two were fighting when defendant pulled out a gun and shot him. The officer found three shell casings in the apartment, but did not find a weapon.

Curry testified that he did not have a gun, any ammunition, or even an empty holster with him when he entered LaToya Ford's house. Although he admitted throwing the first punch, he fought only with his fists. Curry also explained that he did not expect to see defendant at the house because he was aware of a restraining order against defendant prohibiting defendant from being around LaToya or Cathy Ford.

Curry testified that he incurred approximately \$70,000.00 in medical expenses as a result of the incident. The gunshot wound

shattered Curry's femur and caused permanent injuries to his arm, including nerve damage.

Cathy Ford testified for the defense. She confirmed that she was dating defendant at the time of the incident, and had dated Curry for approximately seven-and-a-half years but denied having any type of relationship with him after 2004. Ford testified that on 30 September 2005 she and defendant were at her daughter's apartment. They were sitting in the living room when Curry and Andrews entered the apartment. Curry and defendant started fighting, and Ford admitted hitting Curry in the back of his head. Ford testified that she heard only one gunshot.

The trial court instructed the jury on the offense of assault with a deadly weapon with intent to kill inflicting serious injury. The court also instructed the jury on the defense of self-defense. On 21 April 2008, the jury found defendant guilty of the lesser included offense of assault with a deadly weapon inflicting serious injury. Defendant appeals.

Defendant raises one issue on appeal: whether the trial court committed prejudicial error by permitting testimony that defendant was subject to a restraining order. We find no error.

At trial, Mr. Curry testified that he did not expect to see defendant at LaToya Ford's house, because defendant was subject to a restraining order which prevented defendant from being around Cathy or LaToya Ford. Defendant argues that the testimony regarding the restraining order was irrelevant and inflammatory.

Defendant made only a general objection to the testimony at trial. Our Supreme Court has "previously stated that a general objection is 'ineffective unless there is no proper purpose for which the evidence is admissible. The burden is on the defendant to show that there was no proper purpose for which the evidence could be admitted.'" *State v. Golphin*, 352 N.C. 364, 439-440, 533 S.E.2d 168, 219 (2000) (quoting *State v. Young*, 317 N.C. 396, 412, 346 S.E.2d 626, 635 (1986)), *cert. denied*, 532 U.S. 931, 149 L. Ed.2d 305 (2001).

After reviewing the record, we find that the evidence regarding the restraining order was relevant and admissible. 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 (2007). Generally, all relevant evidence is admissible. N.C. Gen. Stat. § 8C-1, Rule 402 (2007). Our Supreme Court has recognized that "in a criminal case every circumstance calculated to throw any light upon the supposed crime is admissible and permissible." *State v. Collins*, 335 N.C. 729, 735, 440 S.E.2d 559, 562 (1994) (citation omitted).

In pertinent part, Mr. Curry testified as follows:

Q. Was there a reason that, frankly, you expected the defendant not to be there?

A. Yes.

Q. What is that?

MS. WIGGINS: Objection.

THE COURT: Overruled.

A. There was a restraining order against him to not [] be around Latoya Ford or her mother.

Q. So is it a fair statement that you actually were taken by surprise when you saw him in there?

A. Yes, I wouldn't say it was a surprise, but it was a shock to see him.

Q. And had you gone there looking for him?

A. No.

The above testimony was relevant to show Mr. Curry's state of mind as he went to LaToya Ford's house. Because Mr. Curry did not expect defendant to be at the house, one can infer that he did not go to the house to pick a fight with defendant. His knowledge of the restraining order bolsters this claim. This evidence, taken with Mr. Curry's lack of a weapon, tends to negate defendant's self-defense claim and is therefore relevant.

We also note that the testimony does not run afoul of the Rule 404(b) prohibition on using evidence of prior misconduct to prove the character of a person. Rule 404(b) provides:

(b) Other crimes, wrongs, or acts. - 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) (2007). "Rule 404(b) is a general rule of inclusion of relevant evidence of other crimes, and wrongs committed by a defendant and is subject to only one

exception which requires exclusion of such evidence if offered only to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *State v. Hannah*, 149 N.C. App. 713, 722, 563 S.E.2d 1, 7, *disc. review denied*, 355 N.C. 754, 566 S.E.2d 81 (2002). As explained above, the testimony regarding the restraining order against defendant was admissible to show Curry's state of mind.

Defendant's remaining contention is that the evidence should have been excluded by Evidence Rule 403. Even if relevant, evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." N.C. Gen. Stat. § 8C-1, Rule 403. "[T]he determination of whether relevant evidence should be excluded is a matter left to the sound discretion of the trial court, and the trial court can be reversed only upon a showing of abuse of discretion." *State v. Wallace*, 351 N.C. 481, 523, 528 S.E.2d 326, 352-53, *cert. denied*, 531 U.S. 1018, 148 L. Ed.2d 498 (2000).

As an initial matter, we must note that defendant's general objection did not preserve this specific issue for appellate review. *State v. Williams*, 355 N.C. 501, 554, 565 S.E.2d 609, 640 (2002). Pursuant to Appellate Rule 10(b)(1), "[i]n 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) (2007). Defendant's general

objection was not specific, and it was not apparent from the context of the testimony that defendant intended for the trial court to employ the Rule 403 balancing test.

Moreover, we find that any danger of unfair prejudice to defendant was minimal, in light of the other evidence tending to show that defendant acted with excessive force and did not shoot Mr. Curry in self-defense. Therefore, we conclude that the trial court did not abuse its discretion in allowing the evidence regarding the restraining order against defendant. This assignment of error is overruled.

No error.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).