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NO. COA08-1570

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

STATE OF NORTH CAROLINA

v.

Henderson County
Nos. 07 CRS 1985-86

CLARENCE FORD WILLIAMS

Appeal by defendant from judgment entered 16 July 2008 by Judge Mark E. Powell in Henderson County Superior Court. Heard in the Court of Appeals 17 June 2009.

Attorney General Roy Cooper, by Assistant Attorney General Scott A. Conklin, for the State.

J. Clark Fischer for defendant-appellant.

ELMORE, Judge.

On 10 September 2007, defendant Clarence Ford Williams (defendant) was indicted for one count of assault with a deadly weapon with intent to kill inflicting serious injury and for attaining the status of an habitual felon. On 16 July 2008, a jury found defendant guilty of the lesser included offense, assault with a deadly weapon inflicting serious injury. The jury also found defendant guilty of attaining the status of an habitual felon. The trial court thereafter entered judgment, sentencing defendant to a term of 145 to 183 months' active imprisonment, which was within

the presumptive range for his Class C felony and prior record level of VI. Defendant gave timely notice of appeal in open court.

Evidence at trial tends to shown that, on the evening of 29 May 2007, Joshua Barron (Barron) met defendant to smoke crack cocaine. The two went to the nature trail in Hendersonville, an area frequented by individuals using drugs. After the two finished smoking, defendant demanded payment from Barron, and Barron explained that he did not have any money. According to Barron, defendant became angry, pulled out a blue razor knife (also referred to as a box cutter), and began slashing Barron in the face. Barron tried to run away, but fell down three times. Defendant slashed Barron in the face each time Barron fell down. Defendant also picked up a beer bottle off the ground and hit Barron over the head with it. Barron testified that he was slashed on his cheek, his eyebrow, his nose, and below his ear. Defendant also made the following threat to Barron: "[I]f you don't pay me, you're not going to leave this trail alive, and I don't care if I go to jail, or anything."

Barron eventually wrestled the blue knife out of defendant's hand and ran away. Barron testified that he threw the blue knife on the ground as he made contact with a police officer. Officer Coleman Laws of the Hendersonville Police Department testified that he was patrolling the area when he first saw Barron, who was covered in blood from the top of his head all the way down to his midsection. Officer Barron immediately pulled over and asked Barron what happened to him and who was responsible. Barron

responded that it was "Clarence," whom Barron described as a short, muscular black male, who was wearing a black tank top and camouflage pants and riding a red bicycle. A few minutes later, Officer Laws spotted defendant riding north on the trail.

Officer Laws made contact with defendant and placed him under arrest. Officer Laws observed that defendant had a lot of blood on his clothing, was sweating profusely, and was very nervous. Officer Laws discovered a pocketknife on defendant's person while searching defendant incident to arrest. Around the same time, Barron was transported to the emergency room.

At the hospital, Barron told Officer Laws that he wrestled the blue razor knife away from defendant and threw it on the ground near a tire store when he made contact with the officer. Officer Laws relayed this information to two other officers, who found the blue razor knife later that evening. The blue razor knife was covered in blood. The knife and some of defendant's clothing were taken to the State Bureau of Investigation (SBI) lab. The SBI lab confirmed that the substance on the knife and clothing was blood. Special Agent Kristin Meyer, an SBI forensic DNA analyst, testified that the blood from the knife and clothing matched the DNA profile of Barron.

On appeal, defendant only argues one assignment of error. He contends that the trial court erred by allowing the State to present evidence of defendant's habit of carrying a knife. John Hendley (Hendley) testified that he saw defendant and Barron on the nature trail on 29 May 2007 and smoked crack with them. Hendley

had known defendant for about three years and was acquainted with Barron. Hendley testified that defendant became verbally aggressive with Barron after Barron told defendant that he did not have any money to pay for the crack. At that point, Hendley decided to leave the area. Hendley saw an object in defendant's hand, but could not tell what it was. Hendley further testified that defendant had a habit of carrying a knife with him and that he had seen defendant carry knives on many occasions. Defendant contends that Hendley's testimony was not sufficient to establish a proper foundation.

Pursuant to Rule 406 of the North Carolina Rules of Evidence, evidence of habit is admissible under the following circumstance:

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

N.C. Gen. Stat. § 8C-1, Rule 406 (2007). "In determining whether a practice constitutes habit, a court must weigh, on a case-by-case basis, the number of specific instances of the behavior, the regularity of the behavior, and the similarity of the behavior." *State v. Fair*, 354 N.C. 131, 151, 557 S.E.2d 500, 515-16 (2001) (citing *Crawford v. Fayez*, 112 N.C. App. 328, 335, 435 S.E.2d 545, 550 (1993)) "To rise to the level of habit, the instances of specific conduct must be 'sufficiently numerous to warrant an inference of systematic conduct and to establish one's regular response to a repeated specific situation.'" *Id.*, 354 N.C. at 151,

557 S.E.2d at 516 (quoting *Crawford*, 112 N.C. App. at 335, 435 S.E.2d at 550).

We review the trial court's ruling on the admissibility of habit evidence for an abuse of discretion. *Id.* "A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision." *State v. Thompson*, 314 N.C. 618, 626, 336 S.E.2d 78, 82 (1985) (citation omitted). After careful review, we conclude that the trial court did not abuse its discretion.

On *voir dire*, Hendley testified that he had known defendant for approximately four years and that he saw defendant once or twice a week. Hendley explained that he has used drugs and drunk alcohol with defendant and has seen defendant at the Starr Motel, which Hendley described as "a place for people to get high." Hendley further testified that defendant always carries a knife with him.

After the State's proffer, the trial court determined that the evidence was admissible under Rule 406:

[D]uring the time that [Hendley has] known [defendant] and has seen him that he's always been in possession of a knife, not a particular knife but a different type of knife, and . . . with regard to the habit that is sufficient.

After reviewing the transcript, we are satisfied that the trial court properly weighed the regularity and similarity of defendant's behavior in deciding whether to allow evidence regarding defendant's habit of carrying a knife. Hendley saw defendant once or twice a week and defendant always carried a

knife. Regardless of how or why Hendley became acquainted with defendant, such evidence establishes defendant's custom of always carrying a knife on his person, and therefore warrants an inference of systematic conduct. See *State v. Palmer*, 334 N.C. 104, 431 S.E.2d 172 (1993) (holding that the custom of always having money on one's person constituted a habit). Accordingly, we find that the trial court's ruling was the result of a reasoned decision.

Defendant further argues that the trial court should have excluded the evidence of habit under Rule 403 of the North Carolina Rules of Evidence. Rule 403 provides the following: "Although 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 (2007). We also review a trial court's determination under Rule 403 for an abuse of discretion. *State v. Hunt*, 324 N.C. 343, 353, 378 S.E.2d 754, 760 (1989). Defendant claims that the habit evidence should have been excluded as unfairly prejudicial because it was used to inflame the jury against defendant by portraying him as a dangerous person. We disagree. The evidence was relevant to support Barron's testimony that defendant had possession of the weapon at issue before he assaulted Barron. Indeed, the trial court gave the following explanation in conducting its Rule 403 determination:

I'd find also that the possible prejudice of allowing that would not outweigh the probative value, particularly considering the habits of many persons, particularly men in this area to always carry some type of pocketknife or knife, or even a box cutter.

Based on the foregoing, we conclude that the trial court's determination was the result of a reasoned decision. Accordingly, we find no error in the court's admission of evidence that defendant had a habit of carrying a knife. This assignment of error is overruled.

No error.

Chief Judge MARTIN and Judge BRYANT concur.

Report per Rule 30(e).