

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA10-184

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2010

STATE OF NORTH CAROLINA

v.

Orange County
Nos. 08 CRS 6311
08 CRS 50842

RODERICK SURRATT,
Defendant.

Appeal by defendant from judgment entered 5 March 2009 by Judge Kenneth C. Titus in Orange County Superior Court. Heard in the Court of Appeals 31 August 2010.

Attorney General Roy Cooper, by Assistant Attorney General Kimberley A. D'Arruda, for the State.

Kathryn L. VandenBerg for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant Roderick Surratt was convicted of assault with a deadly weapon inflicting serious injury ("AWDWISI") and subsequently pled guilty to having attained habitual felon status. Defendant's sole argument on appeal is that the trial court erred by excluding evidence of prior inconsistent statements made by defendant's long-time girlfriend, the prosecuting witness in this case. As defendant fails to challenge one of the grounds given by the trial court for excluding the evidence, defendant cannot demonstrate error on appeal. Accordingly, we uphold defendant's convictions.

Facts

At trial, the State's evidence tended to establish the following facts: Shonnette Crisp and defendant have lived together sporadically since June 2003. Ms. Crisp has six children and defendant is the father of the two youngest, C.C. and J.C. On 19 February 2008, Ms. Crisp and her children were living with defendant in an apartment in Hillsborough, North Carolina. That evening, Ms. Crisp took her son J.S., who was running a fever, to the hospital. When Ms. Crisp and her son returned home about midnight, defendant went out and Ms. Crisp went to bed.

Defendant came back to the apartment an hour or two later and knocked on the door. When Ms. Crisp let him back into the apartment, she thought that he looked "high." She went back to the bedroom where she had been sleeping with C.C. and J.C. Defendant picked C.C. up out of the bed and took him into another room. When he returned to the bedroom, defendant asked Ms. Crisp to "slide over." She said "no." Tired of defendant "st[anding] in front of [her]," Ms. Crisp got up, sat at the foot of the bed, and turned on the television. Defendant got into bed, but Ms. Crisp asked him to get up and take off his "nasty" shirt. Defendant got up, took off his shirt, and laid back down on the bed. Ms. Crisp, not wanting defendant in the bed, told defendant, "'Just get up out of my bed and just leave, just leave.'" At this point, defendant got up, shut the bedroom door, walked over to his pants, and got out a screwdriver. Defendant then walked over to Ms. Crisp, and said: "'Bitch, shut up. If you make a noise and your kids come back in

here, I'm gonna kill you. I ain't give a fuck.'" While defendant was talking, he held the screwdriver in a clenched fist, in an overhand position, like he was going to "jig [Ms. Crisp] with it." When Ms. Crisp asked defendant to "chill out," he responded, "'You think I'm playing[?] I can kill you.'" Ms. Crisp saw a pair of scissors on the floor and, due to a history of defendant using weapons during their arguments, "slid them up under [her] foot." Ms. Crisp repeatedly asked defendant to put down the screwdriver and talk. Defendant refused, pulled down his underwear, and demanded that Ms. Crisp "'suck [his] dick.'" When defendant laid down on the bed, Ms. Crisp picked up the scissors, straddled defendant, and grabbed his hand in which he was holding the screwdriver. Ms. Crisp and defendant "tussl[ed]" and Ms. Crisp ended up holding both the screwdriver and the scissors. She told defendant that she could kill him but that he was "'not worth it'" and that she "'just want[ed] to leave.'" Defendant laughed and told her that he was "'just playing'" and that he was "'not gonna hurt [her].'"

Ms. Crisp let defendant get up, and defendant went over to his pants, pulled out a boxcutter, and pushed the blade up. Defendant swung the boxcutter at Ms. Crisp, telling her that he would cut her if she did not give him the scissors and screwdriver. Each time she reached for his hand, he swung at her, but eventually Ms. Crisp wrestled the boxcutter away from defendant so that she had all three weapons. She then pushed him onto the bed and told him to stop. Defendant got Ms. Crisp in a headlock and took away the

scissors. Defendant also grabbed her right wrist and tried to pull it back. Ms. Crisp swung out of the headlock, threw the boxcutter and screwdriver on the bed, and ran to the door. As she was trying to open the door, defendant jumped in front of her, slammed the door shut, and swung the scissors at Ms. Crisp, hitting her in the neck. Ms. Crisp said: "'I know you didn't just hit me[.]'" Defendant responded: "'Yes, I did, bitch, and if you move I'm gonna hit you again.'" At that point, Ms. Crisp felt "something warm going down [her] neck," and said: "'Oh, shit, I'm bleeding.'" Defendant turned on the light and Ms. Crisp started "hollering" for someone to call 911. Ms. Crisp ran down the hall, found a shirt, and pressed it against her neck to stop the bleeding. She woke up J.S., told him that defendant had stabbed her, and asked him to call 911. Ms. Crisp then sat outside the front door of the apartment waiting for the paramedics to arrive. Ms. Crisp was taken to hospital, where she underwent surgery to repair her jugular vein.

Defendant was charged with first degree kidnapping, assault with a deadly weapon inflicting serious injury, assault on a female, habitual misdemeanor assault, and being a habitual felon. Defendant initially pled not guilty and the case proceeded to trial. During Ms. Crisp's testimony recounting the incident on 19-20 February 2008, defense counsel attempted to impeach Ms. Crisp, claiming that she had made prior statements at defendant's probable cause hearing that were inconsistent with her trial testimony. Defense counsel moved to admit an unofficial audio recording of the

hearing for impeachment purposes; the trial court denied the motion. After the evidence was excluded, defense counsel filed a written proffer of the "critical . . . variance[s]" between Ms. Crisp's trial testimony and her testimony from the probable cause hearing. The jury convicted defendant of assault on a female and AWDWISI, but acquitted him on the kidnapping charge. As a result of negotiations, the State voluntarily dismissed the assault on a female charge in exchange for defendant's pleading guilty to being a habitual felon. The trial court arrested judgment on the habitual misdemeanor assault charge, consolidated the AWDWISI and habitual felon charges into one judgment, and sentenced defendant to a presumptive-range term of 107 to 138 months imprisonment. Defendant gave notice of appeal in open court.

Discussion

Defendant's only argument on appeal is that the trial court erred in excluding an audio recording from his probable cause hearing, which, according to defendant, contains statements by Ms. Crisp inconsistent with her trial testimony about the incident that lead to the charges against him. Defendant maintains that he should have been permitted to play the recording to impeach Ms. Crisp. The erroneous exclusion of the audio recording, defendant claims, "deprived the jury of a fair opportunity to evaluate Ms. Crisp's credibility," thus "prejudicing [defendant]'s defense" and entitling him to a new trial.

As an initial matter, we note that the trial court excluded the audio tape on two independent grounds: (1) defendant had not

provided a copy of the tape to the State during reciprocal discovery and (2) the tape was not an official recording of the probable cause proceeding. T.2 320-22. On appeal, defendant makes no argument that the trial court abused its discretion in excluding the recording as a sanction for defendant's failure to provide a copy of the recording to the prosecution prior to trial. See N.C. Gen. Stat. § 15A-910(a)(3) (2009) (providing trial court with discretionary authority to exclude evidence not disclosed as required by discovery statutes); *State v. Hill*, 294 N.C. 320, 331, 240 S.E.2d 794, 801 (1978) ("[T]he exclusion of evidence for the reason that the party offering it has failed to comply with the discovery statutes granting the right of discovery, or with an order issued pursuant thereto, rests in the discretion of the trial court."). Defendant's failure to challenge one of the trial court's alternative bases for excluding the evidence constitutes waiver of the issue, precluding relief on appeal. See, e.g., *Moyle v. Y & Y Hyup Shin, Corp.*, 118 Haw. 385, 396, 191 P.3d 1062, 1073 (2008) (explaining that where alternative grounds given by trial court for contested ruling are unaddressed by appellant, appellant fails to demonstrate existence of error); *People v. Chapo*, 283 Mich. App. 360, 367, 770 N.W.2d 68, 74 (2009) ("Defendant's failure to challenge the other two bases of the trial court's decision constitutes a waiver that precludes appellate relief."); *Jones v. City of Dallas*, 310 S.W.3d 523, 530 (Tex. App. 2010) ("By failing to respond to all possible grounds for the trial court's ruling,

[appellant] has waived those issues and the trial court order must be affirmed.").

No Error.

Judges Robert N. HUNTER, Jr. and LEWIS concur.

Report per Rule 30(e).