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NO. COA12-1522
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

STATE OF NORTH CAROLINA

v.

Buncombe County
No. 10 CRS 63418

HAROLD LARRY SAMMONS

Appeal by defendant from judgment entered 20 April 2012 by Judge Gary M. Gavenus in Buncombe County Superior Court. Heard in the Court of Appeals 24 April 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Robert M. Curran, for the State.

Law Offices of John R. Mills, NPC, by John R. Mills, for Defendant.

ERVIN, Judge.

Defendant Harold Larry Sammons appeals from a judgment sentencing him to a term of 111 to 143 months imprisonment based upon his conviction for the voluntary manslaughter of Curtis Tobin Bishop (Toby Bishop). On appeal, Defendant contends that the trial court erred by refusing to allow the admission of evidence tending to show that Toby Bishop had a reputation for violence among law enforcement officers and by entering judgment

before the date upon which Defendant's sentencing hearing was conducted. After careful consideration of Defendant's challenges to the trial court's judgment in light of the record and the applicable law, we conclude that, while this case should be remanded to the Buncombe County Superior Court for the correction of a clerical error, the trial court's judgment should otherwise remain undisturbed.

I. Factual Background

A. Substantive Facts

1. State's Evidence

Charles Harris Bishop, Jr. (Shu Bishop), lives at 114 Goldrush Road in Asheville. On 27 September 2010, Toby Bishop, who was Shu Bishop's son, came to live with his father following his release from prison.

Defendant, who disliked Toby Bishop and had a history of threatening him, had known Shu Bishop since 2009. On either 7 November or 8 November 2010, Defendant called Toby Bishop, cursed him, and threatened to kill and beat him up the next time he saw him. On another occasion, Defendant appeared at the Bishop household with some beer. However, he was turned away by Shu Bishop, who stated that Defendant was not welcome in his home. Defendant was known to have stated of Toby Bishop that he was "going to get his" and that he would kill Toby Bishop.

At approximately 11:30 p.m. on 10 November 2010, Beth Callahan, Defendant's girlfriend, called Shu Bishop, who engaged in the buying, selling, and trading of guitars, and told him that she had a guitar that she wanted to sell to him. Subsequently, Ms. Callahan went to Shu Bishop's home, which was less than 150 yards away from Defendant's residence. After inspecting the guitar which Ms. Callahan had brought to him, Shu Bishop determined that he was not satisfied with it and declined to make any sort of deal with Ms. Callahan. After learning of Shu Bishop's decision, Ms. Callahan left. However, she returned to the Bishop residence after midnight with Defendant.

Upon entering the Bishop residence, Defendant made an obnoxious gesture and yelled expletives at Toby Bishop, who forced Defendant to leave the dwelling. After picking up the guitar that she had brought for Shu Bishop's inspection, Ms. Callahan followed Defendant outside. Although Shu Bishop briefly stepped outside to see Toby Bishop escorting Defendant off the property, he returned to the interior of the residence shortly thereafter. He next heard from Toby Bishop when his son told him to call emergency medical service personnel because Defendant had stabbed him. Although Shu Bishop called 911 and attempted to aid his son, his efforts were unavailing.

Trooper Brian Anthony of the North Carolina State Highway Patrol, who was the first law enforcement officer on the scene, arrived at Shu Bishop's residence at approximately 1:50 a.m. Upon his arrival, Trooper Anthony encountered Shu Bishop, who seemed distraught, excited, and impaired. As Trooper Anthony began clearing the house, he observed Toby Bishop, who was sitting slumped over and dead in a chair. Toby Bishop had died as the result of acute blood loss stemming from a single stab wound to the chest that penetrated the bottom of his breastbone and entered his right ventricle.

At the time that investigating officers arrived at Defendant's home, Ms. Callahan, who answered the door, told them that she did not know whether Defendant was home. After a search of the residence, however, Defendant was located and surrendered without incident. Although Defendant told the investigating officers that the knife that he used to stab Toby Bishop was behind a refrigerator in the garage, he never told investigating officers that Toby Bishop had had a weapon. Subsequent testing established that blood was present on Defendant's hands, knife, pants, and shirt.

2. Defendant's Evidence

Defendant, who worked in construction, had known Ms. Callahan since she was seventeen years of age. As of November

2010, Defendant and Ms. Callahan had been romantically involved for seven years and lived together. Although Ms. Callahan had known Toby Bishop for twenty years, Defendant met him for the first time in October 2010, when Toby Bishop came to Defendant's home and approached him about purchasing crack cocaine. Although Defendant was aware of Toby Bishop's reputation for violence, the two of them used drugs together on a couple of occasions after their initial meeting.

On 10 November 2010, Defendant got home from work at around 9:00 p.m. When Defendant arrived at his residence, Ms. Callahan was distraught. In an effort to help Ms. Callahan calm down, Defendant obtained crack cocaine for the two of them to use. Ms. Callahan told Defendant that she had talked to Toby Bishop earlier about the possibility that his father would purchase a guitar from her and that Shu Bishop had called her to tell her to bring the guitar to his home so that he could examine it. Around 11:00 p.m., Toby Bishop came to Defendant's home to tell Ms. Callahan that she should come to the Bishop residence so that Shu Bishop could inspect the guitar. At that point, Defendant, Ms. Callahan, and Toby Bishop began walking to the Bishop residence.

At the Bishop residence, Defendant, Ms. Callahan, Toby Bishop, and Shu Bishop used drugs and consumed alcohol.

Eventually, Defendant began to argue with Toby Bishop about the nature of the relationship that he and his father had with Ms. Callahan.¹ After Defendant accused Shu Bishop of being a liar, Toby Bishop became angry and punched Defendant in the face. Although Defendant and Toby Bishop struggled inside the living room, Defendant eventually escaped. However, Toby Bishop caught up with him on the porch, where the struggle continued. Despite his persistent efforts to get away, Toby Bishop grabbed Defendant as they stumbled down a hill at the end of the yard. At some point during the altercation, Shu Bishop came out of the house with a wooden object and hit Defendant with it twice.

As Defendant fought with Toby Bishop, he had his hands full, since he held the guitar in one hand and some beer in the other. At some point, Defendant unsuccessfully attempted to hit Toby Bishop with the guitar. Defendant knew that Toby Bishop carried a knife, having seen Toby Bishop use one to cut crack rocks, and believed that Toby Bishop had the knife on his person that night. Although Defendant asked Toby Bishop to stop and announced that he intended to stop engaging in hostilities, his

¹Although Defendant testified at trial that he was aware that Ms. Callahan had had sexual relations with various other individuals and was not bothered by that fact given that the couple paid their bills using the proceeds of Ms. Callahan's activities, Ms. Callahan testified that Defendant was very jealous and that the two of them frequently argued about her relationship with Toby Bishop.

plea did not have the desired effect. As a result, Defendant took out a knife in the hope of fending off Toby Bishop's continued assault. Toby Bishop was, however, unafraid and continued to come at Defendant, who stabbed him. As Defendant fled the scene, he heard Toby Bishop yelling to Shu Bishop that Defendant had cut him. Defendant was incredulous at hearing Toby Bishop's statement since he thought that he had only hit Toby Bishop with his fist.

Defendant returned home at 1:10 a.m., about ten minutes after the point in time at which his co-workers were supposed to pick him up to take him back to work. For that reason, Defendant went into the garage, where he smoked cigarettes and drank. Although Defendant noticed that his T-shirt was missing, he did not know what had happened to it. In addition, although he did not see any blood anywhere or clean his knife, he did hide the weapon. Upon hearing investigating officers arrive at his residence, Defendant got scared and hid in the closet. Eventually, however, investigating officers found Defendant and placed him under arrest.

Defendant did not know that Toby Bishop had died when he spoke with investigating officers. Initially, Defendant claimed that he did not own a knife since he thought that he was only being charged with assault and believed that his knife would be

confiscated if he acknowledged having had one in his possession. After discovering that he was being charged with murder, however, Defendant decided to tell investigating officers where the knife was located. At trial, Defendant testified that, although he might have told Detective Kevin Briggs of the Buncombe County Sheriff's Department that he had washed his hands that evening, he had never actually done so. In December of 2010, Defendant, who was in custody, asked Ms. Callahan to state that Toby Bishop had been out to get him. However, Ms. Callahan did not know that Toby Bishop had had such designs for Defendant.

B. Procedural History

On 6 June 2011, the Buncombe County grand jury returned bills of indictment charging Defendant with second degree murder and having attained the status of an habitual felon. The charges against Defendant came on for trial before the trial court and a jury at the 16 April 2012 criminal session of the Buncombe County Superior Court. On 20 April 2012, the jury returned a verdict convicting Defendant of voluntary manslaughter. After the return of the jury's verdict, the State voluntarily dismissed the habitual felon indictment. On 23 April 2012, at the conclusion of the ensuing sentencing hearing, the trial court entered a judgment sentencing Defendant to a

term of 111 to 143 months imprisonment. Defendant noted an appeal to this Court from the trial court's judgment.

II. Substantive Legal Analysis

A. Exclusion of Reputation Evidence

In challenging the trial court's judgment, Defendant argues that the trial court erred by precluding him from eliciting evidence that Toby Bishop had a reputation among law enforcement officers for being a violent individual. According to Defendant, the evidence in question would have supported his claim that he acted in self-defense, establishing that the trial court's error prejudiced his chances for a more favorable outcome at trial. We do not find Defendant's argument persuasive.

According to well-established North Carolina law, "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused" is admissible. N.C. Gen. Stat. § 8C-1, Rule 404(a)(2). "Where [a] defendant argues he acted in self-defense, evidence of the victim's character may be admissible . . . 'to show defendant's fear or apprehension was reasonable or to show the victim was the aggressor.'" *State v. Ray*, 125 N.C. App. 721, 725, 482 S.E.2d 755, 758 (1997) (quoting *State v. Watson*, 338 N.C. 168, 187, 449 S.E.2d 694, 706 (1994), *cert. denied*, 514 U.S. 1071, 115 S. Ct. 1708, 131 L. Ed. 2d 569

(1995), *overruled on other grounds, State v. Richardson*, 341 N.C. 585, 592, 461 S.E.2d 724, 729 (1995)). However, such evidence must be presented in the form of "testimony as to reputation or by testimony in the form of an opinion." N.C. Gen. Stat. § 8C-1, Rule 405(a). As this Court has previously stated, "[t]he standard method of proving character is by reputation in the community, which means more than mere rumor and gossip, or a divided opinion, or the opinion among part of a community or a particular group. Hearing a majority of people speak of the person is one way by which knowledge of reputation may be acquired." *State v. Wright*, 52 N.C. App. 166, 180, 278 S.E.2d 579, 589 (1981) (citing *State v. Davis*, 291 N.C. 1, 15-16, 229 S.E.2d 285, 295 (1976); *State v. Ellis*, 243 N.C. 142, 144-46 90 S.E.2d 225, 227 (1955), *State v. Kiziah*, 217 N.C. 399, 403, 8 S.E.2d 474, 477 (1940), and 1 *Stansbury N.C. Evidence* § 110 (Brandis rev. 1973)) (citations omitted). As a result:

inquiry into reputation should not be necessarily confined to the residence of the party whose reputation is in question, but should be extended to any community or society in which the person has a well-known or established reputation. Such reputation must be his *general* reputation, held by an appreciable group of people who have had adequate basis upon which to form their opinion. Of course, the testifying witness must have sufficient contact with that community or society to qualify him.

State v. McEachern, 283 N.C. 57, 67, 194 S.E.2d 787, 793-94 (1973) (emphasis in original). Although any preliminary factual determinations which must be made in order to determine the admissibility of reputation or opinion evidence are subject to review using an abuse of discretion standard, *State v. Shuford*, 337 N.C. 641, 649, 447 S.E.2d 742, 747 (1994), the extent to which particular evidence, including evidence concerning the character of a particular individual, is relevant is subject to *de novo* review, with the trial court's relevance "rulings [being] given great deference on appeal." *Dunn v. Custer*, 162 N.C. App. 259, 266, 591 S.E.2d 11, 17 (2004).

At trial, Defendant attempted to question Detective Briggs concerning a caution contained within a particular law enforcement database indicating that Toby Bishop might be armed and was an habitual felon. According to Detective Briggs, the Buncombe County Sheriff's Department has access to "a database on persons who get charged with crimes or who otherwise have contact with law enforcement." The database in question "contains information that is utilized by law enforcement." In the event that the database reflects that "a particular person has a caution associated with their name," such an entry "just means that [law enforcement] should pay particular attention to the record for additional information." In the event that

"someone has a caution that indicates that they're armed and dangerous," such an entry reflects the fact that "someone at some point in time had been in contact with that individual . . . and had requested that that information be placed on that particular record." When Defendant's trial counsel asked Detective Briggs whether the fact that "someone has a caution associated with their name indicating that they're armed and dangerous . . . would indicate their reputation to the law enforcement community for their conduct," the prosecutor objected, resulting in the continuation of the proceeding out of the presence of the jury.

On *voir dire*, Detective Briggs responded to the question posed by Defendant's trial counsel by stating, "My answer would be no, for the word 'reputation' is what bothers me with that, to say yes to that answer." However, Detective Briggs did indicate that such an entry was "a caution for an officer to be aware." Although Defendant's trial counsel continued to question Detective Briggs on *voir dire* in more detail, Detective Briggs reiterated his prior statement that the purpose of such entries was "[f]or officers' safety" and that, since he had "no idea who put that or who would have done that or what particular incident that is referencing," he would, while "us[ing] extra caution when dealing with that person," not "automatically

assume that that person would be armed and dangerous." At the conclusion of the *voir dire* examination and after hearing the arguments of counsel, the trial court allowed Defendant to ask Detective Briggs in the presence of the jury "if a person has a caution associated with their name in the law enforcement database, does that reflect their reputation within the law enforcement community." However, after Detective Briggs answered in the negative, the trial court precluded Defendant from establishing before the jury that the law enforcement database contained an entry indicating that Toby Bishop's record contained a caution reflecting that he was armed and an habitual felon.

On appeal, Defendant argues that the trial court's ruling precluded him from eliciting admissible evidence that, within the law enforcement community, Toby Bishop had a reputation for violence and that members of the law enforcement community knew him to be "armed." This argument lacks merit for a number of different reasons.

As an initial matter, the record clearly establishes that the information which Defendant sought to elicit from Detective Briggs simply did not, in fact, reflect Toby Bishop's reputation within the law enforcement community. As Detective Briggs testified on *voir dire*, the fact that a caution was entered into

the law enforcement database simply meant that, "at some point in time someone felt they needed to put [the caution] in there for whatever officer" and that he had "no idea who [entered it] or who would have [entered it] or what particular incident that that is referencing." Aside from the fact that the record contained no evidence establishing when this "caution" was created for Toby Bishop, Detective Briggs confirmed that such a caution could remain in the system indefinitely despite subsequent non-problematic law enforcement interaction with the individual in question unless someone took affirmative action to delete the entry from the database. As a result, the record simply shows that the document about which Defendant sought to question Detective Briggs was created by an unknown individual at an unknown time for an unknown reason and did not reflect any sort of generalized experience within the law enforcement community involving Toby Bishop. As a result, a decision to admit the information contained in the law enforcement database would have allowed the jury to consider information that might be nothing "more than mere rumor and gossip, or a divided opinion, or the opinion among part of a community or a particular group." *Wright*, 52 N.C. App. at 180, 278 S.E.2d at 589.

Secondly, the document does not contain admissible reputation or opinion evidence. The document about which Defendant sought to question Detective Briggs simply reflected a caution relating to Toby Bishop which indicated that he was "armed" and an "habitual felon." Such information simply does not amount to a description of a person's reputation in a particular community or a statement of opinion concerning that person's character for violence. A person may be fairly described as an habitual felon based on the commission of property crimes or drug offenses. The fact that Toby Bishop might be armed does not necessarily indicate that he had a violent character. Thus, the evidence that Defendant contends to have been improperly excluded simply did not take the form of testimony describing Toby Bishop's reputation or an opinion about his character as required by N.C. Gen. Stat. § 8C-1, Rule 405(a).

Finally, Defendant appears to suggest that the trial court should have disregarded Detective Briggs' testimony that the information contained in the law enforcement database concerning Toby Bishop did not reflect his reputation for violence and, instead, reached a contrary conclusion. According to Defendant, "[u]nder no circumstances would it be appropriate for the judge to leave resolution of whether particular evidence is reputation

or opinion to a witness." Although Defendant is certainly correct that the trial court has an obligation to independently make any factual determinations necessary to make an appropriate evidentiary ruling, *Donovant v. Hedgepeth*, 318 N.C. 1, 8, 347 S.E.2d 797 801-02 (1986) (stating that "it is the sole province of the judge to determine the preliminary questions of fact upon which admissibility depends") (quoting 1 *Brandis on North Carolina Evidence* § 8 (2d ed. 1982) and citing N.C. Gen. Stat. § 8C-1, Rule 104(a) and *State v. Whitener*, 191 N.C. 659, 661-62, 132 S.E.2 603, 604-05 (1926)), our review in such circumstances is limited to whether the trial court abused its discretion by making the factual determination which it deemed appropriate. As we have already noted, Detective Briggs clearly indicated that the entries concerning Toby Bishop in the law enforcement database did not, in fact, reflect his reputation in the law enforcement community. That fact, standing alone, would suffice to support a decision to uphold the trial court's ruling. In addition, as we have previously noted, nothing about the entries which Defendant sought to have presented to the jury necessarily reflected Toby Bishop's reputation for violence within the law enforcement community. Thus, although Defendant correctly notes that the trial court, rather than Detective Briggs, was ultimately responsible for determining whether the information

in question constituted proper reputation evidence, we see no basis for concluding that the trial court erred by determining that the information which Defendant sought to elicit before the jury did not constitute evidence of Toby Bishop's reputation for violence within the law enforcement community. As a result, for all of these reasons, Defendant is not entitled to relief from the trial court's judgment based upon the exclusion of evidence concerning the information about Toby Bishop contained in the law enforcement database about which Detective Briggs testified.

B. Judgment Entry Date

Secondly, Defendant argues on appeal that the trial court erred by entering judgment against him prior to his sentencing hearing and that this error requires that this case be remanded to the trial court for resentencing or, "[a]t a minimum," for the purpose of correcting the erroneous date shown on the judgment. As Defendant asserts, the written judgment entered by the trial court indicates that judgment was entered against Defendant on 20 April 2012. However, the trial transcript reflects that Defendant's sentencing hearing was held on 23 April 2012, that Defendant was given ample opportunity to be heard with respect to sentencing issues on that occasion, and that the trial court entered judgment against Defendant on that date rather than on 20 April 2012. Although he has suggested

that the trial court's sentencing decision might lack adequate record support, Defendant has not pointed to any sentencing-related provision of the trial court's judgment which lacks support in or is inconsistent with the record, and our independent review of the record establishes that the trial court made a careful and thorough inquiry into all relevant sentencing issues before passing judgment. For that reason, we have no hesitation in concluding that the erroneous entry date shown on the trial court's judgment is a mere clerical error rather than an indication that, as Defendant seems to suggest, the trial court sentenced Defendant without developing an adequate record and without providing Defendant with an adequate opportunity to be heard. As a result, in light of the fact that the trial court's judgment contains an incorrect entry date and our conclusion that this erroneous entry date is nothing more than a clerical error, we remand this case to the Buncombe County Superior Court for the correction of this clerical error. *State v. Ellison*, __ N.C. App. __, __, 713 S.E.2d 228, 246 (2011) (stating that "[w]hen, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth") (quoting *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695,

696 (2008)) (internal quotation marks omitted), *aff'd*, ___ N.C. ___, 738 S.E.2d 161 (2013).

III. Conclusion

Thus, for the reasons set forth above, we hold that Defendant's primary challenge to the trial court's judgment lacks merit and that this case should be remanded to the Buncombe County Superior Court for the correction of the erroneous entry date shown on the judgment entered by the trial court in this case. As a result, the trial court's judgment should, and hereby does, remain undisturbed with the exception that this case should be, and hereby is, remanded to the Buncombe County Superior Court for the correction of the entry date shown on the trial court's judgment.

NO ERROR IN PART; REMANDED FOR CORRECTION OF A CLERICAL ERROR IN PART.

Judges ROBERT C. HUNTER and STROUD concur.

Report per Rule 30(e).