IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1152

Filed: 3 September 2019

Forsyth County, Nos. 17CRS1855, 17CRS55659, 17CRS55660

STATE OF NORTH CAROLINA

v.

CONRAD RAY SCOTT, JR., Defendant.

Appeal by Defendant from judgments entered 10 January 2018 by Judge Eric L. Levinson in Forsyth County Superior Court. Heard in the Court of Appeals 8 August 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Tamara Mary Van Pala, for the State.

Forrest Firm, P.C., by Patrick S. Lineberry, for Defendant-Appellant.

INMAN, Judge.

Conrad Ray Scott, Jr. ("Defendant") appeals from the trial court's judgments following jury verdicts finding him guilty of driving while license revoked and felony speeding to elude arrest, as well as attaining habitual felon status. Defendant argues that the trial court erred in (1) denying his motion to dismiss the eluding arrest

charge for insufficient evidence; (2) refusing to admit an audio visual recording of Defendant's statements at the time he was arrested; and (3) refusing to allow defense counsel to cross-examine the arresting officer about Defendant's statements. After thorough review of the record and applicable law, we hold that Defendant has failed to demonstrate error.

I. FACTUAL AND PROCEDURAL BACKGROUND

The evidence introduced at trial tended to show the following:

On the morning of 17 June 2017, Deputy Brandon Scott Shields ("Deputy Shields") of the Forsyth County Sherriff's Office sought to arrest Defendant on an outstanding warrant. Deputy Shields, accompanied by another officer, visited Defendant's last known address on Crews Lane in Walkerton, North Carolina and knocked on the door of the residence multiple times. After no one answered, Deputy Shields ran the license plate of the white pickup truck parked in the residence's driveway to make sure he was at the right address. The license plate was reported stolen. Deputy Shields again knocked on the door of the residence—to no avail—and removed the license plate from the truck and put it into his marked patrol car.

Deputy Shields then drove to a nearby location facing Crews Lane to type his report for locating and recovering stolen property. After about fifteen minutes, Deputy Shields saw a white pickup truck without a license plate traveling down

Crews Lane toward him. The truck turned right onto Old Hollow Road, and Deputy Shields followed.

After Deputy Shields caught up to the truck, he activated his patrol car's emergency lights and siren. Instead of stopping, the truck increased its speed to about 55 to 60 miles per hour ("mph"), ten to fifteen mph above the posted speed limit, and maintained that speed as it turned left onto Davis Road, allowing minimal distance from a vehicle in the oncoming lane. After the truck made the turn, it crossed the center double yellow line and then moved back and forth across lanes before straightening. Deputy Shields described the turn as "abrupt," "evasive," and "unsafe" because it "barely miss[ed]" other vehicles in its vicinity. Even after the turn, the truck sporadically veered "left to center" as it continued down Davis Road and traveled at about 50 mph, exceeding the 45 mph speed limit.

The truck then displayed its left turn signal and turned off of Davis Road and onto Creason Circle, a road leading into a residential neighborhood. Although the road did not have marked dividing lines, Creason Circle is a two-lane road, and the truck "utilized the entire paved roadway" as it traveled approximately 40 to 45 mph in a 35 mph zone. The truck then rolled through a stop sign, turned right onto Sitka Road, and pulled into the driveway of Defendant's parents' residence.

The chase lasted for approximately one minute and forty seconds. On three separate occasions, Deputy Shields saw the driver of the truck stick his arm out of

the rear middle window and gesture by moving his arm "up and . . . down on a couple of different occasions."

Deputy Shields parked behind the truck, exited his patrol car, removed his firearm from its holster, and ordered the driver—later revealed to be Defendant—to remain in the truck. Defendant was already exiting the truck, so Deputy Shields then ordered him to get on the ground. Defendant complied and Deputy Shields placed him under arrest. After running Defendant's driver's license through a police database, Deputy Shields discovered that Defendant's license was revoked.

Deputy Shields' dashboard video camera activated at the same time as the lights and siren on his patrol vehicle. The video captured the entire pursuit and Defendant's vehicle after the stop. Defendant's arrest occurred out of view of the camera but Deputy Shields' commands and Defendant's responses are heard on the video.

On 28 August 2017, Defendant was indicted for felony speeding to elude arrest, reckless driving, driving while license revoked, and attaining habitual felon status.

Defendant's case came on for trial on 8 January 2018 and lasted two days. Before the State introduced evidence, defense counsel made an oral motion in limine requesting that if the State intended to play for the jury the video of the chase and stop, it be required to also play another 37 seconds of footage after Defendant exited the truck ("the post-stop footage"). In that footage, visually depicting the stopped

truck, Defendant can be heard saying that he knew he was going to be arrested, was merely trying to park at his parents' house before getting arrested, and that he was physically handicapped. Defense counsel argued, pursuant to North Carolina Rule of Evidence 106, that fairness dictated that Defendant's statements immediately following the stop be included to provide context for the jury in viewing the rest of the video evidence. The State objected and the trial court denied defense counsel's request, reasoning that Rule 106 did not apply because Defendant's statements were inadmissible hearsay, could not be subjected to cross examination, and that the post-stop footage was unrelated to the rest of the footage.

At trial, before the State admitted and played the video evidence, defense counsel stated "[n]o objection" when the trial court inquired if there were any comments or objections. Deputy Shields was the sole witness and the video evidence was the only other evidence presented by the State.

At the close of the State's evidence, defense counsel moved to dismiss the eluding arrest and reckless driving charges for insufficient evidence and renewed the motion under Rule 106 to play the post-stop footage.[1] The trial court summarily denied those motions. Defendant did not present any evidence. The trial court denied defense counsel's renewed motion to dismiss at the close of all the evidence.

[1] Defendant stipulated to the elements of driving while license revoked.

The jury found Defendant guilty of driving while license revoked and felonious speeding to elude arrest.[2] Defendant then admitted to having attained habitual felon status as an aggravating factor. The trial court consolidated Defendant's convictions into one judgment and sentenced him in the mitigated range to 67 to 93 months' imprisonment, with 177 days of credit given for time spent in confinement, and ordered him to pay $3,412.50 in court costs.

Defendant gave oral notice of appeal.

II. ANALYSIS

A. Motion to Dismiss

Defendant argues that the trial court erred in denying his motion to dismiss the charge of felony speeding to elude arrest and asserts the State produced insufficient evidence to allow the jury to convict him. We review the trial court's denial of a motion to dismiss *de novo*. *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007). When employing *de novo* review, "we consider the matter anew and freely substitute our own judgment for that of the lower court." *State v. Foye*, 220 N.C. App. 37, 40, 725 S.E.2d 73, 77 (2012).

[2] The State dismissed the misdemeanor reckless driving charge as a separate offense but argued that Defendant's reckless driving be considered as an aggravating factor to support a jury verdict finding Defendant guilty of felony speeding to elude arrest. *See* N.C. Gen. Stat. § 20-141.5(b)(3) (2017) (listing reckless driving as an aggravating factor to help elevate the crime from a misdemeanor to a Class H felony).

In reviewing a denial of a motion to dismiss, "the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). Substantial evidence is defined as the "amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Scott*, 356 N.C. 591, 597, 573 S.E.2d 866, 869 (2002). All evidence is viewed "in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Squires*, 357 N.C. 529, 535, 591 S.E.2d 837, 841 (2003) (citation omitted). Any contradictions, discrepancies, or contrary deductions that could be weighed in the defendant's favor do not warrant dismissal and are for the jury to resolve. *State v. Gibson*, 342 N.C. 142, 150, 463 S.E.2d 193, 199 (1995); *State v. Grigsby*, 351 N.C. 454, 457, 526 S.E.2d 460, 462 (2000).

Our General Statutes define felony speeding to elude arrest, in pertinent part, as follows:

> (a) It shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor.
> (b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony. . . .

> (3) Reckless driving as proscribed by [N.C. Gen. Stat.] 20-140. . . .
>
> (5) Driving when the person's drivers license is revoked.

N.C. Gen. Stat. §§ 20-141.5(a), (b)(3), (b)(5) (2017).[3] Defendant does not challenge the sufficiency of the evidence to support the aggravating factors, but he challenges whether the State presented enough evidence that he intended to elude arrest. In determining intent necessary to convict a defendant for eluding arrest, we have held:

> "[A] defendant accused of violating N.C. Gen. Stat. § 20–141.5 must actually intend to operate a motor vehicle in order to elude law enforcement officers[.]" *However, "a defendant's 'guilty knowledge' [can] be either actual or implied from circumstances [.]"* Our Supreme Court has held that a defendant's reasonable belief of something equates to his implied guilty knowledge of that thing.

State v. Graves, 203 N.C. App. 123, 128-29, 690 S.E.2d 545, 549 (2010) (quoting *State v. Woodard*, 146 N.C. App. 75, 80, 552 S.E.2d 650, 654 (2001); *State v. Parker*, 316 N.C. 295, 303, 341 S.E.2d 555, 560 (1986)) (emphasis added).

Defendant contends that his use of the truck's turn signal and hand gestures indicate that he wanted Deputy Shields to follow him. Defendant asserts that, because the chase was brief and ended when he peacefully pulled into his parents' driveway and surrendered, the evidence supported a finding that he merely intended to *delay* arrest rather than avoid arrest altogether. We disagree.

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[3] Although there are eight aggravating factors, the State only argued the two referenced above. *Id.* §§ 20-141.5(1)-(8).

Defendant's argument is similar to one rejected by this Court in *State v. Cameron*, 223 N.C. App. 72, 732 S.E.2d 386 (2012). In *Cameron*, we held that there was sufficient evidence showing that the defendant intended to elude arrest even though she testified that she did not stop because she "preferred to be arrested by a female officer." *Id.* at 75, 732 S.E.2d at 388. We held that the defendant's reason for not stopping was irrelevant because she clearly "intend[ed] to elude the law enforcement officers who were pursuing her." *Id.* The same logic can be applied in the instant case. Assuming that Defendant preferred to be arrested at his parents' residence—to leave the truck there upon his arrest—he still intentionally eluded Deputy Shields' show of authority to stop his vehicle and arrest him on the outstanding warrant.

Neither this Court nor the North Carolina Supreme Court has ever held that a defendant's speeding to delay arrest is legally distinct from speeding to elude arrest. Given the public safety hazard caused by a vehicle speeding with law enforcement in pursuit, it seems unlikely that the legislature intended to allow for such a distinction.

We also note that the evidence, considered in the light most favorable to the State, does not support Defendant's argument. Defendant did not slow down when Deputy Shields activated his lights and siren on his marked patrol car. Defendant's speed was consistently above the speed limit. Defendant drove recklessly with a revoked license through a residential neighborhood. Although Defendant raises

additional facts that he argues support a contrary conclusion, such as his turn signal and hand gestures, it is not our role to supplant the jury on appeal and weigh the evidence submitted at trial. *Lineback v. Wood*, 4 N.C. App. 512, 512, 167 S.E.2d 44, 45 (1969). "Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) (citation omitted). We therefore hold that the State produced sufficient evidence that Defendant intended to elude arrest.

B. Rule 106

Before we address the substance of Defendant's next argument, we must analyze whether Defendant properly preserved this issue for appeal.

Although normally utilized to exclude or limit evidence, a motion in limine serves in seeking a " 'pretrial determination of the admissibility of evidence proposed to be introduced at trial,' and is recognized in both civil and criminal trials." *Heatherly v. Indus. Health Council*, 130 N.C. App. 616, 619, 504 S.E.2d 102, 105 (1998) (quoting *State v. Tate*, 44 N.C. App. 567, 569, 261 S.E.2d 506, 508, *rev'd on other grounds*, 300 N.C. 180, 265 S.E.2d 223 (1980)); *see also State v. Locklear*, 145 N.C. App. 447, 452 n.1, 551 S.E.2d 196, 198 n.1 (2001) (noting that a motion to suppress and a motion in limine are two different motions that may be one and the same (citing *Tate*, 300 N.C. at 182, 265 S.E.2d at 225)).

> [A] motion in limine is insufficient to preserve for appeal the question of the admissibility of evidence. Rulings on these motions . . . are merely preliminary and subject to change during the course of the trial, depending upon the actual evidence offered at trial and thus an objection to an order granting or denying the motion is insufficient to preserve for appeal the question of the admissibility of the evidence. A party objecting to an order granting or denying a motion in limine, in order to preserve the evidentiary issue for appeal, is required to object to the evidence at the time it is offered at the trial (where the motion was denied) or attempt to introduce the evidence at the trial (where the motion was granted).

State v. Hill, 347 N.C. 275, 293, 493 S.E.2d 264, 274 (1997), *cert. denied*, 523 U.S. 1142, 140 L. Ed. 2d 1099 (1998) (citations and quotations omitted).

As noted above, defense counsel made an oral motion pre-trial requesting that the post-stop footage be admitted along with the pursuit footage submitted by the State, which the trial court denied. When the State ultimately submitted the video into evidence, defense counsel stated "[n]o objection." It was not until after Deputy Shields' testimony concluded, the State rested its case, and the jury exited the courtroom—about forty-two minutes after the video was played—that defense counsel renewed her objection to play the post-stop footage.

The State argues that, because defense counsel did not timely object to the video at its initial introduction, Defendant waived this argument for appeal. For independent reasons, we agree. Unlike the cases cited by the State, in which defendants appealed trial courts' rulings denying motions to exclude evidence,

Defendant's appeal arises from the trial court's denial of a motion to compel the State to publish evidence to the jury. Not only did defense counsel expressly state "[n]o objection" when the State requested to publish the video to the jury, but defense counsel did not renew the request to publish the complete video at any time during Deputy Shields' direct testimony, cross examination, redirect examination, or re-cross examination. By waiting until after the State rested its case to request that the State be compelled to publish the post-stop footage to the jury, defense counsel essentially asked the trial court to re-open the opposing party's case. We hold that request came too late to preserve the issue for appeal.

Even if the issue were preserved for appellate review, we would affirm the trial court's ruling because Defendant's counsel did not properly invoke Rule 106. Known as the "rule of completeness," Rule 106 provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." N.C. Gen. Stat. § 8C-1, Rule 106 (2017).

North Carolina's Rule 106 mirrors Federal Rule of Evidence 106. Our Supreme Court has discussed Rule 106 and its purpose:

> The lessons of the federal decisions discussing Rule 106 are well settled. Rule 106 codifies the standard common law rule that when a writing or recorded statement or a part thereof is introduced by any party, an adverse party can

> obtain admission of the entire statement or anything so closely related that in fairness it too should be admitted. . . . The purpose of the "completeness" rule codified in Rule 106 is merely to ensure that a misleading impression created by taking matters out of context is corrected *on the spot, because of the inadequacy of repair work when delayed to a point later in the trial*.

State v. Thompson, 332 N.C. 204, 219-20, 420 S.E.2d 395, 403-04 (1992) (emphasis added) (citations and internal quotation marks omitted). It is the "defendant [who] bears the burden of *contemporaneously* seeking to introduce the excluded parts of the statement and demonstrating that the excluded parts are either explanatory or relevant." *State v. Hall*, 194 N.C. App. 42, 50, 669 S.E.2d 30, 36 (2008) (emphasis added) (citations omitted).

We also are unpersuaded by Defendant's argument that the trial court abused its discretion in excluding the post-stop footage from the jury's view. As discussed above, neither the General Assembly nor any appellate court in North Carolina has provided that the intent to elude arrest can be negated by evidence that a defendant had a preference for the location where he or she would like the arrest to occur. Defendant's statements to Deputy Shields that he was handicapped, knew he was being arrested, and wanted to park his truck at his parents' residence did not negate any element of the speeding to elude arrest charge. We will not disturb a trial court's decision to exclude evidence pursuant to Rule 106 absent a showing of an abuse of discretion. *State v. Vann*, __ N.C. App. __, __, 821 S.E.2d 282, 287 (2018) (quoting

Thompson, 332 N.C. at 219-20, 420 S.E.2d at 403-04). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hensley*, __ N.C. App. __, __, 802 S.E.2d 744, 748 (2017) (quotation marks and citation omitted).

Finally, we disagree with Defendant's argument that he was prejudiced by the trial court's exclusion of the post-stop footage from the jury's view. "[I]n order for the defendant to be entitled to a new trial, he must show that the error in excluding the statement prejudiced him to the extent that had the error not been committed, a different result would have been reached at trial." *State v. Jordan,* 130 N.C. App. 236, 241, 502 S.E.2d 679, 682 (1998) (citing N.C. Gen. Stat. § 15A-1443(a) (1997)).

Defendant's statements recorded in the post-stop footage do not mention the turn signal and gestures that Defendant argues needed to be considered in context of Defendant's statements after he was stopped. Also, although the excluded footage included Defendant's statement that he did not stop because he wanted to leave the truck at his parents' home, Deputy Shields testified that Defendant told him the residence he parked at "was his parents' house." And defense counsel in closing argument proposed the theory that Defendant was not eluding arrest, but signaling to Deputy Shields to follow him to his parents' residence, where he could park his "truck safely in a place where he knew it would be safe." Even if Defendant's post-stop statements could theoretically negate an element of the crime, we would still be

unpersuaded that the omitted evidence from the post-stop footage would have led to a reasonable possibility of a different result at trial.

C. Rule 611

Lastly, Defendant argues that the trial court erred in excluding the post-stop footage because it implicitly deprived him of his right to cross-examine Deputy Shields about the statements in violation of North Carolina Rule of Evidence 611. Although the parties disagree as to whether this issue was preserved, assuming that it was, nothing in the record indicates that the trial court impermissibly infringed on Defendant's right to cross-examine Deputy Shields.

The pertinent part of Rule 611 provides: "A witness may be cross-examined on any matter relevant to any issue in the case, including credibility." N.C. Gen. Stat. § 8C-1, Rule 611(b) (2017). Known as the "wide open" rule of cross-examination:

> Cross-examination is not confined to the subject matter covered on direct examination but ordinarily may extend to any matter relevant to the issues in the case. However, "wide open" cross-examination does not mean that all decisions on cross-examination are left to the cross-examiner. The trial judge may and should rule out immaterial, irrelevant and incompetent matter.

State v. Stanfield, 292 N.C. 357, 362, 233 S.E.2d 574, 578 (1977) (quotations and citations omitted).

"[T]he defendant's right to cross-examination is not absolute." *State v. Guthrie*, 110 N.C. App. 91, 93, 428 S.E.2d 853, 854, *disc. review denied*, 333 N.C. 793, 431

S.E.2d 28 (1993). "[T]he trial court's decision to limit cross-examination is reviewed for abuse of discretion, and 'rulings in controlling cross examination will not be disturbed unless it is shown that the verdict was improperly influenced.' " *State v. Jacobs*, 172 N.C. App. 220, 228, 616 S.E.2d 306, 312 (2005) (quoting *State v. Hatcher*, 136 N.C. App. 524, 526, 524 S.E.2d 815, 816 (2000)).

Contrary to Defendant's assertion, at no point was defense counsel's scope of cross-examination limited to any specific subject matter, nor was she prevented from asking Deputy Shields about what happened or even what Defendant said after he exited his truck. The trial court *overruled* the State's objection when defense counsel asked Deputy Shields about why Defendant parked at that particular residence, allowing Deputy Shields to testify "[Defendant] said it was his parents' house." As for the remaining post-stop statements, defense counsel apparently made a calculated decision not to ask about them.

In sum, we conclude there is no reasonable possibility that publishing to the jury Defendant's post-stop statements would have affected the result of his trial.

NO ERROR.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).