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NO. COA11-902
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v. Transylvania County
Nos. 08 CRS 52222-24;
09 CRS 168

HANK FEW,
Defendant.

Appeal by defendant from judgments entered 5 January 2011
by Judge James U. Downs in Transylvania County Superior Court.
Heard in the Court of Appeals 17 January 2012.

*Attorney General Roy Cooper, by Assistant Attorney General
Josephine N. Tetteh, for the State.*

Benjamin D. Porter for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant was charged with assault on a female, habitual misdemeanor assault, breaking and entering, injury to real property, and first degree burglary. He was found guilty of assault on a female, injury to real property, and misdemeanor breaking and entering. He pled guilty to habitual misdemeanor assault.

The State presented evidence tending to show that at approximately 3:15 a.m. on 4 October 2008, Alicia Sable Galloway was in bed with her fourteen-month-old daughter when she heard the sound of a vehicle arriving in the driveway of her residence. She got out of bed and heard defendant, who was the father of her child, banging on the door and shouting to be allowed into the house. Defendant kicked the door in and entered the house. He grabbed Ms. Galloway, who was seven months pregnant at the time, shoved her onto a recliner, climbed on top of her, dug his knees into her stomach, and hit her head and face while accusing her of infidelity. She fought back by biting defendant, who eventually got off Ms. Galloway and threatened to take their daughter. Defendant left the residence and went back out to his truck. Meanwhile, Ms. Galloway called 911. She grabbed her daughter and locked herself and the child in a bathroom. She also called her mother and told her what was happening. Defendant came back into the house and kicked the bathroom door. Defendant stopped kicking the door and things became quiet. Ms. Galloway next heard the sound of vehicles in her driveway. She exited the bathroom and saw an officer with the Transylvania County Sheriff's Department enter her house. Defendant was no longer in the house.

Ms. Galloway's mother testified that her daughter called her during the early morning hours of 4 October 2008 and reported that defendant had kicked in the door of her house and was trying to take her granddaughter. She subsequently met Ms. Galloway at the Sheriff's Department that morning and observed marks and bruises on her daughter's face, forehead, and arms.

Deputy Sheriff Matthew Chase Owen testified that he was dispatched to a residence on Oscar Chapel Road in the early morning hours of 4 October 2008. He saw a Toyota pickup truck in the driveway. He was met by Ms. Galloway standing in the doorway of the residence and holding her child. He observed injuries to her face and body. Ms. Galloway told him that her attacker had left and gone into the woods. Officer Owen entered the residence and took pictures of the interior of the residence. Among other things, he photographed a busted door jamb on the front door, a broken door hasp on the front door, a hole in the sheetrock wall created when the door handle broke through the wall, and a hole in the bathroom door where it had been kicked or punched. He also took photographs of Ms. Galloway's injuries. Ms. Galloway identified the perpetrator of the property damage and injuries as defendant. The officer also observed that the engine of the vehicle parked in the driveway

was "still warm," thereby confirming Ms. Galloway's statement that it had just arrived.

Jade Crystal McCall testified on defendant's behalf that she had known Ms. Galloway all her life and that in her opinion, Ms. Galloway was not a truthful person. Ms. Galloway's father testified on defendant's behalf that defendant and Ms. Galloway were living together on the night of the incident.

Defendant's mother testified that on the evening of 4 October 2008, she gave defendant a bag of clothes and homemade applesauce to take home to her granddaughter, and that she found defendant sleeping in her residence the next morning. Defendant had a black eye, scratches on his face, a bruise on his leg, and a bite mark on his arm which was bleeding. Defendant told her that he had been running through the woods and the police were chasing him.

Defendant did not testify. Defendant's sole contention on appeal is that the trial court erred in allowing the prosecutor to inquire of Ms. Galloway on redirect examination whether there had been prior altercations between defendant and Ms. Galloway which were "violent enough to break bones." He argues the testimony was not admissible pursuant to N.C. Gen. Stat. § 8C-1, Rule 404(b) (2009) because it was not offered for a proper

purpose. Defendant further argues that the evidence was inadmissible under the balancing test of N.C. Gen. Stat. § 8C-1, Rule 403 (2009) because any probative value was outweighed by its prejudicial effect and tendency to inflame the jury by painting a picture of defendant as a violent and dangerous person who had a history of violence toward Ms. Galloway.

We need not address the merits of defendant's arguments because we determine that the error, if any, was not prejudicial. "A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C. Gen. Stat. § 15A-1443(a) (2009). On cross examination, defendant's counsel asked Ms. Galloway whether defendant broke any of her bones and Ms. Galloway responded, without objection or motion to strike by defendant: "Not that time." A defendant may not claim prejudicial error when evidence of similar import has been admitted without objection by the defendant. *See State v. Brice*, 320 N.C. 119, 123, 357 S.E.2d 353, 355 (1987). In addition, the evidence of defendant's guilt is very strong and essentially uncontradicted so as to make it unlikely that the

jury would have reached a different verdict had it not heard the challenged evidence. See *State v. Shaw*, 322 N.C. 797, 805, 370 S.E.2d 546, 551 (1988). (holding that the defendant suffered no prejudicial error where the trial court erroneously did not give the jury an instruction on identification because the jury would have reached the same verdict had the trial court not committed the error).

We hold defendant received a fair trial, free of prejudicial error.

No error.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).