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NO. COA02-535

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v.

Richmond County
No. 01 CRS 001680

PATRICK AMIL MONROE

Appeal by defendant from judgment dated 2 November 2001 by Judge Michael E. Beale in Richmond County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Assistant Attorney General Kay Linn Miller Hobart, for the State

Megerian & Wells, by Franklin E. Wells, Jr., for defendant appellant.

GREENE, Judge.

Patrick Amil Monroe (Defendant) appeals from a 2 November 2001 judgment entered consistent with a jury verdict finding him guilty of assault with a deadly weapon with intent to kill inflicting serious injury.

The State presented evidence at trial tending show the following: Defendant and the victim, Melinda Hailey (Hailey), were in a relationship and lived together in a mobile home in Hoffman, North Carolina. Hailey testified she and Defendant had been arguing, and she was planning to move out. On 26 March 2001,

Hailey and Defendant had again been arguing because Defendant wanted to take the car to a friend's home and Hailey would not let him. Hailey left the home, taking some clothes with her, and went to her father's home to tell her father she planned to move back in with him. Later that evening, Hailey went to a friend's house. At approximately 11:30 p.m., Hailey left her friend's home to stay with her father. Passing her home that she shared with Defendant, which was located between Hailey's friend's house and her father's home, she noticed the lights were off and the door was open. Hailey stopped and went inside the home, turned on the light, and found Defendant sitting in a recliner in the hallway in front of the front door. Hailey testified Defendant had been drinking, appeared upset, and was holding a gun. Hailey testified the gun belonged to her, and it was an AR-20 rifle.

Defendant asked Hailey if she was staying, and Hailey responded "no." Hailey then walked into her room, closed the door, and locked it. Approximately ten seconds later, Hailey heard four gunshots and felt "something hot in [her] back." Hailey fell to the floor, and Defendant came to the door and asked, "What happened? Let me in." After getting up and opening the door, Hailey told Defendant she had been shot and asked him to take her to the hospital. Hailey testified that she blacked out several times but eventually Defendant did take her to the hospital. Hailey had been struck by two bullets and suffered two collapsed lungs.

On the way to the hospital, Defendant said to Hailey, "I

didn't do this to you, did I?" At the time, Hailey told him "[n]o." Hailey, however, testified she had said this "[b]ecause I knew he had did [sic] it, and I was afraid that he might finish the job." On cross-examination, Hailey admitted to writing a note to a friend stating she did not believe Defendant had shot her on purpose. Testimony from Detective Williams, an investigating officer, revealed an AR-20 rifle as being a semi-automatic weapon and that "every time the trigger is pulled a shot is fired" unless it has been modified into an automatic weapon. Detective Williams also testified there were four bullet holes in the door to Hailey's room with heights of four feet and one-quarter of an inch, four feet, three and one-half inches, four feet four and one-half inches, and five feet and three-quarters of an inch.

At the end of the first day of trial on 31 October 2001, the court was adjourned to allow court personnel and the jury members to go home for an opportunity to go "trick-or-treating" with their children. The trial court stated: "You may want to get home so [you] can be with them for any Halloween events that may be occurring. And I imagine you want to go with them if you're going to let them trick-or-treat in light of what has been going on." Defendant did not present any evidence. Following closing arguments, Defendant requested the trial court, as part of the jury charge, instruct the jury on the defense of accident. The trial court found the defense of accident was not a substantial feature of the case and denied Defendant's request, and the jury subsequently returned a guilty verdict.

The issues are whether: (I) the testimony of Detective Williams about AR-20 rifles was relevant; (II) the trial court erred in commenting on matters outside the record in releasing the jurors to go trick-or-treating with their children; (III) there was substantial evidence Defendant acted with the specific intent to kill; and (IV) the trial court erred in failing to instruct the jury on the defense of accident.

I

Defendant first argues the trial court erred by allowing testimony from Detective Williams about AR-20 rifles. Defendant contends the testimony concerning the AR-20 rifle did not tend to prove anything about the shooting because the weapon that fired the shots which hit Hailey was never found, and there was no evidence that Hailey was shot with an AR-20 rifle. Furthermore, Defendant argues because the State was allowed to introduce this testimony to rebut the possibility of an accidental discharge, the testimony tended to mislead and confuse the jury. We disagree.

"Admission of relevant evidence is a matter left to the sound discretion of the trial court and will not be reversed except upon a showing of abuse of discretion." *State v. Carrilo*, 149 N.C. App. 543, 552, 562 S.E.2d 47, 53 (2002). Evidence is relevant if it has the tendency to prove or disprove any fact that is of consequence to the determination of the action. See N.C.G.S. § 8C-1, Rule 401 (2001). Relevant evidence is generally admissible but may be excluded if the probative value is substantially outweighed by the

danger of unfair prejudice, confusion of the issues, or would mislead the jury. N.C.G.S. § 8C-1, Rules 402, -403 (2001).

In this case, Defendant has made no showing of any undue prejudice, confusion of the issues, or that the jury was misled by admission of the testimony. Detective Williams testified the AR-20 rifle was a semi-automatic weapon, meaning "every time the trigger is pulled a shot is fired." Hailey testified Defendant was holding an AR-20 rifle when she entered the mobile home. Hailey went into her room, and shortly thereafter heard four gunshots and felt "something hot" in her back. Detective Williams' testimony was relevant to Defendant's intent, as it tended to show Defendant would likely have to pull the trigger each time the gun was fired, and negated a possible defense of accident. The lack of evidence Defendant actually fired the AR-20 rifle at Hailey impacts the weight of the evidence, not its admissibility. See *State v. Lytch*, 142 N.C. App. 576, 580, 544 S.E.2d 570, 573 (2001). Thus, the trial court did not abuse its discretion in admitting the testimony about AR-20 rifles.

II

Defendant next argues the trial court erred in adjourning the jury after the first day of trial by commenting on matters outside the record and thereby "shattered the atmosphere of judicial calm and deprived [Defendant] of his right to a trial in an impartial and unprejudiced court."

"Every person charged with a crime is 'entitled to a trial before an impartial judge and unprejudiced jury in an atmosphere of

judicial calm.'" *State v. Locklear*, 349 N.C. 118, 143, 505 S.E.2d 277, 292 (1998) (quoting *State v. Carter*, 233 N.C. 581, 583, 65 S.E.2d 9, 10 (1951)). "The bare possibility . . . an accused may have suffered prejudice from the conduct or language of [the trial court] is not sufficient to overthrow an adverse verdict." *Locklear*, 349 N.C. 143-44, 505 S.E.2d at 292. The test for determining prejudice resulting from a trial court's comments is "the probable effect of the language on the jury." *Id.* This test should be applied by considering the trial court's comments in the light of the circumstances in which they were made. *Id.*

Following the first day of trial, the trial court stated, "[y]ou may want to get home so [you] can be with [your children] for any Halloween events that may be occurring. And I imagine you want to go with them if you're going to let them trick-or-treat in light of what has been going on." Defendant argues the trial court's statement was a clear reference to the terrorist attacks on 11 September 2001 and "served to call attention to the general atmosphere of fear and violence in the country at the time." Defendant contends the trial court disrupted the "judicial calm" by referencing the terrorist attacks on 11 September 2001. Defendant, however, has failed to allege how this reference prejudiced his case. The trial court did not make any comment on the merits of the case. The trial court was simply recognizing that it was Halloween, and some of the members of the jury might have children and planned to accompany their children trick-or-treating in light of the situation in the country at the time. In fact, the trial

court did not even specifically mention the terrorist attacks. There is nothing in the record to show any possible prejudicial impact on the jury resulting from the trial court's comment. Thus, Defendant has failed to meet his burden of establishing that the remarks were prejudicial. See *State v. Green*, 129 N.C. App. 539, 545, 500 S.E.2d 452, 456 (1998), *aff'd*, 350 N.C. 59, 510 S.E.2d 375 (1999) (per curiam).

III

We next consider whether there was sufficient evidence to support the conviction for assault with a deadly weapon with intent to kill inflicting serious injury. Specifically, Defendant argues the State failed to prove he had the specific intent to kill Hailey, and therefore his motion to dismiss should have been granted.

To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992). The evidence must be viewed in the light most favorable to the State, and the State is entitled to every reasonable inference that is drawn therefrom. *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 652-53 (1982). The essential elements of an assault with a deadly weapon with intent to kill inflicting serious injury are: "(1) an assault, (2) with a deadly weapon, (3) with intent to kill,

(4) inflicting serious injury, and (5) not resulting in death." *State v. Wampler*, 145 N.C. App. 127, 132, 549 S.E.2d 563, 567 (2001). Usually, intent to kill must be proven using circumstantial evidence of surrounding facts by which intent to kill may be inferred. See *State v. Alexander*, 337 N.C. 182, 188, 446 S.E.2d 83, 86-87 (1994). An intent to kill may be inferred from the nature of the assault, the manner in which it was made, the weapon used, and other surrounding circumstances. *Id.*

In this case, the evidence viewed in the light most favorable to the State shows Defendant and Hailey had been arguing, and Defendant was angry because Hailey was moving out of their home. Before the shooting, Defendant was sitting in a chair holding an AR-20 rifle. Seconds after entering her room and closing the door, four gun shots were fired at heights between four and just over five feet through the door into the room Defendant knew to be occupied by Hailey. Detective Williams testified a semi-automatic weapon, like the one Defendant was holding, fires one shot each time the trigger is pulled. From these facts, it may be inferred Defendant had the specific intent to kill Hailey. Thus, a jury could reasonably conclude Defendant had the specific intent to kill.

IV

Defendant finally argues the trial court erred by failing to instruct on the defense of accident.

A trial court has a duty to instruct the jury on all substantial features of a case arising from the evidence. *State v.*

Garrett, 93 N.C. App. 79, 82, 376 S.E.2d 465, 467 (1989). All defenses arising from the evidence are substantial features of the case and therefore the jury should be instructed on them. *Id.*

In this case, the trial court found the defense of accident was not a substantial feature of the case. Specifically, the trial court noted there was "no other direct or circumstantial evidence that would lead any fact-finder to find -- or to believe there was any type of accident in this case." We agree. Defendant did not put on any evidence, and the only evidence arguably supporting a defense of accident was Detective Williams' testimony the AR-20 rifle could be converted into an automatic weapon capable of firing multiple shots with one pull of the trigger and the victims' admission of a previous out-of-court statement stating she believed Defendant shot her accidentally. There was, however, no evidence the AR-20 rifle at issue in this case had been converted to an automatic weapon. Detective Williams' statement was used instead to show the victim's belief at the time, not to prove the shooting was accidental. Thus, the defense of accident was not a substantial feature of the case. Accordingly, the trial court did not err by refusing to instruct the jury on the defense of accident.

No error.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).