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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-679

Filed: 21 March 2017

Mecklenburg County, No. 13CRS200265

STATE OF NORTH CAROLINA

v.

ANTHONIO SHONTARI FARRAR

Appeal by defendant from judgment entered 17 August 2015 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 February 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

David Weiss for defendant.

DIETZ, Judge.

Defendant Antonio Farrar appeals his conviction for second degree murder. Farrar challenges the trial court's exclusion of evidence that he lacked a criminal record. He argues that the State opened the door to admission of this evidence when the State called an investigating officer who testified that he served on a special "Violent Criminal Apprehension Team" that pursued suspects with violent criminal

histories, that he was assigned to perform a “work up” on Farrar that included a criminal background investigation, and that he then briefed the rest of the VCAT unit about Farrar’s “background to be aware of.”

As explained below, we agree that this testimony by the State’s witness created an inference that Farrar had a violent criminal history and thus opened the door to rebuttal evidence that Farrar had no criminal history. Moreover, the exclusion of this evidence prejudiced Farrar because the central theme of his defense was that he was in the wrong place at the wrong time, ended up in a violent confrontation with drug dealers angry at another man, and that he was scared and acted in self-defense.

The inference that he had a violent criminal history undermined this defense. Accordingly, although we recognize that trial courts have broad discretion to determine whether testimony has opened the door to otherwise inadmissible rebuttal evidence, we believe that justice required the trial court to permit Farrar to rebut the inference created in this case that he had a violent criminal history. Because there is a reasonable possibility that the exclusion of this rebuttal evidence affected the jury’s decision to convict Farrar, we must vacate his conviction and remand this case for a new trial.

Facts and Procedural History

On 1 January 2013, around 7:00 p.m. Defendant Anthonio Farrar and Dontae Torrence met with Benjamin McDaniel, Jerik Simmons, and Wade Mosley, allegedly

so Torrence could purchase marijuana from McDaniel. Mosley and Simmons typically accompanied McDaniel to drug sales to offer protection. McDaniel, Simmons, and Mosley arrived in McDaniel's car, while Torrence and Farrar arrived on foot. Torrence entered McDaniel's car and purchased the marijuana. After the purchase, while Torrence and Farrar walked away, McDaniel realized that Torrence had given him counterfeit money. Simmons rolled down the window and called out that the money was fake. Torrence immediately ran away. Farrar did not run, but continued to walk slowly away from Simmons and his colleagues.

McDaniel, Simmons, and Mosley then got out of their car and stopped Farrar, insisting that he pay the money or return the drugs Torrence purchased. After a scuffle, Farrar shot Simmons in the chest and McDaniel in the back. McDaniel died from his injuries.

The State and Farrar offered competing versions of the events immediately before the shooting. Simmons, testifying for the State, explained that he punched Farrar because Farrar reached for a gun and that Farrar then shot Simmons in the chest and shot McDaniel in the back. But Simmons admitted that he and his two colleagues were trying to intimidate Farrar to force him to pay the money they believed they were owed. The three men were larger than Farrar, and Simmons admitted that he told Farrar they could "do [him] damage."

Farrar testified that, when the three men approached him to demand the money or return of the drugs, they threatened to injure him, McDaniel swung at him, Simmons punched him, and then someone fired a gun at him. Farrar testified that he then fired back in self-defense. Farrar testified that he had never fired a gun before.

The State indicted Farrar for first degree murder, attempted first degree murder, and assault with a deadly weapon with intent to kill inflicting serious injury. The jury found Farrar guilty of second degree murder. The trial court sentenced him to 225 to 282 months in prison. Farrar timely appealed.

Analysis

Farrar argues that the trial court erred by excluding evidence that he had no criminal record. Farrar contends that the State presented evidence creating an inference he had a violent criminal history, and that he was entitled to introduce his lack of a criminal record not as general character evidence, but to rebut the inference the State created through its own evidence. As explained below, we agree that Farrar had a right to introduce this evidence, and that its exclusion prejudiced him. Accordingly, we vacate the trial court's judgment and remand for a new trial.

Criminal defendants generally may not introduce evidence of a lack of any criminal record to show their own good character. *State v. Bogle*, 324 N.C. 190, 200, 376 S.E.2d 745, 750–51 (1989). However, that evidence may be introduced if the State first “opened the door” to admission of that evidence. *State v. Albert*, 303 N.C. 173,

177, 277 S.E.2d 439, 441 (1981). “Opening the door refers to the principle that where one party introduces evidence of a particular fact, the opposing party is entitled to introduce evidence in explanation or rebuttal thereof, even though the rebuttal evidence would be incompetent or irrelevant had it been offered initially.” *State v. Sexton*, 336 N.C. 321, 360, 444 S.E.2d 879, 901 (1994).

At trial, the State called Detective Kirk Bynoe of the Violent Criminal Apprehension Team of the Charlotte-Mecklenburg Police Department. Bynoe described the VCAT as a special unit that locates and apprehends “violent criminals,” “violent fugitives,” and “anybody who has a violent history,” such as “murder, robbery, [or] rape.” Bynoe testified that when Farrar became a suspect he began to research him. Bynoe testified that he did a “work up” on Farrar that included a federal background investigation. Bynoe also prepared a wanted poster on Farrar that he gave to the VCAT unit. Finally, Bynoe testified that he held a briefing with the VCAT unit to review the case and inform the team of important information about the case, including Farrar’s “background to be aware of.”

At the end of Bynoe’s testimony, Farrar sought permission from the trial court to question Bynoe about Farrar’s lack of any criminal history. Farrar argued that Bynoe’s testimony opened the door to this evidence. He asserted that, based on Bynoe’s description of the work of the VCAT unit, his testimony about the background check “work up” he did on Farrar, and his description of his briefing with the VCAT

unit about Farrar’s “background to be aware of,” the jury reasonably could infer that Farrar had a criminal history and, in particular, a history of violent crimes that would lead the VCAT unit to be involved with him. The trial court denied his request, explaining that the probative value “was very, very de minimis at best For the record, the value would be ever so de minimis on the legal probative value on cross-examination of the detective, and the prejudice would heavily outweigh . . . the utility of that issue.”¹

We recognize that the trial court has broad discretion to assess the potential probative value and accompanying prejudicial effect of evidence. But because the theme of Farrar’s defense turned so heavily on his argument that he had no experience with guns, that he was scared, and that he ended up in this violent confrontation essentially because he was in the wrong place at the wrong time, we hold that the trial court erred by excluding this rebuttal evidence. We agree with Farrar that the State’s evidence created an inference that he had a violent criminal history, which in turn undercut his efforts to suggest to the jury that he was scared and acted in self-defense when the three men attacked him. Because the inference that he had a violent criminal history was so damaging to this central theme of his

¹ The State contends that Farrar failed to preserve this issue for appeal by failing to make a specific offer of proof concerning his lack of a criminal record. An offer of proof is not required where the significance of the excluded evidence is obvious from the record. *State v. Simpson*, 314 N.C. 359, 370, 334 S.E.2d 53, 60 (1985). We think an offer of proof is unnecessary in this case because Farrar would not have asked for permission to question the officer about Farrar’s lack of a criminal record unless Farrar in fact had no prior criminal record.

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defense, and because much of the State's case depended on the credibility of that defense, we hold that the exclusion of this evidence was prejudicial and entitles Farrar to a new trial. *See* N.C. Gen. Stat. § 15A-1443. Because we vacate and remand on this ground, we need not address Farrar's *Batson* challenge or his other remaining arguments asserted on appeal.

Conclusion

We vacate Farrar's conviction and sentence and remand for a new trial.

VACATED AND REMANDED.

Judges BRYANT and HUNTER, JR. concur.

Report per Rule 30(e).