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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-840

Filed: 6 March 2018

Onslow County, Nos. 14 CRS 1110, 52011, 52041-42, 52052, 16 CRS 2955

STATE OF NORTH CAROLINA

v.

GEORGE REYNOLD EVANS

Appeal by defendant from judgments entered 10 March 2017 by Judge W. Douglas Parsons in Onslow County Superior Court. Heard in the Court of Appeals 7 February 2018.

Attorney General Joshua H. Stein, by Senior Deputy Attorney General Amar Majmundar, for the State.

Jeffrey William Gillette, for defendant-appellant.

ARROWOOD, Judge.

George Reynold Evans (“defendant”) appeals from judgments entered on his convictions of possession of a firearm by felon, two domestic violence protective order violations, assault by pointing a gun, assault with a deadly weapon with intent to kill inflicting serious injury, and discharge of a firearm into occupied property. On

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appeal, defendant argues that the trial court erred by refusing to admit into evidence video recordings that defendant proffered in an attempt to impeach the credibility of the officers that apprehended him. For the reasons stated herein, we find no error.

I. Background

On 11 April 2014, defendant was arrested and charged with attempted murder, possession of a firearm by felon, domestic violence protective order violations on 28 and 29 March 2014, assault by pointing a gun, and assault with a deadly weapon with intent to kill inflicting serious injury. On 10 June 2014, the grand jury handed up indictments on each of these charges. On 11 October 2016, defendant was additionally indicted by the grand jury for discharging a firearm into occupied property. Defendant's cases came on for trial at the 6 March 2017 criminal session of Onslow County Superior Court, the Honorable W. Douglas Parsons presiding.

The State's evidence tended to show as follows. Defendant became subject to a domestic violence protective order that forbade him from visiting the home or workplace of his wife, Ms. Audry Graham Evans, on 9 September 2013. On 29 March 2014, this order was still in effect, and Ms. Evans worked at an Olive Garden restaurant in Jacksonville. When her shift concluded the night of 29 March 2014, her coworker, Antoine Spates, escorted her to her car.

Spates saw defendant approaching him and Ms. Evans in the parking lot. Once Ms. Evans was in her car, Spates attempted to speak with defendant. Defendant told

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Spates to get out of his way, and flashed a gun at him. Defendant then approached Ms. Evans' car, demanding she open the door. When she refused, defendant beat on the driver's side window of the car with the gun. Unable to open the door or break the window, defendant stepped backwards, and fired the gun, shooting through the window into the car, and hitting Ms. Evans in the abdomen. Defendant went to the other side of the car, attempting to enter through the passenger side door, which allowed Ms. Evans to escape through the driver's side and reenter the Olive Garden. As she made her way inside, she heard defendant continue to fire the gun. Defendant fled the scene in Ms. Evans' car. In addition to Spates and Ms. Evans, four eyewitnesses testified to defendant's actions in the parking lot the night of 29 March 2014.

On 30 March 2014, law enforcement used GPS surveillance to locate Ms. Evans' car. A high-speed chase ensued. Defendant was driving the vehicle just south of Tabor City in Columbus County when law enforcement caught up with him. The pursuing officers testified that when the car ran out of gas, defendant exited the car, and held his hands up, with a gun in the air. Defendant ignored officers' instructions to drop the gun and get on the ground. As a result, the officers opened fire on defendant. Defendant survived and was taken for medical treatment. The next day, defendant admitted to an investigating officer that he shot his wife at the Olive

Garden. The handgun procured from defendant was later identified as the firearm used to shoot the victim.

Defendant chose to testify on his own behalf, stating that, although he shot his wife and fled the scene, the firearm had discharged accidentally. Thereafter, defendant moved to introduce video recordings from some of the vehicles of law enforcement officers who participated in the high-speed chase. Defendant proffered that the videos would show the officers' pursuit of defendant in Columbus County, and would impeach the credibility of the officers that testified about the chase and subsequent confrontation. The trial court questioned the videos' relevancy:

THE COURT: Tell me, if you destroy all the credibility of every officer involved in the chase and then gunshots being engaged by law enforcement, tell me how that is going to, in any way, become relevant to the guilt or innocence of the defendant, on March 28th or March 29th.

None of these officers -- I listened carefully to the testimony and took notes -- none of these officers were involved in the investigation. None of them took statements from the defendant. So I'm trying to help you establish relevancy.

. . . .

[Defense Counsel]: Judge, I think basically, to the question you asked, they have no relevancy to the shooting at the Olive Garden.

THE COURT: The jury is going to render verdicts on the charges I've just reiterated twice, all right? If you destroy and you prove every officer who testified, Lewis, Capps, right on down the line, Columbus County, if you prove

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every one of them is a liar, tell me how that is relevant to the guilt or innocence of the defendant for the seven charges I just reiterated.

[Defense Counsel]: It bolsters [defendant's] testimony.

. . . .

THE COURT: How?

[Defense Counsel]: Of course, he's charged-- I mean, this is not in the record, but he's charged with assaulting them, in Columbus County.

THE COURT: But I'm not trying him for that.

[Defense Counsel]: Right. I understand.

THE COURT: It is relevant there, I couldn't agree more, but what I'm saying is, if I am -- if I give the jury a judicial notice that each of these officers is untruthful, how is that going to impact all the other witnesses, all the evidence that came in, the live witnesses who were there and saw it, including Ms. Graham, former Ms. Evans, including the ballistics on the gun and the shell casings? Tell me how, if I give the jury a judicial notice instruction that these are untruthful officers, how will that impact the guilt or innocence on the charges for which he's in this courtroom being tried? I want you to talk with your client.

([DEFENDANT] CONFERRED WITH HIS ATTORNEY.)

[Defense Counsel]: Judge, I guess -- I understand your question.

THE COURT: [Defense Counsel], my question is coming straight out of the rules.

[Defense Counsel]: Well, I mean, the [S]tate felt compelled to have these people testify, and we think that they're --

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you know, who knows what the jury is thinking because of what happened in Columbus County. They -- it could have some type of impact.

THE COURT: Could have some impact? [Defense Counsel], I think what I'm saying to you, if I give the jury an instruction, they're all untruthful, I do not see, in any way, how that will discredit any of the witnesses, live eyewitnesses, ballistics. I don't see where this, in any way, crosses the line into those set of facts and those witnesses. None of these officers were fact witnesses as to the guilt or innocence of the defendant for what he's being tried here. I agree they're relevant on the Columbus County charges.

[Defense Counsel]: Their testimony could have an impact on Mr. Evans' testimony.

THE COURT: . . . I can't connect the dots on this one. The Court rules, pursuant to 8C-401 that the evidence proffered by [defendant]; that is, the chase tapes and ensuing gunfire by the Columbus County Sheriff's Department and North Carolina Highway Patrol stationed in Columbus County, the Court finds it is not relevant, pursuant to the rule. It does not have any tendency to make any -- to make the existence of any fact that is of consequence to the determination of this action in Onslow County more probable or less probable than it would be without the evidence.

The Court further finds, pursuant to Rule 403 that, even if any of this evidence is even remotely, by bootstrapping, in a stretch, relevant, that the relevancy is absolutely -- any probative value the relevancy may have, the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, particularly by the considerations of undue delay, a waste of time in this case; therefore, pursuant to Rule 402, the Court denies the defendant's motion

After the trial court denied the admission of the videos, the defense rested.

On 10 March 2017, the jury found defendant guilty of possession of a firearm by felon, two domestic violence protective order violations, assault by pointing a gun, assault with a deadly weapon with intent to kill inflicting serious injury, and discharge of a firearm into occupied property. The jury found defendant not guilty of attempted first degree murder. The trial court sentenced defendant to three consecutive sentences: 159 to 203 months for the assault with a deadly weapon with intent to kill inflicting serious injury conviction, 55 to 78 months for the discharge of a firearm into occupied property conviction, and 24 to 38 months for the remaining convictions (felonious possession of firearm by felon, assault by pointing a gun, and two domestic violence protective order violations), which were consolidated by the trial court.

Defendant appeals.

II. Discussion

The sole issue on appeal is whether the trial court erred by refusing to admit the videos of the Columbus County chase and armed confrontation, which defendant proffered would impeach the credibility of the officers that pursued him on 30 March 2014. First, defendant contends it was error to exclude the videos pursuant to Rules 401 and 402 of the North Carolina Rules of Evidence. Specifically, he argues that the videos were relevant because they impeached the officers' testimony and

recorded defendant's flight from law enforcement. Second, he contends it was error for the trial court to rule that, alternatively, even if relevant, the videos should be excluded pursuant to Rule 403. We agree with the trial court that the videos were irrelevant. Therefore, we find no error in the exclusion of the videos from evidence, and do not reach the issue of whether the videos should be excluded pursuant to Rule 403.

"Evidence which is not relevant is not admissible." N.C. Gen. Stat. § 8C-1, Rule 402 (2017). "In order to be relevant, the evidence must have a logical tendency to prove any fact that is of consequence in the case being litigated." *State v. Griffin*, 136 N.C. App. 531, 550, 525 S.E.2d 793, 806 (2000) (citation and internal quotation marks omitted); see N.C. Gen. Stat. § 8C-1, Rule 401 (2017). "Although a trial court's rulings on relevancy are not discretionary and we do not review them for an abuse of discretion, we give them great deference on appeal." *State v. Bodden*, 190 N.C. App. 505, 509, 661 S.E.2d 23, 26 (2008) (citation and quotation marks omitted). "[E]vidence that has not been connected to the crime charged and which [has] no logical tendency to prove any fact in issue [is] irrelevant and inadmissible." *State v. Hinton*, 226 N.C. App. 108, 113, 738 S.E.2d 241, 246 (2013) (citation and internal quotation marks omitted).

Here, the videos at issue were irrelevant to whether defendant was guilty of the crimes committed on 28 and 29 March 2014. The pursuit occurred on

30 March 2014, after the commission of the crimes defendant was charged with committing, and none of the officers that pursued defendant were fact witnesses as to defendant's guilt or innocence. Even if the admission of the videos demonstrated that the officers were not credible, such a finding would not make a material fact more or less probable. Moreover, such evidence would not impeach the testimony of the multiple eyewitnesses to the crimes, including the victim's testimony, defendant's admission that he shot his wife and fled the scene, and the ballistics analysis that the handgun procured from defendant was used to shoot the victim. In sum, the videos documenting the chase and confrontation were simply not relevant to the criminal acts at issue before the trial court.

Nonetheless, in an argument not raised before the trial court, defendant maintains that the videos were relevant because they show the context of defendant's flight, which defendant argues provides "important clues about the context of [a defendant's] actions and state of mind." We are not convinced.

For the reasons stated above, the videos were never connected to the crimes charged and had no logical tendency to prove any fact in issue, and, thus, were irrelevant. *Compare State v. Patterson*, 59 N.C. App. 650, 653, 297 S.E.2d 628, 630 (1982) (holding that the admission into evidence of a shotgun found in defendant's car as evidence of defendant's guilt was error because it was irrelevant, as there was no evidence it was connected to the crime charged) *with State v. Broussard*, 239 N.C.

App. 382, 387-89, 768 S.E.2d 367, 371-72 (2015) (explaining that in *Patterson* the disputed evidence was submitted as evidence that defendant perpetrated a crime, whereas in *Broussard* the disputed evidence taken from defendant's vehicle at a routine traffic stop was relevant evidence of flight, so the evidence was admissible to show the context thereof). Defendant's argument relies on the reasoning in *Broussard*; however, this case is clearly distinguishable from *Broussard* because, here, the videos defendant sought to admit had no logical tendency to prove any fact in issue, whereas the evidence in *Broussard* was introduced as evidence that defendant was fleeing the crime charged when stopped by law enforcement. *See Broussard*, 239 N.C. App. at 388-89, 768 S.E.2d at 371.

We defer to the trial court's determination that defendant's proffer that the videos would impeach the officers' credibility did not have the tendency to prove or disprove any fact in issue, and the videos were thus irrelevant and inadmissible.

We are also unconvinced by defendant's assertion that, because the State presented evidence through the testimony of the arresting officers, the trial court's failure to admit the videos constituted a violation of his right to confront and cross-examine witnesses against him, and to present evidence to impeach their testimony. *See* U.S. Const. amend. VI, XIV; N.C. Const. art. I, § 23. "[I]mpeaching proof must be relevant within the meaning of Rule 401 and Rule 403 and must in fact be impeaching." *State v. Bell*, 87 N.C. App. 626, 633, 362 S.E.2d 288, 292 (1987)

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(quoting N.C. Gen. Stat. § 8C-1, Rule 607 (Commentary) (emphasis omitted)).

Therefore, as the videos were not relevant to the criminal acts at issue, and defendant had the opportunity to otherwise cross-examine the witnesses, defendant's confrontation rights were not violated.

NO ERROR.

Judges CALABRIA and ZACHARY concur.

Report per Rule 30(e).