

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-679

Filed 16 May 2023

Brunswick County, No. 19 CRS 53929

STATE OF NORTH CAROLINA

v.

ANTHONY SCOTT CREECH, Defendant.

Appeal by Defendant from judgment entered 2 July 2021 by Judge Jason Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 8 February 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Yvonne B. Ricci, for the State.

Stephen G. Driggers for defendant-appellant.

MURPHY, Judge.

We review a trial court's evidentiary ruling for prejudicial error. To demonstrate prejudice, a defendant must show a reasonable possibility that, had the trial court not committed the error, a different outcome would have been reached at trial. Here, where the exclusion of testimony concerning the dismissal of two Chapter 50B complaints by Defendant's alleged victim did not create a reasonable possibility

that the jury would have reached a different verdict with respect to assault on a female, no prejudicial error occurred at trial.

BACKGROUND

On 21 August 2019, after drinking together in their home, Defendant Anthony Scott Creech accused his long-term girlfriend, Ms. Erickson, of cheating on him with a police officer whose business card he found in her wallet. When Ms. Erickson tried to console Defendant, he began to assault her by grabbing her, throwing her on the floor, kicking her, choking her, pulling her hair, climbing on top of her, punching her, and smashing an unopened 40-ounce beer bottle on top of her head. During the assault, Ms. Erickson scratched and bit Defendant and told him she would call the police. After the assault, Ms. Erickson used their neighbor's phone to call the police, and Defendant left the house in a BMW.

When law enforcement arrived, they recorded and photographed Ms. Erickson's injuries and the damage to the living room where the altercation occurred. Ms. Erickson had two black eyes, a knot on each side of her head, and numerous scratches. The living room floor was covered in shattered glass.

On the day after the assault, Ms. Erickson filed a *Complaint and Motion for Domestic Violence Protective Order* against Defendant pursuant to N.C.G.S. Chapter 50B. However, according to Defendant's later arguments, Ms. Erickson dismissed the case one week after filing it. During the time between filing and dismissing the

motion, Ms. Erickson attempted to contact Defendant by calling and texting him, stating that she regretted the fight and loved him.

Approximately one year later, on 8 August 2020, Ms. Erickson filed a second Chapter 50B complaint against Defendant. After she failed to appear in court, this second Chapter 50B complaint was also dismissed.

Two months before his trial, Defendant filed a motion in limine requesting permission to cross-examine Ms. Erickson about her 22 August 2019 and 8 August 2020 Chapter 50B complaints. The trial court ruled that Defendant could question Ms. Erickson about the complaints during the trial, but he could not inquire into the results of the cases arising out of those complaints. Thus, Defendant chose not to pursue this line of questioning. At trial, Ms. Erickson admitted during cross-examination that she filed a false report in Brunswick County in 2018. The trial court permitted this line of questioning pursuant to a separate, granted motion in limine filed by Defendant. On 2 July 2021, at the conclusion of trial, a jury found Defendant guilty of assault on a female and Defendant received an active sentence of 150 days. Defendant timely appealed.

ANALYSIS

Defendant argues on appeal that the trial court erred in denying his motion in limine to cross-examine Ms. Erickson regarding the outcome of her Chapter 50B cases against him.

STATE V. CREECH

Opinion of the Court

To demonstrate a violation of N.C.G.S. § 14-33(c)(2), the State must prove “(1) an assault, (2) upon a female person, (3) by a male person (4) who is at least eighteen years old.” *State v. Herring*, 322 N.C. 733, 743 (1988). The element of assault may be proven by demonstrating (1) an assault, the “intentional attempt, by violence, to do injury to the person of another,” or (2) a battery, “an assault whereby any force is applied, directly or indirectly, to the person of another.” *State v. Britt*, 270 N.C. 416, 418-19 (1967). Defendant argues that, because Ms. Erickson’s testimony provided the basis for the bulk of the evidence presented to support the existence of an assault, the State’s ability to prove its case relied heavily on Ms. Erickson’s credibility.

“In order to show prejudicial error, a defendant must show that had the error in question not been committed there is a reasonable possibility a different result would have been reached at the trial.” *State v. Rosier*, 322 N.C. 826, 829 (1988); N.C.G.S. § 15A-1443(a) (2022). Defendant argues that preventing cross-examination about the outcome of Ms. Erickson’s Chapter 50B complaints constitutes prejudicial error because “[t]he State’s case turned upon the credibility of the testimony of Ms. Erickson,” “[t]here were no outside witnesses to the incident,” “[s]he herself took about half of the pictures that were entered into evidence of the incident and her injuries,” “and she repeatedly texted to Mr. Creech her remorse about the incident and her love for him.” In support of this argument, Defendant suggests that, if the jury had been permitted to hear them, the results of the Chapter 50B complaints would “further impeach Ms. Erickson’s credibility” and “demonstrate that she had

twice played fast and loose with allegations against him.” Defendant concludes “[t]here is a reasonable possibility that, with additional doubt cast upon [Ms. Erickson’s] credibility, the jurors would have reached a different result at trial.”

In turn, the State argues Defendant’s counsel did impeach Ms. Erickson’s credibility as a witness, yet the jurors still found Defendant guilty. During cross-examination, Ms. Erickson admitted that she texted and messaged with Defendant on Facebook for three days following the incident, that she had consumed alcohol on the night of the incident, that she refused medical treatment at the scene, and that she had previously filed a false police report in 2018. Thus, according to the State, the jury did hear evidence which could alter its perception of Ms. Erickson’s credibility, but nevertheless reached a guilty verdict on the charge of assault on a female.

Furthermore, the State argues that it presented ample evidence outside of Ms. Erickson’s testimony to support the jury’s guilty verdict such that, even if Defendant had been permitted to cross-examine Ms. Erickson about the results of her Chapter 50B complaints and the jury subsequently concluded from that testimony that she was an unreliable witness, there is not a reasonable possibility that the jury would have reached a different verdict. This evidence included photographs, some taken by responding officers Sergeant Talbert and Deputy McRae, and testimony of these responding officers concerning their independent observations of Ms. Erickson’s

distraught demeanor and visible injuries, which were consistent with having been assaulted.

The State argues that, even if the Defendant had been permitted to cross-examine Ms. Erickson about her Chapter 50B complaints' outcomes, "there was more than sufficient testimony from the responding law enforcement officers and photographic evidence that corroborated the testimony of Ms. Erickson." To support this conclusion, the State asserts that the responding officers testified to observing "blood remnants and bottle shards that were in her hair," "redness around the left corner of her eye and face, consistent with being assaulted," and "slight red markings around her neck where she had been grabbed." The State further asserts that Deputy McRae testified that he had encountered Ms. Erickson and the Defendant before, and he "could tell this time was different, just by [Ms. Erickson's] demeanor and the way she was very open with [responding officers] and telling [them] exactly what happened."

In light of this evidence, we agree that Defendant has failed to show a reasonable possibility that a different result would have been reached at trial if the outcomes of the Chapter 50B proceedings were admitted. Accordingly, there is no prejudicial error, and Defendant is not entitled to a new trial.

CONCLUSION

During trial, the jury heard and balanced evidence which challenged Ms. Erickson's credibility and evidence outside of Ms. Erickson's own statements. There

STATE V. CREECH

Opinion of the Court

is not a reasonable possibility that the admission of Ms. Erickson's failure to prosecute her Chapter 50B claims would change the outcome of this case; thus, the trial court's exclusion of the Chapter 50B cases' outcomes was not prejudicial.

NO PREJUDICIAL ERROR.

Judges HAMPSON and STADING concur.

Report per Rule 30(e).