State v. Gleason

1997 | Cited 0 times | Court of Appeals of Washington | May 5, 1997

PER CURIAM. Michael Gleason was convicted of first degree burglary for unlawfully entering the apartment of his estranged wife, Amanda Yates, and assaulting her live-in boyfriend, Ralph Pregler. Gleason appeals, alleging that the trial court erred in admitting evidence about a prior verbal threat he made to Pregler. We conclude that the evidence was properly admitted under ER 404(b) and ER 403. Accordingly, we affirm.

FACTS

On March 20, 1995, Gleason entered the apartment Pregler shared with Yates and punched him in the face with his fist. As Gleason was leaving the scene, he allegedly threatened to kill Yates. Gleason was charged with one count of burglary in the first degree and one count of felony harassment.

Prior to trial, the State sought to admit evidence of Gleason's numerous prior bad acts. Specifically, the State moved to have the court admit evidence involving prior acts of violence against Yates and people with whom she was associated. The court granted the State's motion in part and ruled that Gleason's prior threats and acts of violence directed at Pregler and Yates were admissible under ER 404(b).

At Gleason's jury trial, Yates testified that she had previously been married to Gleason and that he had physically abused her on several occasions during their marriage. Yates testified that she was home when Gleason arrived at her apartment on March 20, 1995, that she told him he was not welcomed inside the apartment, and that she offered to walk to the mailbox and talk with him. At some point during their walk, Gleason asked Yates why he could not go inside the apartment and he then started running toward the front door of the apartment. Yates testified that Gleason entered the apartment without permission and headed straight for the bathroom, where Pregler was taking a shower. Yates stated that Gleason walked into the bathroom, that he started hitting Pregler in the face, that Pregler started bleeding, and that Pregler, who was nude, begged Gleason not to hit him anymore. Pregler then grabbed a child's jacket and fled out of the apartment. Gleason chased after him. When Gleason could not find Pregler, he went to his car and, according to Yates, told her, "I will kill you[.]"

Yates also testified that Gleason had previously threatened Pregler when she was living at another residence. Yates stated that Gleason forced his way into the home and that he then threatened Pregler and told him to stay away from his family. Yates testified that Pregler ran out of the home and that Gleason chased after him.

Barbara Motsinger lived in the same apartment complex as Yates and Pregler. She testified she was looking out the window of her apartment on March 20, 1995, and saw a man hiding behind a tree. Motsinger testified that the man, later identified as Pregler, was naked except for a little boy's jacket he had wrapped around him. According to Motsinger, Pregler's face was all bloody and his hair was wet and soapy. Motsinger stated that she invited Pregler, who appeared to be frightened, into her apartment and then she phoned the police.

Kent Police Officer Steven Tanamaha testified that he spoke with Pregler on March 20, 1995. Pregler told the officer that Gleason attacked him while he was taking a shower. The officer stated that Pregler's hair was wet and his nose was swollen. Officer Tanamaha also testified that Pregler had blood splattered on his chest. Another officer testified that he met with Pregler on March 23, 1995, and that the bridge area of his nose appeared to be quite bruised and swollen.

Deanne Smith testified that she was visiting Yates on March 20, 1995, when Gleason arrived at the apartment and Yates told him "You're not coming in my house." According to Smith, Yates stepped outside the apartment and closed the door behind her. Smith testified that she heard running water coming from the bathroom and assumed Pregler was taking a shower. Smith left the apartment shortly thereafter.

Gleason disputed Yates's version of what happened on March 20, 1995. He admitted going to Yates's apartment to see his children but claimed that he was invited into the apartment and was lured into the bathroom where he was attacked by Pregler. According to Gleason, he and Pregler fought briefly and then they both ran out of the apartment. Gleason admitted leaving the apartment a few seconds after Pregler but denied chasing after him. Gleason further admitted that Pregler was not wearing any clothing when he ran out of the residence. Gleason claimed he was the one who was bleeding profusely from the nose. Gleason recalled meeting Pregler on one prior occasion when he was visiting his children at another residence and, after noticing drug paraphernalia in the house, told him he did not want any drugs around his kids. Following deliberations, the jury found Gleason guilty of first degree burglary but was unable to reach a verdict on the charge of felony harassment. The court thereafter granted the State's motion for dismissal of the felony harassment charge. At sentencing on the remaining burglary charge, Gleason received a standard range sentence of fifty-four months. This appeal followed.

ANALYSIS

The sole issue presented on appeal is whether the trial court improperly admitted evidence that Gleason had previously threatened Pregler. Gleason contends that the trial court erred in admitting the evidence under ER 404(b).

The State asserts that Gleason failed to properly preserve this argument for appeal. In support of its argument, the State quotes the following ruling of the court:

At this time I would not allow the 1993 alleged assault with Mr. Clifford. At this time it does seem to me that it is more prejudicial than it is probative. As the case develops, I would possibly reconsider that. I don't know exactly where the defense will lie in this matter. It is general denial. If the prosecutor believes that that is more relevant than it appears at this time, I will reconsider this outside the presence of the jury.

The State claims that because the trial court expressed a willingness to reconsider this evidentiary ruling, Gleason was required to renew his objection at trial. While this particular evidentiary ruling is tentative, the majority of the court's rulings (including the one Gleason challenges on appeal) were expressed in language that was neither tentative nor ambiguous. The court ruled that the prior threat evidence was admissible. Because the trial court made a final ruling on the admissibility of this evidence, Gleason's counsel was not required to object again to preserve the evidentiary issue for appeal. [1]

We must thus decide whether evidence of Gleason's prior threat towards Pregler was admissible under ER 404(b). Pursuant to that rule, evidence of other crimes, wrongs, or acts is presumptively inadmissible to prove character and show action in conformity therewith. [2] However, such evidence may be admitted to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." [3] Before ER 404(b) evidence is admissible under one of these exceptions, however, a trial court must identify that exception and determine whether the evidence is relevant and necessary to prove an essential ingredient of the crime charged. [4] "Evidence is relevant and necessary if the purpose of admitting the evidence is of consequence to the action and makes the existence of the identified fact more probable." [5]

Here, the trial court ruled that the prior threat to Pregler was admissible under ER 404(b) because the evidence "clearly goes to motive and the common scheme and plan in this matter." Because the court properly concluded that the threat evidence fell within the motive exception to ER 404(b), we need not decide whether the evidence was also admissible under the common scheme or plan exception to the rule. [6] Evidence of prior threats and ill feelings is admissible to show motive. [7] Establishing that Gleason threatened Pregler in the past was relevant to his motive for bursting into the apartment and then, without any hesitation, assaulting Pregler. It would also tend to rebut Gleason's theory of self-defense.

We must still decide whether the probative value of the evidence outweighs its prejudicial effect. ER 404(b) and ER 403 require that a trial court determine on the record whether the danger of undue prejudice outweighs the probative value of the evidence in light of the other means of proof and other factors. [8]

Gleason contends that the trial court in this case failed to adequately balance on the record the probative value of the evidence against its prejudicial effect. We disagree. "In weighing probative value against prejudicial effect, the trial court must exercise its discretion, and its decision will be

overturned only for abuse of discretion." [9] Here the record shows that the court engaged in a thoughtful determination regarding whether to admit the prior misconduct evidence. The court ruled that the probative value of evidence that Gleason threatened Pregler was "high" since it involved a prior bad act with the same victim and outweighed any prejudice to Gleason. As previously noted, this evidence was clearly relevant to a material issue in the case. [10] But other general allegations of Gleason's assaultive behavior were excluded. The trial court also excluded testimony regarding allegations that Gleason had threatened and assaulted another boyfriend of Yates. Under the circumstances, the evidence was properly admitted under ER 404(b) and ER 403.

Affirmed.

1. State v. Powell, 126 Wash. 2d 244, 256-57, 893 P.2d 615 (1995).

2. ER 404(b); Powell, 126 Wash. 2d at 258.

3. ER 404(b).

4. Powell, 126 Wash. 2d at 258.

5. Powell, 126 Wash. 2d at 259.

6. Powell, 126 Wash. 2d at 259. (In deciding whether evidence of prior "bad acts" is admissible under ER 404(b), courts may "consider bases mentioned by the trial court as well as other proper bases on which the trial court's admission of evidence may be sustained.")

7. Powell, 126 Wash. 2d at 260; State v. Peerson, 62 Wash. App. 755, 776, 816 P.2d 43 (1991), review denied, 118 Wash. 2d 1012, 824 P.2d 491 (1992).

8. State v. Dennison, 115 Wash. 2d 609, 628, 801 P.2d 193 (1990).

9. State v. Stanton, 68 Wash. App. 855, 860, 845 P.2d 1365 (1993).

10. See State v. Terrovona, 105 Wash. 2d 632, 650, 716 P.2d 295 (1986); State v. Grant, 83 Wash. App. 98, 106, 920 P.2d 295 (1996) (evidence of physical assaults against the same victim is relevant).