



Relevancy: Weapons

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Recently, I've been posting about relevancy issues that arise with some frequency in North Carolina criminal cases. A final topic in that vein is the relevancy of evidence pertaining to weapons allegedly used in the crime. Suppose for example that the State seeks to introduce evidence of a knife allegedly used in an assault. The knife was found on the defendant's property. There are no fingerprints on the knife and no other physical evidence links the knife to the crime. However, the State's medical expert will testify that the depth and width of the victim's wounds are consistent with the dimensions of the knife and that they could have been caused by the knife. The defendant objects, asserting that because there is no evidence conclusively linking the knife to the crime, any evidence regarding the knife is irrelevant. How should the judge rule on the Rule 401 objection?

The cases hold that that for evidence of a weapon allegedly used in a crime to be relevant, the State need not conclusively connect the weapon to the crime. The courts say that the lack of evidence establishing such a conclusive connection goes to weight, not admissibility. Thus, in a fact pattern very similar to my example, evidence of a weapon was held to be relevant. *State v. DeCastro*, 342 N.C. 667 (1996) (evidence of a knife found three months after the murder in a pond some distance from the scene was relevant; although the knife had no bloodstains and was not tested for fingerprints, the medical examiner opined "that some of the fatal knife wounds found on both victims were consistent with the length and width of the knife and that the knife could have been one of the murder weapons;" the lapse in time in finding the knife and its distance from the scene affected weight, not admissibility); *see also* *State v. Grooms*, 353 N.C. 50 (2000) (evidence regarding a pocketknife carried by the defendant and a hacksaw frame and blades was relevant in a murder prosecution; any variance in size between the defendant's knife and the medical examiner's description of the wounds affected weight, not admissibility; based on the proximity of the hacksaw frame to the victim's severed hand and evidence that the hand was severed by a blade similar to those at issue, the items were relevant; the lack of fingerprints on the hacksaw frame, lack of evidence that the blades fit into the frame, and the common availability of such blades affected weight, not admissibility); *State v. Felton*, 330 N.C. 619 (1992) (the failure of State's expert to conclusively match bullets to the murder weapon affected weight, not admissibility); *State v. Lytch*, 142 N.C. App. 576 (2001) (bullets found two days after the murders by the manager of a trailer park where the defendant lived were relevant; the lack of evidence conclusively showing where in the trailer park the bullets were discovered impacted weight, not admissibility; the brief time lapse between the crimes and discovery of the bullets, the proximity of the bullets to defendant's residence, and the fact that one of the bullets was at one time in the murder weapon established relevancy), *aff'd*, 355 N.C. 270 (2002).

Of course, there must be a sufficient connection between the weapon and the crime, or the evidence is irrelevant. Thus, in my example, if the assault was committed with a firearm, evidence of the knife would be irrelevant unless that weapon was connected to the crime in some other way. *See, e.g., State v. Bodden*, 190 N.C. App. 505 (2008) (nine-millimeter bullet found near a murder scene was irrelevant where the bullets used to shoot the victim were .38 or .357 caliber); *State v. Grant*, 178 N.C. App. 565 (2006) (testimony that the defendant possessed a pistol was irrelevant where the pistol was not connected to the shooting of the victim); *State v. Patterson*, 59 N.C. App. 650 (1982) (when the robbery was committed with a small handgun, admission of a sawed-off shotgun was error). In drug cases, this rule has been relaxed somewhat. Our courts have held that evidence regarding gun possession generally is relevant in drug cases, reasoning that there is a common sense connection between guns and drugs. *See, e.g., State v. Boyd*, 177 N.C. App. 165 (2006) (fact that a shotgun was found in a closet in the defendant's home was relevant to drug

possession and trafficking charges). And finally, defense lawyers shouldn't forget about Rule 403 as a potential basis for excluding evidence of weapons where there the State hasn't established a strong connection between the weapon and the crime.