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NO. COA05-249

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

STATE OF NORTH CAROLINA

v.

Guilford County  
No. 03 CRS 81331

SANGRIA DEVONNE NOBLE,  
Defendant

Appeal by defendant from judgment entered 27 May 2004 by Judge Lindsay R. Davis, Jr., in Guilford County Superior Court. Heard in the Court of Appeals 28 November 2005.

*Attorney General Roy Cooper, by Assistant Attorney General Jane L. Oliver, for the State.*

*Duncan B. McCormick for defendant-appellant.*

JACKSON, Judge.

On 4 August 2003, the Guilford County grand jury indicted Sangria Devonne Noble (defendant) on a charge of assault with a deadly weapon inflicting serious injury. After a jury found defendant guilty of the charge, the trial court imposed a sentence of twenty-four to thirty-eight months imprisonment. The trial court then suspended the sentence and placed defendant on supervised probation for thirty-six months. From the trial court's judgment, defendant appeals.

At trial, the State introduced evidence tending to show the

following: On 2 April 2003, Shereta Smith (Smith) located Derek McLean's car parked at defendant's home and used her car to block his car's exit. McLean was the father of one of Smith's daughters. Defendant came out of her home and spoke for five or six minutes with Smith, with whom she had worked several years earlier. When McLean came outside, Smith got out of her car and began arguing and fighting with him. Smith tore the windshield wipers and registration plate on McLean's car. After McLean threw her into a fence and caused a cut on her shoulder, Smith stopped and left him alone. McLean then placed a telephone call, and he left in a car that arrived shortly thereafter.

Smith spoke further with defendant and became upset upon learning that defendant and McLean had stayed together at a motel. She observed that defendant was holding a steak knife by the handle in her left hand, but defendant was not holding it in a threatening manner. Smith took the knife out of defendant's hand and walked about ten or fifteen feet to McLean's car. She knelt down with the knife in her left hand and stabbed at the left front tire three times. Defendant tried to take the knife from her, and Smith eventually released the knife after defendant grabbed the blade and appeared to cut her hand.

Once defendant had the knife, she began stabbing at Smith, who was still kneeling next to the tire. Smith stood up and tried to explain that her dispute was only with McLean, but defendant continued stabbing at her with the knife. Smith backed away from the car and about twenty feet down the sidewalk, and defendant

followed with the knife. In addition to suffering cuts on her left wrist and forearm, Smith later realized that she had received stab wounds in her left chest and her right upper thigh. She was in some bushes when she received the last cut, which was on her left wrist, and blood began gushing from the wound. At that time, defendant stopped and said "[y]ou cut me. You cut me. You cut me first." After Smith wiped the blood off on McLean's car, she asked defendant and defendant's cousin to call the police. She said defendant, however, "was still just standing right in front of me. Just looking at me."

A neighbor and her visitor heard and watched some of the altercations which Smith had with McLean and with defendant. When they heard Smith asking for help, the neighbor called 911. Her visitor ran with a towel to render first aid to Smith and attempted to staunch the bleeding. Officer Frederick Heffner was dispatched to the scene at approximately 4:45 p.m., and upon his arrival he observed blood on McLean's car, a significant amount of blood in the driveway, and blood spattered on the walkway. He saw that Smith had a severe laceration to the inside of her left forearm along with puncture wounds in her left chest and right upper thigh. Defendant had received a cut to the inside of her left hand and was bleeding from her hand and finger area. Both Smith and defendant were transported to the hospital. Officer Heffner recovered the knife from the backyard area. Smith's wounds were sutured temporarily, and she underwent surgery two or three days later to repair tendons and nerves in her wrist. Smith did not regain full

use of her left hand.

Testifying on her own behalf, defendant said she was using a steak knife to repair a screen when she observed a car blocking McLean's car in her driveway. Smith initially greeted defendant as she approached Smith's car. Upon seeing McLean coming out of the house, however, Smith jumped out of the car to confront McLean and hit defendant with the car door at that time. When Smith and McLean began arguing, defendant went back into her house and continued working on her screen door. Because of the yelling, defendant went back out and told both McLean and Smith to leave. McLean placed a phone call, and he left in a car that arrived shortly afterwards.

Defendant, who was holding the screen part and the knife, kept asking Smith to leave. She was holding the blade of the knife in her left hand, and her hand was underneath her arm. In response to a question by Smith, defendant told her that she had known McLean for four or five days. Smith then "was like real crazy. Like acting . . . real deranged like." Upon learning defendant and McLean had been together at a motel, Smith reached up under defendant's arm and snatched the knife out of her hand. Smith acted like she was going toward the car's tires, but then she came toward defendant. Because defendant's "little son was there right by the car" and "was standing by that front tire[,]" defendant went over and tried to get the knife back from Smith.

As defendant approached her, Smith stood up and turned toward her with the knife. Because her left hand had been cut when Smith

snatched the knife from her, defendant used her right hand to grab Smith's arm and tried to bend it back. They "tussled for the knife and . . . fell in the bushes." Defendant said "I guess the knife cut her as I was trying to get the knife from her." Smith dropped the knife when defendant bent her arm back. Defendant said she did not "know how [Smith] got cut on the leg. Maybe that's when we fell." She stated "All I know is everything happened so fast."

After being cut, Smith said "That's good. Now both of you-all will go to jail." Smith then rubbed her blood all over McLean's car and was laughing. Defendant told her niece to call the police, and she testified that "I wasn't trying to hurt her. If she got cut, it was by accident." Defendant's niece threw the knife into the bushes, but defendant told the police where the knife was located. Defendant said "I got cut first. I did not cut her. I did not cut her on purpose. I did not cut her. I tried to get the knife away from her. That's how she got cut." When asked to explain to the jury how Smith sustained her injuries, defendant related that

I took her arm and turned it to get her to drop the knife. That's how she got cut right there. Okay. Well, we fell over in the bushes prior to me doing that, some kind of way, she got cut on her leg. I don't know where the cut came from on her chest. But the way she got cut right there was from me doing this like this to get her to drop the knife.

Although defendant asserted that she told two different officers that she was concerned about the safety of her children in the yard that day, neither officer testified about being informed that children were in the yard during the altercation.

During the charge conference, defendant requested jury instructions on self-defense and accident. After hearing arguments from both defense counsel and the State, the trial court found the accident instruction was not supported by the evidence and declined to give the instruction. Following the jury instructions, the jury deliberated and found defendant guilty of assault with a deadly weapon inflicting serious injury.

Defendant argues the trial court erred by denying her written request for a jury instruction on the defense of accident and committed plain error by failing to give the pattern jury instruction on the defense of accident. We disagree.

"It is well established that when a defendant requests a special instruction which is correct in law and supported by the evidence, the trial court must give the requested instruction, at least in substance." *State v. Tidwell*, 112 N.C. App. 770, 773, 436 S.E.2d 922, 924 (1993) (citing *State v. Lamb*, 321 N.C. 633, 365 S.E.2d 600 (1988)). To prevail on appeal, a defendant "must show that the requested instruction was not given in substance, and that substantial evidence supported the omitted instruction." *State v. White*, 77 N.C. App. 45, 52, 334 S.E.2d 786, 792, *cert. denied*, 315 N.C. 189, 337 S.E.2d 864 (1985). A "trial court need only give the jury instructions supported by a reasonable view of the evidence." *Id.*

"Where an alleged assault is unintentional and the perpetrator acted without wrongful purpose in the course of lawful conduct and without culpable negligence, a resultant injury will be excused as

accidental.” *State v. Thompson*, 118 N.C. App. 33, 36, 454 S.E.2d 271, 273, *disc. review denied*, 340 N.C. 262, 456 S.E.2d 837 (1995). “Culpable negligence is such gross negligence or carelessness as ‘imports a thoughtless disregard of the consequences’ or a ‘heedless indifference to the rights and safety of others.’” *Id.* (quoting *State v. Everhart*, 291 N.C. 700, 702, 231 S.E.2d 604, 606 (1977)).

Defendant relies upon her own testimony of the events to support her requested instruction. She testified that Smith may have been stabbed as a result of their struggle for control of the knife, and she argues that her conduct was not wrongful because she was attempting to protect her son. Defendant’s efforts to protect her son properly would support an instruction on defense of others, and the trial court did in fact instruct the jury on that defense.

Defendant’s testimony that she did not mean to cut Smith and that the injuries were the result of an accidental cutting is inconsistent with a reasonable view of the physical evidence and the extent of Smith’s injuries. Defendant stated that she and Smith “tussled” over the knife. She described how she turned Smith’s arm or bent it back, which caused Smith to drop the knife. Defendant’s various explanations, that she “guess[ed] the knife cut [Smith] as I was trying to get the knife from her[,]” that Smith must have fallen on the knife after she dropped it, and that she had no idea how the injuries occurred, are significantly outweighed by the severity and locations of Smith’s injuries. Such wounds are not indicative of an accidental injury during a struggle.

Smith had two injuries on the wrist and forearm of her left arm, and she was described as holding the knife in her left hand during the struggle. The wrist injury was described as a severe laceration. In addition, Smith had a stab wound in her left chest and her upper right thigh which cannot be reconciled with defendant's testimony as to how those injuries occurred. Defendant did not present substantial evidence for a reasonable juror to find the victim's injuries were caused by accident. Accordingly, the trial court did not commit error, much less plain error, by denying defendant's request for a jury instruction on the defense of accident.

No error.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).