

NO. COA14-710

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

Wayne County
No. 12 CRS 52591

JAMEL RASHON EDWARDS

Appeal by defendant from judgment entered 7 January 2014 by Judge Reuben F. Young in Wayne County Superior Court. Heard in the Court of Appeals 4 December 2014.

Attorney General Roy Cooper by Assistant Attorney General Ryan C. Zellar for the State.

Ryan McKaig for defendant-appellant.

STEELMAN, Judge.

The trial court did not err by denying defendant's request for an instruction on duress or necessity as a defense to possession of a firearm by a felon.

I. Factual and Procedural Background

Officers Anthony Ravine and Cornelius Crittendon of the Goldsboro Police Department were on duty on 24 May 2012. At about 6:00 p.m., they observed Jamel Edwards (defendant) standing with other persons in a vacant lot on the corner of Swan and E. John

Streets in Goldsboro. When defendant saw the officers, he "hurriedly started walking away" and "reached into his waistband and pulled out a silver item which [the officers] immediately saw was a handgun[.]" "[Defendant] dropped the handgun" and "was walking away, but when he saw Officer Crittenden he turned and came back[.]" At that time, the officers placed defendant under arrest and took possession of the weapon, a 9 mm. "Smith & Wesson semiautomatic handgun." Following his arrest, defendant executed a written waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), and was interviewed by Officer Crittendon. Defendant's statement to Officer Crittendon is discussed below.

Defendant was indicted for possession of a firearm by a felon on 4 December 2012. This matter came on for trial at the 7 January 2014 criminal session of Superior Court in Wayne County. In addition to the testimony of Officers Ravine and Crittendon, the State presented evidence that defendant had been convicted of a felony prior to the date of his arrest. On 7 January 2014 the jury returned a verdict finding defendant guilty of possession of a firearm by a felon. The trial court imposed an active sentence of 14 to 26 months imprisonment.

Defendant appeals.

II. Instruction on Defense of Duress or Necessity

In his sole argument on appeal, defendant asserts that the trial court erred by denying his request for a jury instruction on duress or necessity as a defense to the charge of possession of a firearm by a felon. We disagree.

A. Standard of Review

"In North Carolina, requests for special jury instructions are allowable under N.C.G.S. § 1-181 and 1A-1, Rule 51(b) of the North Carolina General Statutes. N.C. Gen. Stat. §§ 1-181, 1A-1, Rule 51(b) [(2013)]. It is well settled that the trial court must give the instructions requested, at least in substance, if they are proper and supported by the evidence. 'The proffered instruction must . . . contain a correct legal request and be pertinent to the evidence and the issues of the case.'" *State v. Craig*, 167 N.C. App. 793, 795, 606 S.E.2d 387, 388 (2005) (citing *Roberts v. Young*, 120 N.C. App. 720, 726, 464 S.E.2d 78, 83 (1995), and quoting *State v. Scales*, 28 N.C. App. 509, 513, 221 S.E.2d 898, 901 (1976)).

Defendant contends that there is a "conflict in North Carolina law about whether a trial court's failure to give a jury instruction is reviewed under a *de novo* standard or an abuse of discretion standard." We disagree, and conclude that the conflict posited by defendant reflects the fact that the proper standard of

review depends upon the nature of a defendant's request for a jury instruction.

Certain requests for jury instructions require the trial court to exercise its discretion. For example:

"After the jury retires for deliberation, the judge may give appropriate additional instructions to . . . [r]espond to an inquiry of the jury made in open court[.]" N.C. Gen. Stat. § 15A-1234(a)(1)[.] . . . "[T]he trial court is in the best position to determine whether further additional instruction will aid or confuse the jury in its deliberations, or if further instruction will prevent or cause in itself an undue emphasis being placed on a particular portion of the court's instructions." Thus, a trial court's decision to grant or deny the jury's request for additional instruction is reviewed by this Court only for an abuse of discretion.

State v. Guarascio, 205 N.C. App. 548, 563-64, 696 S.E.2d 704, 715 (2010) (quoting N.C. Gen. Stat. § 15A-1234(a)(1), and *State v. Prevette*, 317 N.C. 148, 164, 345 S.E.2d 159, 169 (1986)). In this regard, *State v. Jenkins*, 35 N.C. App. 758, 242 S.E.2d 505 (1978), which defendant argues is "controlling" on this issue, involved the trial court's discretionary determination of whether an instruction was warranted on the credibility of young children.

However, it is axiomatic that "[w]e review questions of law *de novo*." *State v. Khan*, 366 N.C. 448, 453, 738 S.E.2d 167, 171 (2013) (citing *In re Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)). "Whether evidence is

sufficient to warrant an instruction on self-defense is a question of law; therefore, the applicable standard of review is *de novo*." *State v. Cruz*, 203 N.C. App. 230, 242, 691 S.E.2d 47, 54 (citing *State v. Lyons*, 340 N.C. 646, 662-63, 459 S.E.2d 770, 778-79 (1995)), *aff'd*, 364 N.C. 417, 700 S.E.2d 222 (2010). Similarly, the question of whether a defendant is entitled to an instruction on the defense of duress or necessity presents a question of law, and is reviewed *de novo*. We hold that where the request for a specific instruction raises a question of law, "the trial court's decisions regarding jury instructions are reviewed *de novo* by this Court." *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009) (citations omitted).

B. Analysis

Defendant contends that the trial court erred by denying his request that the jury be instructed on the defense of duress to the charge of possession of a firearm by a felon, and urges this Court to explicitly adopt the reasoning of *United States v. Deleveaux*, 205 F.3d 1292 (11th Cir. 2000), an opinion that "recognized justification as an affirmative defense to possession of firearms by a felon." *Craig*, 167 N.C. App. at 795, 606 S.E.2d at 389. The test set out in *Deleveaux* requires a criminal defendant to produce evidence of the following to be entitled to an

instruction on justification as a defense to a charge of possession of a firearm by a felon:

(1) that the defendant was under unlawful and present, imminent, and impending threat of death or serious bodily injury;

(2) that the defendant did not negligently or recklessly place himself in a situation where he would be forced to engage in criminal conduct;

(3) that the defendant had no reasonable legal alternative to violating the law; and

(4) that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm.

Deleveaux, 205 F.3d at 1297.

"Consistent with the precedent from this Court, we assume *arguendo*, without deciding, that the *Deleveaux* rationale applies in North Carolina prosecutions for possession of a firearm by a felon. Nevertheless, the evidence in the present case, even when viewed in the light most favorable to Defendant, does not support a conclusion that Defendant, upon possessing the firearm, was under unlawful and present, imminent, and impending threat of death or serious bodily injury." *State v. Monroe*, __ N.C. App. __, __, 756 S.E.2d 376, 380 (2014), *aff'd*, __ N.C. __, __ S.E.2d __, (23 January 2015) (2015 N.C. LEXIS 33).

In this case, defendant did not testify or present evidence. The defendant's statement to Officer Crittendon during a brief

interview of defendant contains the only evidence pertinent to the circumstances under which defendant came to be in possession of a firearm. This interview contained the following:

OFFICER CRITTENDON: . . . The first question:
How long - how long you had the gun?

DEFENDANT: An hour.

OFFICER CRITTENDON: Next question: Who you get
the gun from?

DEFENDANT: A white boy.

OFFICER CRITTENDON: Where did you meet at?

DEFENDANT: From around the way.

OFFICER CRITTENDON: Why did you have the gun?

DEFENDANT: For protection.

OFFICER CRITTENDON: What problems you having
to have a gun?

DEFENDANT: People threatening my life.

Defendant's statements to Officer Crittendon do not constitute evidence of any of the elements of the *Deleveaux* test. Notably, there is no indication of (1) the identity of the "people" who were "threatening [defendant's] life"; (2) the time or place of the threats; (3) the circumstances, if any, indicating that the threat presented an "imminent, and impending threat of death or serious bodily injury"; (4) the circumstances under which defendant was "in a situation where he would be forced to engage in criminal conduct"; (5) whether defendant had a reasonable

alternative to violating the law; or (6) the existence of "a direct causal relationship between the criminal action and the avoidance of the threatened harm." We conclude that defendant failed to establish any basis for an instruction on duress or necessity as a defense to the charge of possession of a firearm by a felon, and that the trial court did not err by denying his counsel's request for this instruction.

We also observe that, in arguing for a contrary result, defendant's appellate counsel makes a number of assertions that are not supported by the evidence before the trial court. As discussed above, defendant's statement does not identify or describe the people who threatened him, indicate when the threats were issued, or provide information about whether defendant was under an imminent threat of death or bodily harm. Nonetheless, in his appellate brief, defense counsel makes a number of unsupported assertions:

[Defendant] "had just received death threats when he obtained a gun."

[Defendant] "was in fear that a group of thugs would make good on their threats to kill him" and was "in mortal fear of being murdered by people who had recently threatened his life[.]"

[Defendant] had "recently received death threats that he believed were credible and presented the possibility of imminent harm."

"[T]he evidence showed that [defendant] was under the unlawful and present threat of imminently being murdered."

[D]efendant, "in light of the death threats he faced, was justified in getting a gun to protect himself from being murdered."

We reiterate that the record contains no evidence that defendant had been recently threatened, that the threats were credible, that defendant was "in mortal fear," or that he was threatened by "a group of thugs." "On appeal, counsel has a duty to make a fair presentation of the case to the Court. See N.C.R. App. P. 34(a)(3). While counsel has the duty to zealously represent his or her client, the duty does not grant to counsel *carte blanche* to distort the facts of a case or to make misleading arguments. . . . [C]ounsel has a duty to apply the law to the facts of the case, not to twist the facts so that they fit a legal theory that will allow them to prevail in the case." *State v. Ward*, __ N.C. App. __, __, 742 S.E.2d 550, 554-55 (2013) (Steelman, J., concurring).

For the reasons discussed above, we conclude that defendant had a fair trial, free of error.

NO ERROR.

Judges GEER and STEPHENS concur.