

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1000

Filed: 20 June 2017

Guilford County, No. 12 CRS 86278

STATE OF NORTH CAROLINA

v.

CHRISTOPHER N. LAFORTUNA

Appeal by defendant from judgment entered 16 May 2016 by Judge Edwin G. Wilson, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 5 April 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberly D. Potter, for the State.

Parish & Cooke, by James R. Parish, for defendant.

DIETZ, Judge.

Defendant Christopher LaFortuna appeals his conviction for voluntary manslaughter after he shot and killed his sister's violent and abusive boyfriend. LaFortuna argues that the evidence proved he acted in perfect self-defense and thus the trial court should have dismissed the charges. He also contends that the trial

court improperly excluded evidence that the victim had chased his sister with a knife several days earlier.

As explained below, we reject LaFortuna's arguments. Although LaFortuna presented evidence establishing the victim's violent, abusive behavior, the State presented sufficient evidence from which the jury could infer that LaFortuna shot the unarmed victim without a reasonable belief that his own life was in danger. Thus, the trial court properly sent the charge of voluntary manslaughter to the jury. Likewise, the trial court did not abuse its discretion in excluding testimony about the knife incident (of which LaFortuna was unaware), particularly where the court admitted other testimony from that same witness establishing the victim's aggressive and violent nature. Accordingly, we find no error in the trial court's judgment.

Facts and Procedural History

On the night of 14 August 2012, Defendant Christopher LaFortuna was overseeing construction work at his family's restaurant when his sister, Monica, arrived at the restaurant. LaFortuna drove Monica to a convenience store to buy food and a 40-oz. bottle of beer. On the way to the store, Monica told LaFortuna that her boyfriend, Shawn Heath, had been beating her. When they returned to the restaurant, Heath arrived and told Monica to come home. Heath was intoxicated and "pretty rowdy." Monica refused to leave.

STATE V. LAFORTUNA

Opinion of the Court

Heath later threatened to drag Monica away by her hair if she did not come home with him. Eventually, the two went outside the restaurant, where they continued to argue.

LaFortuna then went outside to check on his sister. Outside the restaurant, Heath and LaFortuna began yelling at each other. Heath took off his shirt and lunged at LaFortuna. LaFortuna testified that he thought Heath had the 40-oz. beer bottle in his hand as he was lunging and swinging. LaFortuna took his gun out of his holster and shot Heath one time in the chest. After he shot Heath, LaFortuna realized Heath did not have the beer bottle and was unarmed.

LaFortuna called 911 to report that there had been a fight and a person was shot. He reported that the person shot was being violent towards his sister and then turned on him. He initially denied knowing who shot the victim, but ultimately admitted that he did it. Officers responded and arrested LaFortuna. Monica told the officers Heath had threatened both her and LaFortuna and that LaFortuna was acting in self-defense. Heath died from the gunshot wound, and LaFortuna was charged with first degree murder.

At trial, LaFortuna argued that he acted in self-defense. A medical examiner testified that the gun was fired within a foot of the victim and that the victim had cocaine and alcohol in his system. Monica testified that Heath was a violent person

STATE V. LAFORTUNA

Opinion of the Court

when intoxicated, that Heath had threatened her and LaFortuna, and that Heath had lunged at LaFortuna before he was shot.

A friend of Monica's, Tangelina Tolar, testified that she had stayed with Monica and Heath a few days before the shooting. She testified that Heath was a violent person and that she had seen Monica's blood on the wall after a fight between Monica and Heath. The trial court admitted this testimony but excluded additional testimony from Tolar that she had seen Heath chase Monica with a butcher knife two days before the shooting.

LaFortuna moved to dismiss the murder charge based on insufficiency of the evidence. The trial court denied the motion. The jury convicted LaFortuna of voluntary manslaughter and the trial court sentenced him to 60-84 months in prison. LaFortuna timely appealed.

Analysis

LaFortuna raises two issues on appeal. First, he argues that the trial court erred in denying his motion to dismiss the murder charge because the State presented insufficient evidence to rebut his claim of self-defense. Second, he argues that the trial court erred in excluding Tangelina Tolar's testimony that she saw Heath chase Monica with a knife. We address each of these arguments in turn.

I. Denial of motion to dismiss

LaFortuna first argues that the trial court erred in denying his motion to dismiss the murder charge. He contends that he proved he acted in self-defense and that the State failed to present any evidence to rebut that defense. We disagree.

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). “Upon defendant’s motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980).

The State’s theory of voluntary manslaughter in this case involves imperfect self-defense—meaning an act of self-defense that does not excuse the killing entirely but reduces the offense from murder to manslaughter. *See State v. Ross*, 338 N.C. 280, 283, 449 S.E.2d 556, 559 (1994). To convict a defendant of voluntary manslaughter under the theory of imperfect self-defense, the State must prove that the defendant committed “the unlawful killing of a human being without malice, express or implied, and without premeditation and deliberation” but “in the exercise

STATE V. LAFORTUNA

Opinion of the Court

of self-defense where excessive force is used.” *State v. Jackson*, 145 N.C. App. 86, 90, 550 S.E.2d 225, 229 (2001). Excessive force means the defendant did not reasonably believe that it was necessary to kill the victim “in order to save himself from death or great bodily harm.” *Ross*, 338 N.C. at 283, 449 S.E.2d at 560.

Here, the State presented evidence that LaFortuna got into an argument with the victim, that the victim lunged at LaFortuna while unarmed, and that LaFortuna then shot and killed the victim. LaFortuna testified that he believed the victim was armed with a 40-oz. beer bottle, but other evidence suggested LaFortuna might have known the victim did not have that beer bottle in his hands. For example, a detective testified that LaFortuna’s sister, Monica, initially told him that she took the beer bottle with her when she walked away from her brother and the victim. Moreover, LaFortuna first told the 911 operator that he did not know who killed the victim, and only later relented and admitted that he did so.

This evidence is sufficient for a reasonable jury to infer that LaFortuna lied about his belief that the victim was armed with a beer bottle and instead knowingly shot the unarmed victim after their argument turned physical. This, in turn, is sufficient for the jury to conclude that LaFortuna (knowing that he was armed with a gun), did not reasonably believe he faced a risk of death or great bodily injury from the unarmed victim. To be sure, there is ample conflicting evidence to support LaFortuna’s claim that he believed the victim was armed and thus acted in perfect

self-defense. But the duty to resolve this conflicting evidence lies with the jury, not with the trial court on a motion to dismiss. *State v. Gilreath*, 118 N.C. App. 200, 208–09, 454 S.E.2d 871, 876 (1995). Accordingly, the trial court properly denied LaFortuna’s motion.

II. Exclusion of testimony regarding victim’s prior conduct

LaFortuna next argues that the trial court erred in excluding testimony from a witness who saw the victim chase LaFortuna’s sister with a knife several days before the shooting. As explained below, we reject this argument as well.

We review the trial court’s exclusion of this evidence for abuse of discretion. *State v. Cummings*, 332 N.C. 487, 507, 422 S.E.2d 692, 703 (1992). This Court will find abuse of discretion only if the trial court’s decision “was so arbitrary that it could not have been the result of a reasoned decision.” *State v. Campbell*, 359 N.C. 644, 674, 617 S.E.2d 1, 20 (2005).

Here, case law supports the trial court’s ruling. Ordinarily, “[e]vidence of a person’s character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion.” N.C. R. Evid. 404(a). But evidence of the victim’s violent character can be admissible in a case involving self-defense to show either that the defendant’s fear was reasonable or that the victim was the aggressor. *State v. Ray*, 125 N.C. App. 721, 725, 482 S.E.2d 755, 758 (1997).

STATE V. LAFORTUNA

Opinion of the Court

The flaw in LaFortuna's argument is that the challenged evidence does not fit neatly into either of these exceptions. First, there was no evidence that LaFortuna knew the victim chased his sister with a knife several days earlier. Thus, the evidence could not be used to show LaFortuna's reasonable fear of the victim. *See id.* Likewise, testimony about this type of specific act of violence by the victim, directed at someone other than the defendant, has previously been held inadmissible to prove the victim's general reputation for violence. *See State v. Corn*, 307 N.C. 79, 85, 296 S.E.2d 261, 266 (1982). Thus, this Court cannot say that the trial court's decision to exclude this testimony was so arbitrary that it could not have been the result of a reasoned decision.

Moreover, any error in the exclusion of this evidence was harmless. "An error is not prejudicial unless there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at trial." *State v. Mason*, 144 N.C. App. 20, 27–28, 550 S.E.2d 10, 16 (2001). Here, the trial court admitted testimony from the witness, Tangelina Tolar, that the victim was a violent person who used crack cocaine and that Tolar had seen Monica's blood on the wall following a physical fight between Monica and the victim. The trial court only excluded Tolar's additional testimony that she saw the victim chase Monica with a knife. Monica also testified about the victim's violent and aggressive behavior, and

STATE V. LAFORTUNA

Opinion of the Court

that testimony established that LaFortuna was aware of the victim's violent tendencies.

In light of all of this evidence of the victim's violent character, we find no reasonable possibility that, had Tolar also testified about the knife incident, the jury would have reached a different result. Accordingly, we reject LaFortuna's argument.

Conclusion

For the reasons discussed above, we find no error in the trial court's judgment.

NO ERROR.

Judges CALABRIA and MURPHY concur.

Report per Rule 30(e).