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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-250

Filed: 3 October 2017

Rowan County, No. 16 CRS 50550

STATE OF NORTH CAROLINA

v.

NICOLE MARIE JACKSON, Defendant.

Appeal by Defendant from judgment entered 22 September 2016 by Judge Christopher W. Bragg in Rowan County Superior Court. Heard in the Court of Appeals 25 September 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Brittany K. Brown, for the State.

Irons & Irons, PA., by Ben G. Irons II, for Defendant-Appellant.

MURPHY, Judge.

Nicole Marie Jackson (“Defendant”) appeals from a judgment entered upon a jury verdict finding her guilty of felony operating a motor vehicle to elude arrest. On appeal, Defendant argues the trial court erred in denying her request for jury instructions on the defense of necessity. We find no error.

Background

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At approximately 10:00 a.m. on 6 February 2016, Officer Corriher of the China Grove Police Department randomly checked the license plate number on Defendant's vehicle and discovered that it had been revoked due to lack of liability insurance. Officer Corriher activated his blue lights and siren and initiated a traffic stop of Defendant's vehicle. Defendant pulled into a mostly empty parking lot.

Defendant provided Officer Corriher with her license and registration and admitted the vehicle did not have insurance. Officer Corriher advised Defendant that he would have to remove the vehicle tag and that she could no longer drive the vehicle. In response, Defendant became upset and began yelling and screaming. Officer Corriher called for additional assistance.

Deputies Holshouser and Shoemaker of the Rowan County Sheriff's Department arrived and removed defendant's license plate. Defendant then began to drive away, Deputy Holshouser ordered her to stop and she complied. Officer Corriher issued Defendant a citation and gave her a receipt indicating that her license plate had been collected. She balled up both documents and threw them in her back seat.

As Officer Corriher was walking away, Defendant jumped into her vehicle and again attempted to drive away. She drove past Officer Corriher, who struck her vehicle on the passenger side with his baton, damaging the passenger side window. Defendant then led law enforcement on a high speed chase, reaching speeds as high

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as 116 miles per hour. After several miles, officers were able to block Defendant's car at a stop light.

Defendant was arrested and subsequently indicted for felony fleeing to elude arrest in a motor vehicle and for the aggravating factors of (1) speeding in excess of 15 miles per hour over the speed limit, (2) driving recklessly in violation of N.C. Gen. Stat. § 20-140, and (3) driving in excess of the posted speed limit in a highway work zone. On 20 September 2016, Defendant filed a notice that she intended to rely upon the affirmative defense of necessity.

Beginning 21 September 2016, Defendant was tried by a jury in Rowan County Superior Court. After all evidence was presented, the trial court conducted a charge conference. Defendant requested an instruction on the defense of necessity, and the trial court denied the request. On 22 September 2016, the jury returned a verdict finding Defendant guilty. The jury also found the existence of all three alleged aggravating factors. The trial court sentenced Defendant to an active sentence of 5 to 15 months of imprisonment. Defendant gave notice of appeal in open court after the verdict was reached, but prior to judgment being entered.

Analysis

As an initial matter, we must address Defendant's notice of appeal. Defendant gave oral notice of appeal after the jury reached its verdict, but prior to sentencing. Since Defendant only indicated she wished to appeal before the trial court entered its

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judgment, she failed to properly enter notice of appeal. *See State v. Robinson*, 236 N.C. App. 446, 448, 763 S.E.2d 178, 179-80 (2014). Nonetheless, in our discretion we allow Defendant's alternative petition for writ of certiorari and review the merits of her appeal.¹ *See* N.C. R. App. P. 21.

Defendant's sole argument is that the trial court erred by denying her request to instruct the jury on the defense of necessity. We disagree.

"[Arguments] challenging 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).

A trial court must give a requested instruction if it is a correct statement of the law and is supported by the evidence. For a particular defense to result in a required instruction, there must be substantial evidence of each element of the defense when viewing the evidence in a light most favorable to the defendant. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

State v. Burrow, ___ N.C. App. ___, ___, 789 S.E.2d 923, 926 (2016) (internal quotation marks and citations omitted).

"A trial court must give a requested instruction if it is a correct statement of the law and is supported by the evidence." *State v. Haywood*, 144 N.C. App. 223, 234, 550 S.E.2d 38, 45, *appeal dismissed and disc. review denied*, 354 N.C. 72, 553 S.E.2d 206 (2001). "For a jury instruction to be required on a particular defense, there must

¹ The State did not oppose Defendant's petition.

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be substantial evidence of each element of the defense when ‘the evidence is viewed in the light most favorable to the defendant’” *State v. Hudgins*, 167 N.C. App. 705, 709, 606 S.E.2d 443, 446 (2005) (quoting *State v. Ferguson*, 140 N.C. App. 699, 706, 538 S.E.2d 217, 222 (2000), *disc. review denied*, 353 N.C. 386, 547 S.E.2d 25 (2001)).

“Under the ‘necessity’ defense, [a] person is excused from criminal liability if he acts under a duress of circumstances to protect life or limb or health in a reasonable manner and with no other acceptable choice.” *State v. Thomas*, 103 N.C. App. 264, 265, 405 S.E.2d 214, 215 (internal quotation marks and citations omitted), *disc. review denied*, 329 N.C. 792, 408 S.E.2d 528 (1991). “Our Supreme Court long ago restricted the necessity defense to situations where ‘a human being was thereby saved from death or peril, or relieved from severe suffering.’” *Hudgins*, 167 N.C. App. at 710, 606 S.E.2d at 447 (quoting *State v. Brown*, 109 N.C. 802, 807, 13 S.E. 940, 942 (1891)).

Defendant contends that she was entitled to a necessity instruction because she testified that she fled from the officers because she felt she was in “mortal danger” when Officer Corriher approached her with his baton. **[T 105]** She also testified that she was living out of her automobile at the time, and so the officer’s actions in removing her vehicle tags amounted to “taking [defendant’s] home, [her] job, and

[her] life.” **[Id.]** Finally, she testified that her intended destination was her place of employment, where she would “be ok.” **[T 106]**

Defendant’s testimony, taken in the light most favorable to her, did not provide the substantial evidence needed to require a necessity instruction. Even under Defendant’s version of events, Officer Corriher only struck her car with his baton, which she stated made her feel she was in “mortal danger *at that point,*” *after* she began moving the vehicle. (emphasis added). Ultimately, there was no evidence that Defendant only acted to protect life or limb or health when she fled.² Thus, there was not substantial evidence of each element of the necessity defense, and the trial court properly denied Defendant’s request for a necessity instruction.

Conclusion

For the reasons stated above, we find no error.

NO ERROR.

Judges CALABRIA and TYSON concur.

Report per Rule 30(e).

² We do not address whether Defendant’s actions were reasonable under the circumstances or whether Defendant had other acceptable options, as those are questions for the jury. *Hudgins*, 167 N.C. App. at 711, 606 S.E.2d at 448.