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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-770

Filed: 2 January 2018

Forsyth County, No. 15 CRS 055852

STATE OF NORTH CAROLINA

v.

CHARLES THOMAS STACKS

Appeal by defendant from judgment entered 29 November 2016 by Judge Edwin G. Wilson, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 13 December 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Wes Saunders, for the State.

Lisa Miles for defendant-appellant.

TYSON, Judge.

Charles Thomas Stacks ("Defendant") appeals from the jury's conviction of misdemeanor assault with a deadly weapon. We find no error in Defendant's conviction or in the trial court's judgment entered thereon.

I. Background

The State's evidence tended to show that late in the evening of 23 June 2015, Sean Rivera was sitting on the back patio of his first floor apartment when torn paper fell from one of the apartments above and landed upon his patio and the surrounding grass. Mr. Rivera loudly inquired who was going to come down and clean up the trash. A voice responded, "I'll be right there, homeboy." Mr. Rivera proceeded to his front door to let in the person, who he presumed to be Defendant, so he could walk through the apartment to the patio and backyard to pick up the trash. When he opened the door, Mr. Rivera testified he saw Defendant coming towards his door. As words were exchanged between the parties, Mr. Rivera "saw stars."

Mr. Rivera recalled being hit on the top of his head by something metal, which allegedly Defendant had dropped, and which Mr. Rivera subsequently picked up to avoid being hit again. Mr. Rivera testified his face and shirt were covered in blood from his head wound. Defendant went back upstairs after he hit Mr. Rivera. Police were called and arrived soon after the incident. An officer called an ambulance, but Mr. Rivera refused transport and was treated later at the hospital for his injuries.

Mr. Rivera's wife, Colleen Rivera, was located outside the apartment when her husband was hit. She testified Defendant struck her husband with a metal baton, dropped the baton, and ran back upstairs. Mrs. Rivera testified blood was running out of the wound, concealing her husband's face and soaking his shirt.

Jill Bennington lived in the second floor apartment between Mr. Rivera's first floor apartment and Defendant's third floor apartment. She was also outside on her back porch that evening, and overheard some arguing upstairs between Defendant's roommate and the roommate's girlfriend. The girlfriend tore up a letter and threw it over Defendant's balcony, where it fell down to the first floor patio and grass. Ms. Bennington heard Mr. Rivera ask if someone was going to clean up the mess. Defendant responded that he would "come down."

Ms. Bennington testified she believed an altercation was about to occur, and went through her apartment to the front stoop area to see what would happen. When she got to her front door, she testified she saw Defendant standing outside Mr. Rivera's apartment holding something in his hand. Ms. Bennington witnessed Defendant's hand raise and heard him hollering "come on out." When she looked down, she saw Mr. Rivera covered in blood and Defendant running back up the stairs. Ms. Bennington's daughter called the police.

Kernersville police officer R. Orellana was the first to arrive on the scene. He was approached by Mr. Rivera, who was holding the metal baton. Officer Orellana ordered Mr. Rivera to drop the weapon, and Mr. Rivera complied, dropping the baton and getting onto his knees. Officer Orellana observed Mr. Rivera's face and shirt covered in blood and that he had suffered a head injury.

While Officer Orellana was talking to Mr. Rivera, Defendant came out of his apartment. Mr. Rivera stood up and identified Defendant as the man who had struck him. Officer Orellana interviewed Defendant, who stated his roommate and his roommate's girlfriend had been arguing. The girlfriend had gone outside onto the balcony, and thrown the torn pieces of a letter over the balcony. Mr. Rivera yelled for them to clean up the mess, and began cursing at Defendant. Defendant yelled back, and the two began arguing. Defendant and Mr. Rivera decided to "go outside and handle it like men." Defendant asserted he had gone downstairs to talk with Mr. Rivera, but Mr. Rivera had pulled out the baton and swung it at Defendant. Defendant stated he punched Mr. Rivera in the head and ran away.

Officer Vladimir Feldman arrived on the scene soon after Officer Orellana. He observed Mr. Rivera on his knees, covered in blood, with an obvious head wound. Officer Feldman interviewed Mr. Rivera several times, and testified Mr. Rivera's account of the events remained consistent.

While interviewing Mr. Rivera, Officer Feldman found the metal baton used in the altercation. Officer Feldman testified the baton was a collapsible baton, with a weighted tip, identical to the ones police officers use both defensively and offensively. Officer Feldman observed the wound on Mr. Rivera's head, and testified it appeared as if a small object had struck it, and had created a small crater surrounded by swelling. Defendant did not present any evidence.

A jury found Defendant guilty of assault with a deadly weapon on 28 November 2016. The trial court entered judgment and sentenced Defendant to seventy-five days in jail. Defendant filed notice of appeal on 2 December 2016.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2015).

III. Issue

Defendant's sole issue on appeal is whether the trial court erred in denying his request for a self-defense instruction.

IV. Analysis

A. Standard of Review

"[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).

B. Self-Defense Instruction

A self-defense instruction is appropriate when evidence is presented from which a jury could reasonably infer the defendant acted in self-defense. *State v. Allred*, 129 N.C. App. 232, 235, 498 S.E.2d 204, 206 (1998) (citation omitted). The right to self-defense is "only available to a person who is without fault." *State v. Juarez*, 369 N.C. 351, 354, 794 S.E.2d 293, 297 (2016) (citation omitted). "[I]n

determining whether a defendant is entitled to a self-defense instruction, the evidence must be viewed in the light most favorable to the defendant, and the determination shall be based on evidence offered by the defendant and the State." *State v. Cook*, __ N.C. App. __, __, 802 S.E.2d 575, 577 (2017) (citations, emphasis, and quotation marks omitted).

Defendant did not present any evidence in this case, nor was he required to do so in order to obtain an instruction of self-defense. *State v. Whetstone*, 212 N.C. App. 551, 554-55, 711 S.E.2d 778, 781 (2011) (citation omitted) ("when there is evidence from which it may be inferred that a defendant acted in self-defense, he is entitled to have this evidence considered by the jury under proper instruction from the court"). The entirety of the evidence was presented by the State, which provides for two possible scenarios. In the sequence of events supported by the State, Mr. Rivera asked whoever had thrown the torn paper over the balcony to come clean it up. Defendant showed up at Mr. Rivera's door with a metal baton, struck Mr. Rivera on the head, and ran away.

The Defendant's story, presented to the responding officers and represented to the court through the officers' body camera recordings, is only slightly different. Defendant told Officer Orellana that he voluntarily came down to Mr. Rivera's apartment, even after he and Mr. Rivera had allegedly been arguing over their respective balconies concerning the paper. When Defendant arrived at the front door,

Mr. Rivera swung the baton at him, striking Defendant's lip. Defendant reacted by punching Mr. Rivera, and then running away.

The jury found Mr. Rivera's account to be more credible. Even viewing the contradictory testimony in the light most favorable to Defendant, he was still not entitled to an instruction of self-defense. *See Juarez*, 369 N.C. at 354, 794 S.E.2d at 297; *see also Cook*, __ N.C. App. at __, 802 S.E.2d at 577. The jury found Defendant had voluntarily entered into an altercation with Mr. Rivera, after descending three flights of stairs to confront him after the alleged argument over the littering. Defendant's arguments concerning the self-defense instruction are overruled.

V. Conclusion

Viewing all the evidence presented in the light most favorable to the Defendant, we hold the trial court did not err in denying Defendant's motion to include an instruction on self-defense.

We find no error in the jury's verdict or the judgment entered thereon. *It is so ordered.*

NO ERROR.

Judges CALABRIA and DAVIS concur.

Report per Rule 30(e).