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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-677

Filed: 15 January 2019

Davidson County, No. 15 CRS 52791

STATE OF NORTH CAROLINA

v.

RYAN QUANTERIUS BLUE

Appeal by defendant from judgment entered 1 November 2016 by Judge Ted S. Royster in Davidson County Superior Court. Heard in the Court of Appeals 27 November 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Katherine M. McCraw, for the State.

W. Michael Spivey for defendant-appellant.

ZACHARY, Judge.

Defendant Ryan Quanterius Blue appeals from his judgment for assault upon a law enforcement agency animal. Defendant argues that the trial court erred in failing to *sua sponte* dismiss that charge for insufficient evidence, or in the alternative, that the trial court plainly erred by not instructing the jury on the element of willfulness. We decline to invoke Rule 2 in order to review Defendant's

argument concerning the sufficiency of the evidence, and we conclude that the trial court's failure to instruct the jury on the element of willfulness did not amount to plain error.

Background

At approximately 1:20 a.m. on 16 May 2015, Sergeant Adam Gleave of the Davidson County Sheriff's Office was on patrol on Business I-85 North with his K-9 officer of nine years, Valor. Sergeant Gleave observed four vehicles approaching from his rear, all driving roughly twenty miles per hour over the posted speed limit. Defendant was driving one of the vehicles. After speeding past Sergeant Gleave, Defendant "swerved right in front" of another vehicle and exited the highway onto Winston Road, a 35-mile-per-hour zone. Sergeant Gleave activated his lights and followed. Defendant "sped up and took off" at over 65 miles per hour, Sergeant Gleave activated his sirens, and Defendant continued to flee. Defendant led Sergeant Gleave on a high-speed chase until he ultimately crashed into two vehicles at an intersection.

Sergeant Gleave approached the crash scene in his patrol car and observed Defendant seated on the ground next to his vehicle. Defendant then picked himself up and fled the scene on foot. Sergeant Gleave exited his patrol vehicle and shouted at Defendant to "Stop" and "You're under arrest," to no avail. Sergeant Gleave then let Valor out of the vehicle and they both began to pursue Defendant on foot.

Valor chased Defendant through a parking lot and over a retaining wall next to a building, at which point Valor was immediately able to apprehend Defendant. Valor held onto Defendant's pant leg until Sergeant Gleave was able to catch up and place Defendant under arrest. Sergeant Gleave testified that when he rounded the building's corner,

> I observed [Defendant] in a seated position, and my dog had ahold of his pant leg at that point. And what I observed next was him just viciously beating the dog in his head, nose, upper body area of the dog. Just repeatedly, you know just kind of like a boxer beating on his heavy bag, going to town on the dog.

Sergeant Gleave then quickly placed Defendant under arrest.

Sergeant Gleave explained that Valor was trained as an apprehension dog, which is "a term that we use when we send the dog after an individual to essentially bite and hold until we are able to catch up and take the subject into custody ourselves." Such dogs "are trained to bite and hold the individual, not to sit there and attack but just to bite and hold on until they're told to let go." Thus, when Defendant was beating him, Valor "just held on to the pant leg"—he could not "do[] anything at that point" other than sit and wait for Sergeant Gleave's help.

Defendant was indicted on 26 October 2015 for felony assault upon a law enforcement agency animal, operating a motor vehicle while fleeing to elude a law enforcement officer, driving while impaired, and attaining the status of an habitual felon.

Defendant was not tried until just over one year after his indictments were issued, with 28 October 2016 being Defendant's eleventh court date. By then, Defendant had been appointed four different attorneys. The record does not reveal why Defendant's first and third attorneys were removed, but it appears that the second attorney was removed "because of problems between he and" Defendant. On 28 October 2016, the court heard the motion to withdraw of Defendant's fourth attorney, Corey Buggs.

Mr. Buggs indicated that he filed his motion in response to his "tenuous" relationship with Defendant, after Defendant had continuously insulted Mr. Buggs and demanded that the trial court remove him from the case. Mr. Buggs explained that Defendant wanted "to proceed with a defense that in [his] view and . . . professional opinion w[ould] not be successful." Defendant continuously insisted that the North Carolina courts did not have jurisdiction over him because he was a "Moorish sovereign citizen" operating under the Moorish Tribe Nation who has "constitutional rights to enter the land." Defendant repeatedly asserted this defense during the 28 October 2016 hearing.

Judge Royster concluded that "It is clear that [Defendant] has used this process dilatorily to try to keep this case from coming to trial," and ordered that Defendant was "not entitled to any[]more court-appointed attorneys." However, Judge Royster stated that Defendant "needs help" and decided to keep Mr. Buggs on as Defendant's

counsel in order for the trial to "go smoother and quicker." Defendant continued to argue with Judge Royster, repeating that "I don't want him as my attorney." Judge Royster responded, "I'm sorry, you have got him anyways. I will address that motion Monday. Mr. Blue, it is clear to me that you are trying to abuse the process." Defendant continued to make outbursts as Judge Royster waited patiently, finally concluding the proceedings until the following Monday.

On the following Monday, Judge Royster granted the State's motion *in limine* "to restrict the defense arguments to the jury specifically regarding [Defendant's] association with the [Moorish] Nation," and instructed Defendant that he was not "to try to introduce any kind of [Moorish] Nation defense" to the jury, to which Defendant objected. Defendant then stated that "as a matter of law, I want to represent myself. I don't . . . want him as my attorney." In response, Judge Royster advised Defendant that if he granted his motion, Defendant would not have another attorney appointed to represent him. Defendant responded, "Just said I want to represent myself," and Judge Royster conducted the necessary colloquy. Defendant voluntarily and intelligibly elected to represent himself, and signed a waiver of counsel. Judge Royster appointed Mr. Buggs as Defendant's standby counsel. A jury was then empaneled and Defendant's trial began.

Upon arising to give his opening statement, Defendant abruptly stated to the jury, "For the record, I would like to give y'all my affiliation and acknowledgment of

the . . . Yamassee tribe of Saga [Moors] . . . . Jurors, please don't be blind by the fact that this is the supreme law of the land." The trial court thereafter dismissed the jury and explained to Defendant for the second time that "this is not your time to put on evidence." The following encounter then ensued:

> THE COURT: Now, for the record, outside the presence of the jury, are you going to make an opening statement or not?
>
> [DEFENDANT]: For the record, Your Honor, I would like to present what I have, these documents—
>
> THE COURT: Mr. Blue, yes or no? Nothing else. Are you going to make an opening statement?
>
> [DEFENDANT]: I'm making an opening statement by presenting--
>
> THE COURT: No, sir.
>
> [DEFENDANT]: --my tribal information . . . to you in the courtroom.
>
> THE COURT: No, sir.
>
> [DEFENDANT]: Yes, sir.
>
> THE COURT: One last time--
>
> [DEFENDANT]: I don't understand your jurisdiction. I don't go by your jurisdiction. I am a [Moorish] American.
>
> THE COURT: You and I have been over this. One last time, yes or no?
>
> [DEFENDANT]: What are you getting at, one last time? This is my trial. What are you getting at, one last time?

> What does that mean? Can you break that down?
>
> THE COURT: It means if you continue to try to sabotage this trial, I may be forced to have to gag you.
>
> [DEFENDANT]: Your Honor, but pursuant to constitutional case law and in accordance with *Davis vs. Wechsler*, 263 U.S. 2224, *Stromberg vs. California*, 283 U.S. 359, *NAACP vs. Alabama*, 375 U.S. 449: The assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. And right now we are in local practice. This is not supreme law.
>
> THE COURT: Mr. Blue, I will take—Mr. Buggs, do you concur? I assume that I have to take it that he does not want to make the traditional opening statement that we're accustomed to; is that correct?
>
> MR. BUGGS: I would concur with that assessment.

The trial court thereafter had the jury re-enter the courtroom, and the State presented Sergeant Gleave as its first and only witness. Defendant declined to cross-examine Sergeant Gleave. Defendant maintained that he did not wish to present any evidence other than his status as a Moorish-American, which he intended to support with the introduction of certain documents, stating, "they have a lot to do with the trial, because this is constitutional law. It's not the law of the land. Supreme law." The trial court allowed Defendant to introduce his documents into evidence. Defendant thereafter refused to take the stand and did not present any evidence.

The jury found Defendant guilty of felony attempted assault upon a law enforcement agency animal, felony fleeing to elude arrest with a motor vehicle,

driving while impaired, and having attained the status of an habitual felon. The trial court sentenced Defendant to consecutive sentences of 84 to 113 months' imprisonment for fleeing to elude arrest and 30 to 48 months' imprisonment for assault upon a law enforcement agency animal. Defendant also received a concurrent sentence of six months' imprisonment for his conviction of driving while impaired. Defendant did not file a notice of appeal, but on 13 October 2017 this Court allowed Defendant's Petition for Writ of Certiorari for the purpose of reviewing his judgments.

Defendant did not make a motion to dismiss at trial. Nevertheless, on appeal Defendant argues that the trial court erred by not dismissing his charge of felony assault upon a law enforcement agency animal on the grounds of insufficient evidence. Defendant also argues that the trial court committed plain error when it instructed the jury on felony assault upon a law enforcement agency animal without including an instruction on the essential element of willfulness.

Discussion

I.

Defendant first argues that the State's evidence was insufficient to support the charge of assault upon a law enforcement agency animal and that the trial court therefore erred by not dismissing that charge.

Defendant was charged pursuant to N.C. Gen. Stat. § 14-163.1(b), which provides that "[a]ny person who knows or has reason to know that an animal is a law

enforcement agency animal . . . and who willfully causes or attempts to cause serious harm to the animal is guilty of a Class I felony." N.C. Gen. Stat. § 14-163.1(b) (2015). Thus, the State was required to present sufficient evidence to show (1) that Defendant knew or had reason to know that Valor was a law enforcement agency animal, and (2) that Defendant willfully caused or attempted to cause serious harm to Valor.

Defendant argues that the State did not present sufficient evidence to establish that Defendant "knew or had reason to know that the dog that attacked him was a law enforcement dog and that his purpose was to violate the statute by attempting to inflict 'serious harm' upon the dog." However, because Defendant did not make a motion to dismiss at trial, this issue was not preserved for appellate review. N.C.R. App. P. 10(a)(3) ("In a criminal case, a defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dismiss the action . . . is made at trial."). Nonetheless, Defendant asks this Court to invoke Rule 2 in order to suspend the requirements of Rule 10(a)(3) and reach the merits of his argument concerning the sufficiency of the evidence.

Pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure,

> [t]o prevent manifest injustice to a party, or to expedite decision in the public interest, either court of the appellate division may, except as otherwise expressly provided by these rules, suspend or vary the requirements or provisions of any of these rules in a case pending before it upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

N.C.R. App. P. 2. Rule 2 is an "extraordinary step" that "must be invoked cautiously" and only under "exceptional circumstances." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 196, 657 S.E.2d 361, 364 (2008) (quotation marks omitted).

The instant case does not involve exceptional circumstances justifying suspension of the appellate rules in order to review Defendant's argument. Defendant's failure to make a motion to dismiss occurred after he refused to cooperate with each of his four court-appointed attorneys and insisted that he represent himself at trial. Moreover, Sergeant Gleave, whose testimony was the only evidence presented at trial, testified that the felony assault upon the law enforcement agency animal took place after Defendant aggressively and recklessly fled from Sergeant Gleave and crashed into two innocent bystanders. Defendant thereafter fled the scene on foot, and Sergeant Gleave and Valor proceeded to chase after him. Defendant was quickly apprehended by Valor, at which point Defendant proceeded to beat Valor in a manner that was vividly described by Sergeant Gleave. The testimony reveals that Defendant was fully aware of the fact that he was under police pursuit, and it is no rarity for such a pursuit to involve the use of a K-9 Officer. Defendant refused to cross-examine Sergeant Gleave, and the only evidence that he presented were documents purporting to establish that the court had no jurisdiction over him given his affiliation with the "Moorish Tribe."

We see no "manifest injustice" that would result by not invoking Rule 2 in order to suspend the appellate rules under these circumstances, and therefore we decline to do the same.

II.

Next, Defendant argues that the trial court plainly erred by not including the element of willfulness in its jury instruction on the charge of assault upon a law enforcement agency animal. We disagree.

It is axiomatic that "[a] trial court must instruct the jury on every essential element of an offense." *State v. Ramos*, 363 N.C. 352, 355, 678 S.E.2d 224, 226 (2009). N.C. Gen. Stat. § 14-163.1(b) requires as an essential element of the offense that the State prove that the defendant "willfully" caused or attempted to cause serious harm to the law enforcement agency animal.

"Willful" as used in criminal statutes "means something more than an intention to do a thing. It implies the doing the act purposely and deliberately, indicating a purpose to do it without authority—careless whether he has the right or not—in violation of law." *State v. Dickens*, 215 N.C. 303, 305, 1 S.E.2d 837, 839 (1939). In other words, "[w]illful means without just cause, excuse, or justification." *Id.* (quotation marks omitted). "Willfulness is an essential element which the fact-finder must determine, often by inference." *Ramos*, 363 N.C. at 355, 678 S.E.2d at 226.

In the instant case, the trial court omitted the word "willfully" from its jury instruction, instead charging, pursuant to the pattern jury instructions, that:

> [T]he defendant has been charged with attempting to cause serious harm to a law enforcement agency animal. Now, for you to find the defendant guilty of this offense, the State must prove two things beyond a reasonable doubt: First, the defendant knew or had reason to know that the animal was a law enforcement agency animal; and second, the defendant attempted to cause serious harm to the animal.

Defendant did not object to this instruction at trial, and therefore our review of this issue is limited to one for plain error. N.C.R. App. P. 10(a)(4); *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012).

In order for a defendant to establish that an instructional error amounted to plain error entitling him to a new trial, the defendant must show

> that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

Lawrence, 365 N.C. at 518, 723 S.E.2d at 334 (citations, quotation marks, and brackets omitted).

Defendant cites this Court's recent opinion in *State v. Scaturro* in support of his contention that the trial court's omission of the word "willfully" in the instruction amounted to plain error. ___ N.C. App. ___, 802 S.E.2d 500 (2017), *disc. review*

denied, 370 N.C. 75, 804 S.E.2d 528 (2018). In *Scaturro*, the defendant was charged with felony hit-and-run under N.C. Gen. Stat. § 20-166, which required willfulness as an essential element of the offense. *Id.* at ___, 802 S.E.2d at 506. However, the statute also required that any driver involved in a crash "render to any person injured in such crash reasonable assistance, including the calling for medical assistance." *Id.* at ___, 802 S.E.2d at 506. Therefore, the case might exist in which a defendant could "leave the scene of an accident intentionally and still not 'willfully' violate N.C.G.S. § 20-166(a) if his intentional departure was justified or with excuse." *Id.* at ___, 802 S.E.2d at 507. Indeed, the record in *Scaturro* reflected that the defendant's "sole defense to the charge of hit and run . . . was that his departure from the accident site was authorized, and actually required, by statute as he left in an effort to get [the other driver] medical assistance." *Id.* at ___, 802 S.E.2d at 507. At trial, both the defendant and the other driver "testified at length as to [the] [d]efendant's decision to leave the scene to take [the other driver] to the nearest hospital instead of waiting for emergency responders upon . . . believing he was about to bleed to death." *Id.* at ___, 802 S.E.2d at 507 (quotation marks omitted). Thus, because the defendant's "entire defense was predicated on the argument that he neither willfully left the scene of the accident nor willfully failed to return to it," this Court concluded that the facts of *Scaturro* rendered it "one of the rare cases in which the trial court's failure to give

an additional instruction . . . had a probable impact on the jury verdict." *Id.* at ___, 802 S.E.2d at 507.

Analogizing the instant case to *Scaturro,* Defendant maintains that here, "the crucial question for the jury" was whether Defendant "hit the dog for the purpose of violating the law, or whether he did so for some other purpose, such as getting the dog off of him, preventing injury to himself, or as a reflexive reaction to unexpectedly being bitten and pulled down by the dog." In stark contrast to *Scaturro*, however, in this matter the jury was presented with absolutely no evidence that Defendant beat Valor for one of these purposes. The only evidence that Defendant presented was his "affiliation and acknowledgement with the Yamassee Tribe of the indigenous Saga [Moors], as being a [Moorish-]American, claiming my nationality." Defendant also declined to cross-examine Sergeant Gleave concerning his version of the events. The record therefore contains nothing to contradict the evidence that Defendant led Sergeant Gleave and Valor on a foot-chase and thereafter continued to "viciously beat[]" Valor "repeatedly," "like a boxer beating on his heavy bag." It is also uncontradicted that Valor sat motionless, holding onto Defendant's pant leg while suffering Defendant's beating. *Cf. Dickens*, 215 N.C. at 305, 1 S.E.2d at 839 ("There was here no evidence offered that the dog . . . , at the time he was killed, was attempting to attack any animal or person, or threatening injury to property, so as to reasonably lead the defendant to believe that it was *necessary* to kill in order to

protect the property of his employer. All the evidence was to the contrary." (emphasis added)).

Given the abundance of uncontradicted evidence, we conclude that Defendant has failed to establish that the jury probably would have returned a different verdict had the trial court instructed the jury on the element of willfulness. *Lawrence*, 365 N.C. at 519, 723 S.E.2d at 335. The trial court's instruction did not amount to plain error.

Conclusion

We decline to invoke Rule 2 in order to reach the merits of Defendant's argument concerning the sufficiency of the evidence to warrant the submission to the jury of the charge of assault upon a law enforcement agency animal. The trial court's failure to instruct the jury as to the element of willfulness did not amount to plain error.

NO ERROR.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).