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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-554

Filed: 18 June 2019

Randolph County, No. 16 CRS 4

STATE OF NORTH CAROLINA

v.

CYNTHIA DENISE YORK

Appeal by defendant from judgment entered 14 July 2017 by Judge V. Bradford Long in Randolph County Superior Court. Heard in the Court of Appeals 26 March 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph E. Elder, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for defendant.

DIETZ, Judge.

Defendant Cynthia York appeals her conviction for assault with a deadly weapon with intent to kill inflicting serious injury. York got drunk, harassed her neighbors in various ways, and ultimately stabbed a neighbor in the chest with a butcher knife.

On appeal, York argues that the trial court committed plain error when it failed to instruct the jury on voluntary intoxication, although her counsel did not request that instruction. As explained below, even assuming the voluntary intoxication instruction was required—and we are not persuaded that it was—York has not shown that, but for that instruction, the jury probably would have reached a different verdict. We therefore find no plain error.

Facts and Procedural History

Defendant Cynthia Denise York lived up the street from Jeff Wood and his family. York's on-again, off-again boyfriend, Andy Coble, lived in a rented mobile home on Wood's property. In 2014, Wood banned York from his property after she got into an altercation with him and Coble. Wood made it clear that York was never allowed to return.

On 29 August 2015, the Woods had guests to their home for a party. Around 10:00 p.m., Wood and his son were talking to Coble on Coble's back porch when York parked her car in Wood's driveway, walked around to the back porch, and confronted Coble. Wood demanded that York leave, but she ignored his instruction, which prompted Wood's son to call York a "stupid bitch" and tell her to "get home, now." Wood admonished his son to "keep [his] mouth shut" but ordered York to leave his property. York cussed at the three men, returned to her car, and drove home.

Around 11:00 p.m. that night, Wood contacted the Sheriff's office and reported

that York trespassed on his property. Deputy William Duvall responded to the call and spoke with the Wood family for about ten minutes. The Woods told Deputy Duvall that York trespassed on their property, that she appeared drunk, and that she was driving. While Deputy Duvall spoke to the Woods, a woman sounding like York was yelling and honking a car horn up the road.

Deputy Duvall then went to York's home, and found York standing beside her car, which was parked in her front yard. York appeared intoxicated and was yelling at someone on the phone. Deputy Duvall advised York that if she returned to Wood's property, Wood could pursue a trespassing charge.

Between 11:23 p.m. and 12:00 a.m. that night, York placed several phone calls to Coble and left a series of voicemails in which her speech was slurred. Coble played the messages in front of Wood and his guests, and many considered the voicemails to be threatening. Wood's guests also saw York driving slowly back and forth by Wood's property several times. Later in the evening, two guests, who were driving in their car, saw York standing in the middle of the road holding a fire poker in one hand and a phone in the other. When York noticed the two, she threatened to "rearrange somebody's face with this fire poker" if they left their car.

Around 2:00 a.m. that night, worried about York's behavior, Wood and a friend walked toward the end of Wood's driveway to prevent York from driving toward

Wood's home. Eventually, York pulled her car into the driveway, prompting Wood and his friend to step in front of it.

At that point, York put her car in reverse and rapidly backed up, spinning and squealing the tires. The car stopped in the middle of the road. Wood's friend approached York's car when the door suddenly swung open. York got out of the car holding a butcher knife. As York approached, Wood grabbed his friend and pulled him back. York then stabbed Wood in the chest in a single, overhand motion. She returned to her car and drove home, leaving the knife lodged in Wood's body. Paramedics rushed Wood to the hospital. He survived after a fifteen-day hospital stay, but suffered lasting health problems.

Deputy Duvall and Sergeant Chad Oates later went to York's home to investigate. Deputy Duvall asked York if she knew why they were there, "and she stated yes." Sergeant Oates observed that York was upset and visibility intoxicated. Without prompting, York explained to Sergeant Oates that she had gone for a walk and taken the knife for protection. She explained that, while walking along the road, Wood and another man approached her. She claimed that Wood "slapped her in the face openhanded, really hard." York explained that she then used the knife to protect herself and ran back to her house. The officers looked at York's face but did not see any indication that anyone had struck her.

York went to trial and the jury found her guilty of assault with a deadly weapon with intent to kill inflicting serious injury. The trial court sentenced her to 73 to 100 months in prison. York timely appealed.

Analysis

York argues that the trial court committed plain error by failing to instruct the jury on voluntary intoxication, although her counsel did not request that instruction.

"For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "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." *Id.* In other words, the defendant must show that, "absent the error, the jury probably would have returned a different verdict." *Id.* at 519, 723 S.E.2d at 335. Plain error should be "applied cautiously and only in the exceptional case" where the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Id.* at 518, 723 S.E.2d at 334.

The specific intent to kill is an essential element of assault with a deadly weapon with intent to kill inflicting serious injury. *State v. Cain*, 79 N.C. App. 35, 46, 388 S.E.2d 898, 905 (1986). Voluntary intoxication, although not a legal defense to criminal behavior, "may be sufficient in degree to prevent and therefore disprove the

existence of a specific intent such as an intent to kill." *State v. Spencer*, 154 N.C. App. 666, 669, 572 S.E.2d 815, 818 (2002). But merely being intoxicated is not enough. Instead, the evidence must show that the defendant was so intoxicated the she "was utterly incapable of forming the requisite intent." *State v. Howie*, 116 N.C. App. 609, 613, 448 S.E.2d 867, 870 (1994); *see also State v. Cheek*, 351 N.C. 48, 76, 520 S.E.2d 545, 561 (1999).

York argues that the evidence at trial "showed that at the time of the offense, [she] was intoxicated and incoherent. Her speech was slurred and unintelligible. Her motor skills were impaired. Her balance was impaired. She was unsteady on her feet. She was unable to understand basic verbal communication."

This is accurate. The evidence certainly supports the fact that York was intoxicated throughout the night as she repeatedly harassed her neighbors and ultimately attacked Wood. But this evidence does not support the conclusion that York was so intoxicated that she was "utterly incapable of forming the requisite intent." *Howie*, 116 N.C. App. at 613, 448 S.E.2d at 870. Indeed, the evidence shows that York spent four hours harassing Coble, the Wood family, and their guests. Throughout this time, she was able to drive her car, make phone calls (although, to be fair, some of York's voice messages were so slurred they were unintelligible), and threaten guests who stared at her from their car.

Most importantly, within minutes of stabbing Wood, York called 911 and provided a lucid account of the situation, including Wood's location. York told the 911 operator that she had used the knife in self-defense after Wood slapped her in the face. Her voice on the recorded 911 call is clear and without noticeable slurring. Similarly, both Deputy Duvall and Sergeant Oates explained that, while York was visibly intoxicated in their encounters with her, they were able to communicate with her and she responded intelligently to them.

Simply put, the evidence does not suggest that York might have been so intoxicated that she was utterly incapable of forming the requisite intent. Thus, the trial court was not required to give a voluntary intoxication instruction. In any event, York has not shown that, but for the failure to give that instruction, the jury probably would have acquitted her. Likewise, she has not shown that this alleged error was so serious that it rendered her trial fundamentally unfair and undermined the integrity of our justice system. *Lawrence*, 365 N.C. at 518–19, 723 S.E.2d at 334–35. Accordingly, we find no error—and certainly no plain error—in the trial court's judgment.

Conclusion

We find no error in the trial court's judgment.

NO ERROR.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).