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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-980

Filed: 7 July 2020

Mecklenburg County, Nos. 15 CRS 237540, 17 CRS 14932–34

STATE OF NORTH CAROLINA

v.

SHAWN JONEAL SAVAGE

Appeal by defendant from judgments entered 6 February 2019 by Judge Forrest D. Bridges in Mecklenburg County Superior Court. Heard in the Court of Appeals 13 May 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Mark X. Sneed, for the State.

Lisa Miles for defendant.

DIETZ, Judge.

Defendant Shawn Savage appeals his conviction for assault with a deadly weapon inflicting serious injury after a shooting in which Savage and another man shot the victim, Robert Griffin. Griffin died of his injuries.

On appeal, Savage argues that it is unclear which gunshot wounds were fatal. Thus, Savage contends, the trial court committed plain error by failing to instruct the

jury that assault with a deadly weapon inflicting serious injury requires the victim to be alive.

We reject this argument. The State's evidence showed that, although the victim suffered several fatal gunshot wounds, none would have caused instant death. Given the speed with which the shooting occurred, the trial court's use of the pattern jury instruction for assault with a deadly weapon inflicting serious injury, without objection by Savage, was not error and certainly not plain error.

Facts and Procedural History

In October 2015, Montreal Forman, Robert Griffin, and Shawn Savage were at Forman's home in Charlotte playing cards in the dining area. Griffin became upset, and the men started arguing. Forman shot Griffin. Griffin began walking toward Forman and then fell onto him.

After Griffin fell on Forman, Savage shot at both Griffin and Forman while they were on the ground. Griffin died of his injuries at the scene. Forman survived after medical treatment.

Savage was indicted for murder, assault with a deadly weapon inflicting serious injury, and other related offenses.

The case went to trial. The State presented evidence that Savage shot Griffin, including an eyewitness who testified that Savage fired multiple shots at the two men after Griffin fell over onto Forman. A medical examiner testified that Griffin suffered

from numerous gunshot wounds, none of which were instantly fatal, but at least three of which would have caused death within five to twenty minutes without immediate medical treatment.

At the close of the State's evidence, the trial court dismissed the charge of first degree murder. The jury found Savage not guilty of second degree murder. The jury convicted Savage of assault with a deadly weapon inflicting serious injury against both Forman and Griffin and possession of a firearm by a felon. Savage then pleaded guilty to attaining armed habitual felon status.

The trial court sentenced Savage to two terms of 120 to 156 months in prison on the charges of assault with a deadly weapon inflicting serious injury against Griffin and Forman, both running consecutively with a sentence of 14 to 26 months for possession of a firearm by a felon. Savage timely appealed, challenging his conviction for assault with a deadly weapon inflicting serious injury with respect to Griffin.

Analysis

Savage argues that the trial court plainly erred by failing to instruct the jury that assault with a deadly weapon inflicting serious injury required the State to prove that the assault was committed upon a living person. He contends that this instruction was necessary because the jury could have concluded that Griffin already was dead before Savage shot him. We reject this argument.

As an initial matter, Savage concedes that he did not object to the jury instructions at trial, and thus, we review for plain error. “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.* 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.

Savage does not argue that the trial court’s instructions to the jury failed to accurately state the law, but contends that the trial court should have included an additional instruction emphasizing that assault inflicting serious injury requires the victim to be alive at the time the serious injury is inflicted.

“Regardless of requests by the parties, a judge has an obligation to fully instruct the jury on all substantial and essential features of the case embraced within the issue and arising on the evidence.” *State v. Harris*, 306 N.C. 724, 727, 295 S.E.2d 391, 393 (1982). But even in cases where an instructional challenge is preserved, the defendant “bears the burden of showing that the jury was misled or misinformed by

the instructions given.” *State v. Beck*, 233 N.C. App. 168, 171, 756 S.E.2d 80, 82 (2014). “[W]hen instructions, viewed in their entirety, present the law fairly and accurately to the jury, the instructions will be upheld.” *State v. Roache*, 358 N.C. 243, 304, 595 S.E.2d 381, 420 (2004).

The essential elements for assault with a deadly weapon inflicting serious injury are (1) an assault, (2) with a deadly weapon, (3) inflicting serious injury, (4) not resulting in death. *State v. Littlejohn*, 158 N.C. App. 628, 635, 582 S.E.2d 301, 306 (2003). The trial court accurately instructed the jury on these elements using the applicable pattern jury instructions, including an explanation that “serious injury” is a physical injury that “causes great pain and suffering.” The requirement that the assault inflict serious injury under this definition presupposes a living person; in ordinary English usage, a person cannot suffer a serious injury that causes great pain and suffering not resulting in death if the person already is dead. Because the instructions, viewed in their entirety, fairly and accurately stated the law, we cannot find error. *Roache*, 358 N.C. at 304, 595 S.E.2d at 420.

Moreover, in light of the State’s evidence that none of the fatal gunshot wounds would have caused immediate death, Savage has not shown that the jury probably would have reached a different verdict had the trial court provided the instruction he describes on appeal. *Lawrence*, 365 N.C. at 519, 723 S.E.2d at 335. Accordingly, we find no error, and certainly no plain error, in the trial court’s judgments.

Conclusion

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

NO ERROR.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).