IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-56

No. COA20-210

Filed 2 March 2021

Henderson County, No. 18-CRS-723-725

STATE OF NORTH CAROLINA,

v.

JAMES BRADLEY OWEN, Defendant.

Appeal by defendant from judgment entered 12 August 2019 by Judge Peter Knight in Henderson County Superior Court. Heard in the Court of Appeals 27 January 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Adren Harris, for the State.

Charlotte Gail Blake, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 James Bradley Owen ("Defendant") appeals pursuant to N.C. Gen. Stat. §§ 7A-27(b), 15A-1442, and 15A-1444(a) from judgment entered after a jury found him guilty of three counts of assault with a firearm on a law enforcement officer. We find no error.

I. Factual & Procedural Background

¶ 2 The evidence at trial tended to show the following: On the evening of 11 August 2018, Defendant and his friend Hunter Wright ("Wright") drove Defendant's truck to a thirty-acre parcel owned by the Owen family to put out corn for deer. Wright drove because he believed Defendant was intoxicated. Wright testified that Defendant shot a rifle out the window of the truck approximately one-quarter mile from the property. An area resident testified that he called 911 after witnessing a young male stick a pistol out of a truck window to shoot at deer.

¶ 3 According to Wright, he parked the truck at the gate of Defendant's property, behind the Mills River Community Center ("Community Center") building. Defendant and Wright then walked to the parcel, up to the back side of a wooded mountain, to a deer stand located approximately 120-130 yards away from the Community Center.

¶ 4 Deputy Christopher Goodwin of the Henderson County Sheriff's Office, a military veteran with ten years of active-duty experience, responded to the 911 call. Deputy Goodwin identified a truck that met the description of the vehicle reported. He found the truck parked at a driveway near the Community Center with its doors open and headlights on. Deputy Goodwin called out to see if anyone was nearby but heard no answer. After getting no response, Deputy Goodwin "bumped" his sirens for approximately fifteen seconds, which activated the lights on his vehicle.

¶ 5 Wright testified that while he and Defendant hiked up the mountain, they heard a "Watauga horn" coming from the direction of the Community Center. Wright believed Defendant shot the rifle twice after hearing the horn. Wright testified that after the two shots were fired, it was getting dark as they made their way down out of the woods.

¶ 6 The sirens on the patrol vehicles are tested by officers each quarter to ensure they can be heard from a half-mile away. Deputy Goodwin left the lights on in an attempt to block traffic. Deputy Goodwin testified that he first heard "the crack of a bullet" over his right shoulder. Believing he had been shot at, Deputy Goodwin called for back-up and took cover behind his vehicle. Deputy Goodwin further testified that two additional shots were fired while he was in his vehicle. Shortly thereafter, he saw Defendant come out of the woods holding a rifle. Deputy Goodwin instructed Defendant multiple times to put the gun down; however, Defendant did not immediately comply with Deputy Goodwin's commands. Defendant eventually put the rifle down on the tailgate of the truck. Defendant informed Deputy Goodwin that his friend was in the woods "with a scope rifle on [his] position," which Deputy Goodwin interpreted Defendant to mean that a gun was pointed at him. Three additional deputies arrived at the scene to assist Deputy Goodwin. Deputy Nick Newell testified that Defendant was kicking and punching the deputies, and that Deputy Newell and another officer had to pin Defendant down on the ground to gain

control over him. Defendant was then handcuffed and arrested. Deputy Newell searched the truck and found a pistol in between the seats of the truck.

¶ 7 On 7 January 2019, the Henderson County Grand Jury indicted Defendant on three counts of assault with a firearm on a law enforcement officer and assault on a law enforcement officer with injury. Counsel for the defense moved to dismiss all four charges at the close of the State's evidence. The trial court denied all motions. At the close of all evidence, counsel for the defense renewed its motions to dismiss all charges. The trial court granted the motion to dismiss the charge of assault on a law enforcement officer with injury. The jury found Defendant guilty on three counts of assault with a firearm on a law enforcement officer. The trial court entered judgments sentencing Defendant to three consecutive, twenty-four to forty-one month sentences. The trial court suspended the sentences, and placed Defendant on supervised probation for a period of thirty months. Defendant now appeals.

II. Jurisdiction

¶ 8 We first address Defendant's petition for writ of certiorari. In the event this Court concluded that Defendant's written notice of appeal was ineffective to preserve his right to appeal his convictions by jury, Defendant filed, contemporaneously with his brief, a petition for writ of certiorari pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure.

¶ 9 Under Rule 21, a "writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action . . . ." N.C. R. App. P. 21(a)(1).

¶ 10 Our Court has previously stated that "a defect in a notice of appeal should not result in loss of the appeal as long as the intent to appeal . . . can be fairly inferred from the notice and the appellee is not misled by the mistake." *State v. Springle*, 244 N.C. App. 760, 763, 781 S.E.2d 518, 521 (2016) (citations and quotations omitted) (granting a defendant's petition for writ of certiorari where his notice of appeal was defective).

¶ 11 We acknowledge Defendant's notice of appeal is technically defective pursuant to Rule 4 of the North Carolina Rules of Appellate Procedure because it does not "designate the judgment[s] or order[s] from which appeal is taken." N.C. R. App. P. 4(b). Nevertheless, Defendant's attempt to give his notice of appeal was timely filed, and we can clearly infer Defendant's intent to appeal the judgments entered against him. Moreover, the State has not claimed it has been prejudiced or misled by this technical defect. Therefore, we grant Defendant's petition and issue a writ of certiorari to ensure our appellate jurisdiction to review the merits of the case.

¶ 12 This Court has jurisdiction to address Defendant's appeal pursuant to N.C. Gen. Stat. §§ 7A-27(b), 15A-1442, and 15A-1444(a).

III. Issues

¶ 13 The issues are whether: (1) the trial court erred in denying Defendant's motion to dismiss the charges of assault with a firearm on a law enforcement officer by finding substantial evidence of intentional shootings at an officer; and (2) the trial court erred in denying Defendant's request for a jury instruction on the defense of accident.

IV. Motion to Dismiss

A. Standard of Review

¶ 14 On appeal, we review "the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted).

> A motion to dismiss for insufficient evidence is properly denied if there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. All evidence, both competent and incompetent, and any reasonable inferences drawn therefrom, must be considered in the light most favorable to the State. Additionally, circumstantial evidence may be sufficient to withstand a motion to dismiss when a reasonable inference of defendant's guilt may be drawn from the circumstances. If so, it is the jury's duty to determine if the defendant is actually guilty.

State v. Blakney, 233 N.C. App. 516, 518, 756 S.E.2d 844, 846 (2014), *disc. rev. denied*, 367 N.C. 522, 762 S.E.2d 204 (2014) (citations and quotations omitted). "The State is entitled to every reasonable inference to be drawn from the evidence.

Contradictions and discrepancies do not warrant dismissal of the case; rather, they are for the jury to resolve." *State v. Franklin*, 327 N.C. 162, 172, 393 S.E.2d 781, 787 (1990). "The defendant's evidence, unless favorable to the State, is not to be taken into consideration." *State v. Jones*, 280 N.C. 60, 66, 184 S.E.2d 862, 866 (1971).

B. Analysis

¶ 15 In his first argument, Defendant alleges the trial court erred in denying his motion to dismiss because there was insufficient evidence that Defendant intentionally shot at Deputy Goodwin. Additionally, Defendant contends there was insufficient evidence of his knowledge that a law enforcement officer was present when he fired the rifle. We disagree.

¶ 16 "The elements of the offense of assault with a firearm on a law enforcement officer are: (1) an assault; (2) with a firearm; (3) on a law enforcement officer; (4) while the officer is engaged in the performance of his duties." *State v. Dickens*, 162 N.C. App. 632, 636, 592 S.E.2d 567, 571 (2004) (citation omitted); *see* N.C. Gen. Stat. § 14-34.5(a) (2015). This violation is a general intent crime, meaning that to return a verdict of guilty, a "jury is not required to find the defendant possessed any intent beyond the intent to commit the unlawful act, and this will be inferred or presumed from the act itself." *State v. Page*, 346 N.C. 689, 700, 488 S.E.2d 225, 232 (1997) (citation omitted).

¶ 17 "An assault is an overt act or attempt, with force and violence, to do some immediate physical injury to the person of another, which *show of force or violence* must be sufficient to put a person of reasonable firmness in fear of immediate physical injury." *State v. Childers*, 154 N.C. App. 375, 382, 572 S.E.2d 207, 212 (2002) (citation and quotations omitted) (emphasis added). Furthermore, "intent is an essential element of the crime of assault [and] may be implied from culpable or criminal negligence." *State v. Coffey*, 43 N.C. App. 541, 543, 259 S.E.2d 356, 357 (1979) (citation omitted). Additionally, to be found guilty, "the defendant must have known or had reasonable grounds to know that the victim was a law enforcement officer." *Dickens*, 162 N.C. App. at 636, 592 S.E.2d at 571 (citation omitted).

¶ 18 "[T]he nature of the assault, the manner in which it was made, the weapon, if any, used, and the surrounding circumstances are all matters from which [ ] intent . . . may be inferred." *State v. White*, 307 N.C. 42, 49, 296 S.E.2d 267, 271 (1982). "The surrounding circumstances include the foreseeable consequences of a defendant's deliberate actions as a defendant must be held to intend the normal and natural results of his deliberate act." *State v. Liggons*, 194 N.C. App. 734, 739, 670 S.E.2d 333, 338 (2009) (citation and quotations omitted).

¶ 19 Viewing the evidence in the light most favorable to the State we find that a reasonable inference could be drawn from the circumstances as to Defendant's guilt of assault with a firearm on a law enforcement officer. *See State v. Sauls,* 291 N.C.

253, 257, 230 S.E.2d 390, 393 (1976) (citations omitted). The evidence tends to show a siren was sounded for approximately fifteen seconds within hearing range of Defendant's location on the mountain prior to him firing three shots from his rifle. Wright and Defendant heard a sound like a "Watauga horn" prior to Defendant firing the rifle. Deputy Goodwin heard the crack of a bullet over his shoulder, and heard two additional shots fired shortly after the first. Based on these facts, there was substantial evidence that Defendant intentionally shot at Deputy Goodwin. *See Blakney*, 233 N.C. App. at 518, 756 S.E.2d at 846.

¶ 20 Additionally, Defendant's intent can be implied by his culpable negligence. *See Coffey*, 43 N.C. App. at 543, 259 S.E.2d at 357. The evidence tends to show that Defendant fired the gun after dusk, while intoxicated, and in an area where a siren had sounded. A bullet passed just to the right of Deputy Goodwin, and he believed he was being shot at. Deputy Goodwin called for assistance and tried to block traffic with his vehicle. The State presented substantial evidence to show that Defendant put on a show of force or violence to put a person of reasonable firmness in fear of immediate physical injury; thus, there was sufficient evidence to prove the element of assault. *See Childers*, 154 N.C. App. at 382, 572 S.E.2d at 212.

¶ 21 The State's evidence of the siren sounding before Defendant fired the rifle also shows Defendant knew or had reasonable grounds to know that the victim was a law enforcement officer. Defendant's knowledge of the law enforcement officer could also

be inferred based on the surrounding circumstances: a law enforcement officer searching for and finding Defendant's truck near the Community Center was a foreseeable consequence of Defendant's deliberate act of firing the initial shot from his moving truck's window in the vicinity of nearby residences.

¶ 22 When viewed in the light most favorable to the State, there was substantial evidence presented of each essential element of the crime charged. *See Blakney*, 233 N.C. App. at 518, 756 S.E.2d at 846. The weight to be given to the evidence was a matter for the jury to determine. *See State v. Hunt*, 365 N.C. 432, 436, 722 S.E.2d 484, 488 (2012). We hold that the trial court did not err in denying Defendant's motion to dismiss for insufficient evidence to support Defendant intentionally shot at a law enforcement officer.

V. Defense of Accident Jury Instruction

A. Standard of Review

¶ 23 "[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. Analysis

¶ 24 In his second argument, Defendant contends that the trial court erred by not instructing the jury on the defense of accident. We disagree.

> It is well established that when a defendant requests a special instruction which is correct in law and supported

> by the evidence, the trial court must give the requested instruction, at least in substance. If a requested instruction is refused, [the] defendant on appeal must show the proposed instruction was not given in substance, and that substantial evidence supported the omitted instruction. Substantial evidence is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

State v. Thompson, 118 N.C. App. 33, 36, 454 S.E.2d 271, 273 (1995), *disc. rev. denied*, 340 N.C. 262, 456 S.E.2d 837 (1995) (citations and quotations omitted).

¶ 25 A jury instruction on the defense of accident is appropriate where "[a]n injury is accidental" meaning "it is unintentional, occurs during the course of lawful conduct, and does not involve culpable negligence. Culpable negligence is such gross negligence or carelessness as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others." N.C.P.I.–Crim. 307.11.

¶ 26 In this case, the trial court denied the accident instruction over the objection of the defense based on the evidence presented at trial. Our review of the record indicates that the requested instruction was not supported by substantial evidence. The Defendant did not testify or offer any testimonial evidence in his defense, and only offered documentary evidence that was addressed by defense counsel during cross-examination. The evidence presented tends to show that Defendant's actions involved "such gross negligence or carelessness" and a "thoughtless disregard of consequences or a heedless indifference to the safety and rights" of others. *See State*

v. Thompson, 118 N.C. App. 33, 36, 454 S.E.2d 271, 273 (1995). Defendant fired his rifle multiple times, while intoxicated, and in relative close proximity to the Community Center and a public road.

¶ 27 The evidence also tends to show that Defendant did not immediately comply with Deputy Goodwin's instructions to put his gun down and to get down on the ground. Rather, the deputies had to pin Defendant on the ground to gain control over him as he physically resisted arrest. In Defendant's first interaction with Deputy Goodwin, Defendant stated that his friend had a scope rifle on Deputy Goodwin. Thus, Defendant's conduct and actions, once he came into contact with the officers, did not give rise to an inference that his actions were accidental or unintentional.

¶ 28 To argue that the trial court erred in failing to instruct on the defense of accident, Defendant relies on *State v. Martin*, 35 N.C App. 108, 240 S.E.2d 486 (1978) (defendant testified regarding facts as to accident); *State v. Garrett*, 93 N.C. App. 79, 376 S.E.2d 465 (1989) (defendant's sister and mother testified as to accident), *rev. denied*, 324 N.C. 338, 378 S.E.2d 802 (1989); and *State v. Best*, 31 N.C. App. 389, 229 S.E.2d 202 (1976) (defendant testified as to accident). In each of these cases, however, there was evidence that the defendant accidently shot at the victim and did not intend to fire the gun. On the other hand, in *State v. Efird*, "all of the evidence indicate[d] that [the] defendant intended to fire and did fire the shot or shots which resulted in injury to the victim . . . ." 37 N.C. App. 66, 68, 245 S.E.2d 226, 227 (1978). In *Efird*,

this Court held that the defendant was not entitled to an instruction on accident because the evidence did not show that the discharge of the firearm was an accident; rather, the evidence indicated an intentional discharge. *Efird*, 37 N.C. App at 67–68, 245 S.E.2d at 227. Here, Defendant discharged his rifle three times within a short time period—all the evidence presented tends to show that these discharges were intentional. Therefore, we hold the trial court did not err in denying Defendant's request for a jury instruction on defense of accident.

VI. Conclusion

¶ 29 The evidence viewed in the light most favorable to the State demonstrates that there was substantial evidence as to each essential element of the offense charged. Questions of fact as to whether Defendant committed an assault and had knowledge of the presence of a law enforcement officer were proper issues for the jury to decide. Defendant, on appeal, has not shown that an instruction on the defense of accident was supported by substantial evidence nor was there evidence to show that the rifle discharges were unintentional. For the foregoing reasons, we find no error.

NO ERROR.

Judges HAMPSON and JACKSON concur.

Report per Rule 30(e).