IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-226

No. COA20-400

Filed 18 May 2021

Rockingham County, No. 17 CRS 50277

STATE OF NORTH CAROLINA

v.

RICHARD DENNIS JUMPER, JR.

Appeal by defendant from judgment entered 30 August 2019 by Judge Stanley L. Allen in Rockingham County Superior Court. Heard in the Court of Appeals 14 April 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Jeremy D. Lindsley, for the State.

Michael E. Casterline for defendant-appellant.

TYSON, Judge.

¶ 1 Richard Dennis Jumper, Jr. ("Defendant") was indicted for first-degree murder for the death of David Wayne Bullins ("Bullins"). Defendant was tried before a jury in August 2019. The jury found Defendant not guilty of first-degree murder, but it returned a verdict of guilty of second-degree murder. Defendant gave oral notice of appeal in court. We find no prejudicial error.

I. Background

¶ 2 Just before midnight on 29 January 2017, Rockingham County Sheriff's Deputy, Lincoln Thompson, ("Deputy Thompson") was on patrol and received a call about a shooting near Anglin Mill Road. Deputy Thompson arrived at the scene, entered the house, and saw Bullins had been shot. Bullins was lying in a pool of blood about two or three feet from the front door inside the living room. Deputy Thompson spoke to Ashley Hogan ("Hogan"), who identified herself as a witness.

¶ 3 On 3 February 2017, Defendant was arrested. Four days later, he was indicted for first-degree murder in Bullins' death.

A. Ashley Hogan's Testimony

¶ 4 Hogan testified she was visiting with Bullins at his home on Anglin Mill Road on 29 January 2017. Bullins called someone he knew to deliver drugs to the house. Hogan fell asleep before the drugs arrived and was still asleep when they were delivered. Hogan and Bullins smoked all of the cocaine together. Later that day, Bullins said he was calling the same person he called earlier to obtain more crack cocaine.

¶ 5 Defendant arrived and knocked on the door. Bullins told Defendant to come in and he walked through the front door. Defendant and Bullins discussed their deal for some pills Defendant was supposed to buy from Bullins for $500 or $600. Bullins told Defendant that he did not have the pills because Defendant had taken too long

to get there. Bullins bought $20 worth of straight cocaine from Defendant.

¶ 6 Hogan testified Bullins accused Defendant and his friends of stealing his laptop when they had made their drug delivery earlier that day. Defendant became upset. Defendant raised his voice, and Bullins started yelling at Defendant. Defendant started backing out of the house. Hogan saw Defendant was holding a pistol in his right hand, pointing it toward the ground. Once Defendant had backed out of the door, Bullins grabbed what Hogan described a "little wooden baseball bat" and ran out the door after Defendant.

¶ 7 Hogan heard Bullins say, "get out of my yard, you f**k**g n****r, and don't come back." She then heard "about five rounds popped off." Bullins crawled back into the house and told Hogan to call 911. Hogan had remained seated on the couch, during these events, but stood-up, closed and locked the front door, and called 911.

B. Alesia Stewart's Testimony

¶ 8 Alesia Stewart ("Stewart"), an acquaintance of Defendant, testified she drove Defendant to Bullins' home in exchange for crack cocaine on 29 January 2017.

¶ 9 Defendant gave directions from his cell phone to Stewart. Stewart and Defendant arrived at Bullins' home between 11:00 p.m. and 12:00 a.m. She pulled the vehicle into the driveway and stopped with the truck's drivers' side door facing the house. After Defendant went inside the house, Stewart took another hit of crack cocaine.

¶ 10 Stewart testified that she heard three pops instantaneously as Defendant went inside. A short time later, she saw Defendant running toward the truck, pulling up his pants, saying they were trying to rob him, and he had been hit in the back of the head with a stick. Stewart did not think Defendant was "running for no dear life or nothing."

¶ 11 Stewart testified she saw the silhouette of a woman holding a gun at the door before she drove away. Stewart testified she did not see the woman shoot the gun. After Defendant got into the truck, Stewart asked him, "Are you bleeding back there?" referring to the back of his head. "He said, 'no, but they hit me good in the back of the head.'"

¶ 12 Shortly after driving away from the house, Stewart and Defendant passed a police car travelling in the opposite direction from them. Stewart then saw Defendant throw something out of the passenger's side window. She believed one item was Defendant's cell phone because Defendant asked to use her phone thereafter, instead of using his own phone as he had on the trip to Bullins' home. Upon arrival at their destination, a car pulled up, Defendant exited Stewart's truck, got into that car, and the driver drove away.

C. Additional Testimony

¶ 13 Dr. Deborah Radisch, a forensic pathologist, conducted an autopsy of Bullins. She found four distinct gunshot wounds. One bullet had entered Bullins' left back,

another entered his left upper buttock, one entered the back of his right knee and another entered the top of his right foot. Dr. Radisch opined that Bullins died as a result of the gunshot wound to his left back area.

¶ 14 Bryan Alexander was observing ongoing construction activities on 6 February 2017, a week after the shooting. He found a gun with a silencer and a cell phone on the roadside not far from Angling Mill Road, leading away from the location of Bullins' home.

¶ 15 Officer Eugene Bishop, the State's firearms examination and comparison expert, examined the gun Alexander had found on the roadside, the shell casings recovered at the scene, and bullets recovered from Bullins' body. He opined the comparison of shell casings recovered from test fires and casings recovered at the scene showed the recovered shells were fired by the gun found on the side of the road by Alexander. The ballistics report concluded the gun found along the roadside was the same weapon that fired the bullets leading to Bullins' murder.

¶ 16 Based upon an interview with Hogan, the police were notified a metal flashlight had been involved in the conflict between the Bullins and Defendant. Sheriff's Detective Mary Jane Webb recovered a silver metal flashlight shaped like a baseball bat from Bullins' front porch. A photograph of the baseball bat shaped flashlight was presented to the jury. Detective Webb also recovered a live round from directly in front of Bullins' front stairs. Deputy Thompson testified a preloaded live

round would be ejected when the user slid the gun slide back to load the next round.

¶ 17 Defendant moved for dismissal at the close of the State's case, which the court denied. Defendant did not present evidence and renewed his motion to dismiss at the close of all evidence. The court again denied the motion. Defendant did not file advance notice to assert self-defense; request an instruction on self-defense; and the trial court did not include self-defense in its charge to the jury. Defendant failed to object to the jury instructions as given.

¶ 18 The jury returned a verdict of guilty convicted Defendant of second-degree murder. Defendant was sentenced to an active term of 320 to 396 months as a prior record level four offender. Defendant appeals.

II. Issues

¶ 19 Defendant asserts the trial court committed plain error by failing to instruct the jury on perfect or imperfect self-defense, when a reasonable juror could infer from the evidence that Defendant shot Bullins after Bullins had hit and tried to rob Defendant, while using a baseball bat shaped metal flashlight as a deadly weapon.

III. Plain Error

A. Standard of Review

¶ 20 Both parties stipulate the proper standard of appellate review is for plain error. This Court's review under plain error is "applied cautiously and only in the exceptional case," where the error "seriously affect[s] the fairness, integrity or public

reputation of judicial proceedings," to overcome dismissal for a defendant's failure to preserve. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). We review the trial court's failure to instruct on Defendant's self-defense is reviewed for plain error.

B. Jury Instruction

¶ 21 Our Supreme Court has held: "The trial judge must, without special request, charge the law applicable to the substantive features of the case arising on the evidence and apply the law to the essential facts of the case." *State v. Covington*, 317 N.C. 127, 131, 343 S.E.2d 524, 527 (1986) (citation omitted). "A trial judge is required by N.C.G.S. § 15A-1231 and N.C.G.S. § 15A-1232 to instruct the jury on the law arising on the evidence." *State v. Bogle*, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989). "The court is required to instruct on all substantial features of a case, G.S. 15A-1232; and it is equally settled that defenses raised by the evidence constitute substantial features requiring an instruction." *State v. Jones*, 300 N.C. 363, 366, 266 S.E.2d 586, 587 (1980) (citations omitted). "Failure to instruct upon all substantive or material features of the crime charged is error." *Bogle,* 324 N.C. at 195, 376 S.E.2d at 748. (citations omitted).

> [F]or a defendant to establish entitlement to an instruction on perfect or imperfect self-defense, two questions must be answered in the affirmative: (1) Is there evidence that the defendant in fact formed a belief that it was necessary to kill his adversary in order to protect

> himself from death or great bodily harm, and (2) if so, was that belief reasonable? If both queries are answered in the affirmative, then an instruction on self-defense must be given. If, however, the evidence requires a negative response to either question, a self-defense instruction should not be given.

State v. Harvey, 372 N.C. 304, 308, 828 S.E.2d 481, 484 (2019) (citations omitted).

1. State v. Spaulding

¶ 22 Failure or refusal to provide an instruction on self-defense by the trial court, if warranted by the evidence and prejudicial, compels a new trial. *See State v. Spaulding*, 298 N.C. 149, 157, 257 S.E.2d 391, 396 (1979).

¶ 23 In *Spaulding*, the Supreme Court of North Carolina addressed "whether the trial court erred in refusing to instruct the jury on self-defense. In resolving this question the facts are to be interpreted in the light most favorable to defendant." *Id.* at 154, S.E.2d at 394 (citation and internal quotation marks omitted). Our Supreme Court held it was a prejudicial error for the trial court to refuse to provide a self-defense instruction, if warranted by the evidence, and the defendant was entitled to a new trial. *Id*. at 152, 257 S.E.2d at 393.

¶ 24 Our Supreme Court reasoned:

> [A] person may kill even though to kill is not actually necessary to avoid death or great bodily harm, if he believes it to be necessary and has a reasonable ground for that belief. The reasonableness of his belief is to be determined by the jury from the facts and circumstances as they appeared to him at the time of the killing.

Id. at 156, 257 S.E.2d at 396 (emphasis and citation omitted).

¶ 25 In *Spaulding*, the defendant and victim were both incarcerated. *Id*. at 152, 257 S.E.2d at 393. The evidence showed on the day of the victim's murder, several other inmates had heard the victim threaten the defendant. *Id*. at 154, 257 S.E.2d at 394. Several inmates saw the victim walking towards the defendant with his hand in his pocket. *Id*. The defendant claimed he believed the victim was going to stab him, so the defendant grabbed a knife and mortally wounded the victim. *Id*.

¶ 26 Our Supreme Court concluded:

> This Court has, moreover, held that an action by the victim as if to reach for a weapon was sufficient to justify an instruction on self-defense . . . . Defendant claims it was his belief, as a result of the threats and the behavior to which he testified, that he was in imminent danger of great bodily harm or death. Under the evidence he presented, the reasonableness of this belief was a question for the jury. It was prejudicial error for the trial court to refuse an instruction on self-defense, and for that error defendant is entitled to a new trial.

Id. at 157, 257 S.E.2d at 396.

¶ 27 Here, like in *Spaulding*, Defendant was armed prior to the confrontation. Viewed in a light most favorable to Defendant, Bullins attempted to rob Defendant, Bullins charged after Defendant with a metal flashlight shaped as a bat as he retreated out the front door towards the truck, and Bullins struck Defendant on the back of his head. Unlike *Spaulding*, no evidence was presented during trial to show

Defendant believed Bullins posed a threat to him. There was no evidence presented tending to show Defendant believed he was in imminent danger of great bodily harm or death. The live round from the gun was found at the bottom of Bullins' front stairs, indicating the pistol's slide was racked as Defendant descended the stairs. Further, three of Bullins' four gunshot wounds were in Bullins' back, buttocks and the back of his knee.

¶ 28 Viewed in a light most favorable to Defendant, he was struck on the head, and then fired four rounds, three of which entered Bullins' back and rear. Without some evidence of Defendant's reasonable belief he was in imminent danger, Defendant has not shown it was plain error for the trial court to withhold an instruction on imperfect self-defense.

2. State v. Stephens

¶ 29 In *State v. Stephens*, this Court ordered a new trial holding "the trial court erred by denying the self-defense instruction." __ N.C. App. __, __, 853 S.E. 2d 488, 496 (2020). The defendant in *Stephens* was angry when he went to the victim's house because the victim's dog had killed the defendant's cat. *Id.* at __, 853 S.E. 2d at 491. The men argued, the victim told the defendant to stop using vulgarities, and the defendant taunted "what are you going to do about it?" *Id.* The victim then grabbed a 2-inch by 2-inch piece of lumber, and the defendant displayed a holstered handgun. *Id.* The defendant claimed the victim beat him twice with the stick as he was walking

away toward his truck. *Id.* The events escalated and the two men engaged in a "wild west" gunfight leaving both men injured. *Id.*

¶ 30 The defendant in *Stephens* raised three issues on appeal: (1) Did defendant's possessing a handgun while on the victim's property "provoke lethal force," making him "the aggressor," (2) Did the victim provoke the defendant by "the use of deadly force by attacking" the defendant with a wooden stick; and (3) If the "defendant was an aggressor," did he regain "his right to use deadly force in self-defense under N.C.G.S. § 14-51.4(2)(b)" by walking towards his vehicle. *Id.* at __, 853 S.E.2d at 493.

¶ 31 To the first issue in *Stephens*, this Court held:

> [T]he jury could have determined that [d]efendant was permitted to brandish his firearm because he had a reasonable belief it was necessary to protect himself from death or great bodily harm and because [the victim] was the initial aggressor and provoked him through the use of serious or deadly force in striking him with a piece of lumber.

Id. at __, 853 S.E.2d at 495.

¶ 32 To the second issue, this Court held: "Defendant withdrew by walking toward his vehicle, clearly announcing his intent to withdraw by actually leaving. It was [the victim] who resumed the use of deadly force by firing on [d]efendant as he was walking toward his vehicle." *Id.* at __, 853 S.E.2d at 496.

¶ 33 To the third issue, this Court held:

> [S]ubstantial evidence tended to show that, even if

> [d]efendant was the initial aggressor, he nevertheless regained his right to use force in self-defense under N.C.G.S. § 14-51.4(b) by leaving and walking toward his truck. Therefore, as an alternative basis, [d]efendant was entitled to a jury instruction on self-defense because the evidence supports a finding that he withdrew from the dispute.

Id.

¶ 34 The facts before us, taken in the light most favorable to Defendant, are similar to the facts in *Stephens*. Here, like *Stephens*, Defendant went onto the victim's property with a pistol in his possession. *Id*. at __, 853 S.E. 2d at 491.

¶ 35 An accusation led to tension and arguments between Defendant and victim. *Id*. Also as in *Stephens*, Defendant began to retreat, walking backwards out of Bullins' house and towards his car with his gun pointed toward the ground. *Id*. Bullins then allegedly assaulted Defendant with a baseball bat shaped metal flashlight and tried to rob him, coupled with uttering insulting phrases. At this point, Defendant apparently racked the slide of his handgun, ejecting a live round on the front steps.

¶ 36 Unlike *Stephens*, here Defendant was not being fired upon as he walked toward the vehicle. No evidence tended to show Defendant was in reasonable fear of Bullins' deadly force when the shots were fired hitting Bullins in the back and rear. These facts do not explain why at least four shots were fired and hit Bullins, while Defendant stood 14 to 21 feet away from Bullins' front porch. No evidence tends to

show Bullins left his front porch.

IV. Self-Defense

A. Perfect Self-Defense

¶ 37 Defendant argues he was entitled to a jury instruction on perfect or imperfect self-defense.

> The elements which constitute perfect self-defense are:
>
> > (1) it appeared to defendant and he believed it to be necessary to kill the deceased in order to save himself from death or great bodily harm; and
> >
> > (2) defendant's belief was reasonable in that the circumstances as they appeared to him at that time were sufficient to create such a belief in the mind of a person of ordinary firmness; and
> >
> > (3) defendant was not the aggressor in bringing on the affray, i.e., he did not aggressively and willingly enter into the fight without legal excuse or provocation; and
> >
> > (4) defendant did not use excessive force, i.e., did not use more force than was necessary or reasonably appeared to him to be necessary under the circumstances to protect himself from death or great bodily harm.

State v. Larry, 345 N.C. 497, 518, 481 S.E.2d 907, 919 (1997).

B. Imperfect Self-Defense

1. Admitted Evidence

¶ 38 Our Supreme Court held: "Imperfect self-defense renders a defendant guilty of at least voluntary manslaughter if the first two elements above exist at the time of

the killing but the defendant, *without murderous intent*, either was the aggressor in bringing on the affray or used excessive force." *Larry*, 345 N.C. at 519, 481 S.E.2d at 919 (emphasis original).

¶ 39 "Generally voluntary manslaughter occurs when one kills intentionally but does so in the heat of passion suddenly aroused by adequate provocation *or in the exercise of self-defense where excessive force under the circumstances is employed* or where the defendant is the aggressor bringing on the affray." *State v. Herndon*, 177 N.C. App. 353, 362, 629 S.E.2d 170, 176 (2006) (emphasis original).

¶ 40 The evidence tends to show Defendant went to Bullins' house twice to engage in illegal drug transactions. Defendant arrived late, so Bullins was unable to provide the pills that he and Defendant planned to exchange for cocaine.

¶ 41 Viewing the evidence in the light most favorable to Defendant, relations between the men escalated inside the house, after Bullins accused Defendant and his friends of stealing Bullins' laptop during the first drug exchange earlier that day. As the men argued, Defendant started backing out of the front door and began to leave Bullins' home and withdraw from the conflict. He possessed a handgun but kept it pointed at the floor. Defendant walked backwards towards the front door. Once Defendant exited the home, Bullins grabbed a metal flashlight shaped like a baseball bat and ran outside after Defendant, yelling, "Get out of my yard, you f**k**g n****r, and don't come back."

¶ 42 Bullins allegedly hit Defendant in the back of the head and attempted to rob him. Bullins was shot at least four times, and spent shells were recovered between 14 and 21 feet away from the front steps of the house. Standing silhouetted in the dim light of the house was a woman allegedly holding a gun.

¶ 43 Defendant's counsel argued during the charge conference:

> [T]he conduct of the victim was clearly provocation because the evidence shows that the shooter was backing out the door and was in the process of leaving until the victim chased him. So that's provocation. Now whether that's adequate provocation or not, that is clearly in the province of the jury. And I think if you look at Footnote Number 10 of that particular jury instruction, that's essentially what it says, that mere words alone are not enough. But if you connect those mere words with some conduct on the part of the victim that constitutes provocation, then it's up to the jury to decide whether that's adequate provocation.

¶ 44 Defense counsel further argued:

> DEFENSE COUNSEL: And I'd submit that when he pursued him into the yard that would be a threat and assault.
>
> THE COURT: Yeah, but he's doing it with a flashlight. A flashlight and a firearm?
>
> . . . .
>
> THE COURT: [A]fter going back and reflecting on the request for voluntary manslaughter, I read the [jury instruction] footnote that said that it is basically the jury's determination as to whether or not provocation is adequate.

¶ 45 The trial court acknowledged that it would be proper to instruct on the

provocation prong of the imperfect self-defense. When given opportunities to object to these instructions, Defendant failed to object.

¶ 46 As the defendant did in *Spaulding*, Defendant argues sufficient evidence was presented from which a reasonable jury could have found Defendant believed it was necessary to use deadly force against Bullins to save himself from imminent death or great bodily harm. *Spaulding*, 298 N.C. at 157, S.E.2d at 396. We disagree. No evidence tended to show Defendant believed it was necessary to defend himself at the time he fired the four shots into Bullins' back, rear, knee, and foot.

¶ 47 The State argues Defendant failed to present evidence to support any instruction on self-defense, and the admitted evidence raises only "suspicion or conjecture" and is not substantial. *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). The trial court properly instructed the jury on provocation, the State's burden beyond a reasonable doubt to overcome Defendant's evidence, and on the lesser-included offense of voluntary manslaughter. The jury found and concluded Defendant acted with malice in the killing of Bullins, rejected first-degree, and returned its verdict of second-degree murder.

V. Conclusion

¶ 48 Conflicting evidence was presented from Ashley Hogan and Alesia Stewart that Bullins assaulted Defendant and attempted to rob him. Taking all the evidence in the light most favorable to Defendant and giving him the benefit of all inferences

raised thereon, no evidence tended to show Defendant was acting in perfect or imperfect self-defense when he shot Bullins.

¶ 49 The jury was properly instructed on provocation and the lesser-included offense, to allow the jury to find Defendant had acted under provocation and convict him of voluntary manslaughter. However, the jury's verdict concluded the State had proven Defendant was guilty of second-degree murder.

¶ 50 As discussed above, Defendant has failed to show the trial court's failure to further instruct was prejudicial. We find no plain or prejudicial error. *It is so ordered*.

NO PREJUDICIAL ERROR.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).