

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-727

No. COA20-742

Filed 21 December 2021

Randolph County, No. 17CRS056248, 17CRS716225, 18CRS054142

STATE OF NORTH CAROLINA

v.

MICHAEL ISACC RUSS, Defendant.

Appeal by Defendant from judgment entered 16 July 2019 by Judge V. Bradford Long in Randolph County Superior Court. Heard in the Court of Appeals 20 October 2021.

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

Daniel M. Blau, Attorney at Law, P.C., by Daniel M. Blau, for the Defendant.

DILLON, Judge.

¶ 1 Defendant Michael Isaac Russ appeals from a judgment convicting him of second-degree murder.

I. Background

¶ 2 On 22 December 2017, Larry Campbell and Roy Pruitt, both members of the motorcycle club the “Iron Patriots,” went on a motorcycle ride. Prior to their ride,

Campbell secured a pistol within the inner portion of his coat, which was buttoned and worn under his Iron Patriots leather vest. The bottom portion of his vest, specifically the “bottom rocker,”¹ read “North Carolina.”

¶ 3 Defendant saw Pruitt and Campbell drive past his house. Defendant, a member of the “Hell’s Angels” motorcycle club, realized from Campbell’s jacket that he was a member of a local motorcycle club. Defendant followed Campbell and Pruitt in his truck into the parking lot of a restaurant and blocked in their motorcycles. After words were exchanged, Defendant walked around the front of his truck with a loaded gun. Defendant claims he saw a gun in Campbell’s hand and, thinking his life was in danger, shot Campbell three times. Defendant also fired a round at Pruitt, which missed. Campbell died on site.

¶ 4 Defendant was pulled over for speeding as he was fleeing the scene of the shooting. During the stop, the deputy recognized that Defendant matched the description of the shooting suspect and detained him. Defendant was subsequently indicted for a number of crimes in connection with the shooting.

¶ 5 The jury convicted Defendant of second-degree murder and other crimes. The trial court arrested judgment on the other convictions. Defendant timely appealed his second-degree murder conviction.

¹ A bottom rocker is a patch on the lower back of a motorcycle club’s vest, usually indicating the territory the club claims.

II. Analysis

A. Evidence of Defendant's Motive

¶ 6 Defendant challenges certain testimony of former members of the Iron Patriots offered to show Defendant's motive to pursue Campbell and Pruitt. He contends the testimony was irrelevant or otherwise unduly prejudicial.

¶ 7 Relevant evidence is defined as "evidence having *any* tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2017) (emphasis added); *see also State v. Perry*, 298 N.C. 502, 510, 259 S.E.2d 496, 501 (1979) (stating relevant evidence is defined by having "*any* logical tendency, however slight, to prove a fact in issue in the case").

¶ 8 Only relevant evidence is admissible. N.C. Gen. Stat. § 8C-1, Rule 402. Further, evidence of motive "is not only competent, but often very important, in strengthening the evidence for the prosecution." *State v. Richards*, 294 N.C. 474, 483, 242 S.E.2d 844, 850 (1978) (internal quotation marks omitted); *see generally State v. King*, 226 N.C. 241, 37 S.E.2d 684 (1946).

¶ 9 The trial court's determination of whether any evidence's probative value is outweighed by its tendency to unfairly prejudice the defendant is reviewed for abuse of discretion. *State v. Meekins*, 326 N.C. 689, 696, 392 S.E.2d 346, 350 (1990).

¶ 10 We conclude that the former Iron Patriots' testimony was relevant to prove

Defendant's motive. A former Iron Patriots Vice President testified that the bottom rocker on their members' jackets used to read "Band of Brothers" but was later changed to "North Carolina." Further testimony at the trial court revealed that "North Carolina" was also on the bottom rocker used by members of the Hell's Angels at the time of Defendant's shooting. This witness further testified that he was concerned that changing the bottom rocker to "North Carolina" could possibly raise an issue regarding territory. Finally, there was testimony that the Hell's Angels were unhappy with the Iron Patriots having the same bottom rocker.

¶ 11 We conclude the trial court did not otherwise abuse its discretion in allowing relevant testimony pertaining to motive.

B. Expert Witness Testimony

¶ 12 Defendant challenges the testimony of a State's expert regarding organized motorcycle club activity.

¶ 13 "The standard of review for this Court assessing evidentiary rulings is abuse of discretion." *State v. Boston*, 165 N.C. App. 214, 218, 598 S.E.2d 163, 166 (2004).

¶ 14 Qualified expert testimony, "scientific, technical or other specialized knowledge," is allowed when the testimony will assist the trier of fact in understanding the evidence or determining a fact in issue. N.C. Gen. Stat. § 8C-1, Rule 702(a). Expert testimony assists the trier of fact when the testimony offers studied insight beyond what a lay juror could conclude from ordinary experience.

State v. McGrady, 368 N.C. 880, 889, 787 S.E.2d 1, 8 (2016).

¶ 15 Here, the State's expert witness testified that it is customary behavior for a smaller club to ask permission from the region's dominant club to form a motorcycle club. In addition, the expert affirmed it is ordinary practice for smaller clubs to seek approval from the dominant club as to what patches are allowed, what the club's name may be, and what the club may display as their bottom rocker.

¶ 16 The expert stated that, in this case, Hell's Angels was a dominant motorcycle club and that the Iron Patriots were a smaller club. The expert further testified that, based on Defendant's Hell's Angels motorcycle jacket design, Hell's Angels' bottom rocker signified the club claimed North Carolina as its territory. Because the Iron Patriots' bottom rocker claimed the same territory, the expert surmised that action could cause a disagreement with Hell's Angels.

¶ 17 As the average juror could not readily conclude this information on their own, the State's expert testimony assisted the trier of fact and was relevant to understanding the events preceding Campbell's death. We, therefore, conclude that the trial court did not err in allowing the expert witness to testify.

C. Cumulative Error

¶ 18 Defendant argues that the cumulative effect of allowing testimony from the former Iron Patriots and the State's expert witness constituted cumulative error. As we have already concluded that none of these issues present error, we decline to

consider Defendant's cumulative error argument. *See State v. Thompson*, 359 N.C. 77, 106, 604 S.E.2d 850, 871 (2004) (concluding that it was not necessary to consider defendant's cumulative error argument when defendant's other assignments of error did not constitute error).

D. Second-Degree Murder Jury Instruction

¶ 19 Defendant argues that there was insufficient evidence to support the trial court's second-degree murder instruction. "Assignments of error 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).

¶ 20 Our Supreme Court instructs that a trial judge should only instruct a jury on defenses that are supported by the evidence at trial. *State v. Cameron*, 284 N.C. 165, 171, 200 S.E.2d 186, 191 (1973). "[A]n instruction about a material matter not based on sufficient evidence is erroneous." *Childress v. Johnson Motor Lines, Inc.*, 235 N.C. 522, 530, 70 S.E.2d 558, 564 (1952).

¶ 21 Second-degree murder is "(1) the unlawful killing, (2) of another human being, (3) with malice, but (4) without premeditation and deliberation." *State v. Coble*, 351 N.C. 448, 449, 527 S.E.2d 45, 46 (2000). Malice may be shown through either:

- (1) actual malice, meaning hatred, ill-will or spite; (2) an inherently dangerous act done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief; or (3) that condition of mind which prompts a

person to take the life of another intentionally without just cause, excuse, or justification.

State v. Arrington, 371 N.C. 518, 523, 819 S.E.2d 329, 332 (2018) (internal quotation marks and citation omitted).

¶ 22 Here, sufficient evidence exists in the record to satisfy the charge of second-degree murder. Defendant cornered Campbell and Pruitt with his truck in the restaurant parking lot. Defendant then confronted Campbell and Pruitt and asserted they were not supposed to be in the area. When Campbell expressed confusion at the statement, Defendant retorted that they both knew exactly what he meant. Campbell then replied that he was not going anywhere, and Defendant responded, “That’s the way it’s going to be.” Defendant then grabbed his 45-caliber pistol, tucked it into his waistband, exited his truck, and fired rounds that struck Campbell. After firing a round in Pruitt’s direction as well, Defendant got into his truck and left the parking lot.

¶ 23 Campbell and Pruitt were a part of the Iron Patriots whose actions regarding the bottom rocker may have upset Hell’s Angels, the motorcycle club of which Defendant was a member. The jury could have found that Defendant acted maliciously, but without premeditating the killing, thus supporting an instruction for second-degree murder.

¶ 24 We conclude that the trial court did not commit reversible error regarding the

second-degree murder jury instruction.

E. Voluntary Manslaughter Jury Instruction

¶ 25 Defendant contends that the trial court committed plain error by not instructing on voluntary manslaughter based on evidence that he, though the aggressor, acted in self-defense.

¶ 26 When a defendant does not object to the trial court’s jury instructions and did not request instructions on lesser offenses, he is barred from asserting as error that the trial court did not instruct on the lesser-included offenses. *State v. Collins*, 334 N.C. 54, 61, 431 S.E.2d 188, 193 (1993); N.C. R. App. P. 10(a)(2). Thus, we review this argument under the plain error standard. *State v. Odom*, 307 N.C. 655, 659, 300 S.E.2d 375, 378 (1983).

¶ 27 To be considered plain error, the error in the jury instructions presented by the trial court must be “so fundamental as to amount to a miscarriage of justice or . . . probably resulted in the jury reaching a different verdict than it otherwise would have reached.” *State v. Bagley*, 321 N.C. 201, 213, 362 S.E.2d 244, 251 (1987).

¶ 28 Defendant failed to request an instruction on voluntary manslaughter at trial. But “[a] trial court must give instructions on all lesser-included offenses that are supported by the evidence, even in the absence of a special request for such an instruction[.]” *State v. Lawrence*, 352 N.C. 1, 19, 530 S.E.2d 807, 819 (2000). The trial court must “instruct the jury on substantial features of a case raised by the

evidence.” *State v. Shaw*, 322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988).

¶ 29 Imperfect self-defense involves the same elements as perfect self-defense. To establish perfect self-defense, four things are required:

- (1) it appeared to defendant and he believed it to be necessary to kill or use force against the victim 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 the 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. Greenfield, 375 N.C. 434, 441, 847 S.E.2d 749, 755 (2020). Imperfect self-defense applies in situations where the first two elements of perfect self-defense are present at the time of the killing, but the second two were absent. *State v. Harvey*, 372 N.C. 304, 308, 828 S.E.2d 481, 484 (2019).

¶ 30 In the present case, Defendant failed to show that declining to give an imperfect self-defense instruction amounted to a “miscarriage of justice” or that the jury would have reached a different verdict if the instruction were included.

Defendant presented evidence that he believed it was necessary to kill Campbell, and he was not the aggressor. Thus, Defendant's own evidence negated an instruction on imperfect self-defense as he allegedly satisfied the third element of the perfect self-defense test. We conclude, based on the evidence, that the jury would not have reached a different verdict if the trial court included the imperfect self-defense instruction. For these reasons, we conclude that the trial court did not commit plain error.

III. Conclusion

¶ 31 We conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).