IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-83

No. COA21-365

Filed 1 February 2022

Guilford County, No. 19 CRS 71843

STATE OF NORTH CAROLINA

v.

JOHN ALEXANDER POSS

Appeal by defendant from judgment entered 20 November 2020 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 11 January 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Terence Steed, for the State.

Richard J. Costanza for defendant-appellant.

TYSON, Judge.

¶ 1 John Alexander Poss ("Defendant") appeals from judgment entered after a jury convicted him of assault with a deadly weapon inflicting serious injury ("AWDWISI"). We find no error.

I. Background

¶ 2 Jordan Matusik had lived in the same neighborhood as Defendant for some

time and worked with him. Matusik lived in a basement apartment with his girlfriend, Teresa Gill. Matusik heard a knock on the door at approximately 8:00 pm on 2 April 2019. Defendant was at the door and demanded money from Matusik. Matusik said he did not have any money to give Defendant, Defendant persisted in asking, and Matusik asked him to leave the home. Defendant refused to leave.

¶ 3 Defendant and Matusik spoke on the porch for approximately thirty minutes. Matusik repeatedly asked Defendant to leave. Defendant pulled out a knife with a four-inch-long blade. Matusik went inside his home to retrieve his non-firing BB gun.

¶ 4 Upon returning to the porch Matusik heard Gill scream. Matusik saw two people, Lydia Kernodle and Floyd Anthony McNeill, running from the side of the home. Matusik asked Defendant, Kernodle, and McNeill to leave, which they eventually did.

¶ 5 Later that evening, Gill and Matusik were inside their home. They heard a crash come from the front bedroom. Matusik and Gill discovered the bedroom window's glass had been smashed from the outside. Matusik ran outside to see who had broken the window. Matusik took his car to further his search for the culprit in his neighborhood. Matusik saw Kernodle in his neighborhood, and she came back to Matusik's home to access the damage to the window. Matusik had Kernodle call Defendant to come, but Defendant refused to come to Matusik's home.

¶ 6 Matusik and Defendant agreed to meet at the same spot where he had picked

up Kernodle. Kernodle accompanied Matusik to the location. Matusik got out of the car to confront Defendant about the broken window. The interaction became more heated. Matusik and Defendant drew closer to each other. Matusik noticed Defendant had the knife in his hand. Matusik grabbed Defendant by the collar and shoved him away from himself. Defendant threatened to kill Matusik if he called the police. Matusik backed away from Defendant and turned away from Defendant to go to his car.

¶ 7 After Matusik turned away, he felt Defendant "punch" him in the back. Matusik screamed, turned around, and twisted Defendant's hand that held the knife until Defendant dropped the knife. Matusik wrestled Defendant to the ground but immediately let him go because of the "excruciating pain" in his back.

¶ 8 Matusik retreated to his car and drove home. Once home, Gill told Matusik he needed medical attention for the stab wound. Gill's sister called 911 to report the incident. Matusik went to the emergency medical department. Matusik was diagnosed with a puncture wound from the knife and was treated for a four-in-a-half-inch stab wound to his back.

¶ 9 While at the hospital, Matusik was interviewed by Greensboro Police Officer N.P. Carter. While Officer Carter was interviewing Matusik, Defendant called Matusik to apologize for stabbing him. Officer Carter asked Defendant to meet him at a Wal-Mart store, to which Defendant agreed. Carter arrested Defendant and

seized a knife with approximately a four-inch blade that Defendant had brought with him.

¶ 10 Defendant was indicted for AWDWISI. At Defendant's trial during the charge conference, the trial court noted the knife "was slightly more than four inches in length[.]" The trial court ruled the knife was deadly weapons as a matter of law. The jury convicted Defendant of AWDWISI. Defendant was sentenced to 17 to 33 months, which was suspended. Defendant was placed on 36 months of supervised probation. Defendant appeals.

II. Jurisdiction

¶ 11 Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2021).

III. Issue

¶ 12 Defendant argues the trial court committed plain error when it instructed the jury the knife used by Defendant was a deadly weapon as a matter of law.

IV. Jury Instruction

¶ 13 During the charge conference, the trial court asked Defendant if he "had any objections, concerns, problems, issues, [or] requests for additions" to the jury's instructions. Defendant's counsel responded "No, Your Honor."

¶ 14 After the trial court instructed the jury and the jury had retired to the jury room for deliberation, the trial court asked the State and Defendant if there were any

objections to the jury charge as given. Defendant's counsel responded "No, Your Honor."

A. Standard of Review

¶ 15 Defendant's failure to object during the charge conference or after the instructions were given to the jury along with his express agreement during the charge conference and after the instructions were given to the jury, constitutes invited error. Defendant's invited error waives any right to appellate review of the invited error, "including plain error review." *State v. Barber*, 147 N.C. App. 69, 74, 554 S.E.2d 413, 416 (2001).

B. Analysis

¶ 16 Our Supreme Court examined a defense counsel's agreement challenging jury instructions in *State v. White*, and held: "Where a defendant tells the trial court that he has no objection to an instruction, he will not be heard to complain on appeal." *State v. White*, 349 N.C. 535, 570, 508 S.E.2d 253, 275 (1998) (citation omitted).

¶ 17 Defendant's express agreement to the instruction during the charge conference and again after the instructions were given to the jury forecloses appellate review. Defendant's argument is overruled.

V. Conclusion

¶ 18 Defendant's trial counsel's express agreement on the instructions forecloses appellate review on this issue, "including plain error review." *Barber*, 147 N.C. App.

at 74, 554 S.E.2d at 416. Defendant's counsel's express agreement to the instructions before and after they were given constitutes invited error and waives any right to appellate review concerning the invited error. *White*, 349 N.C. at 570, 508 S.E.2d at 275. Even without the invited error, Defendant cannot show prejudice to demonstrate plain error. The State presented overwhelming evidence of Defendant's guilt.

¶ 19 Defendant received a fair trial, free from prejudicial errors he preserved or argued. We find no error in the jury's verdicts or in the judgment entered thereon. *It is so ordered.*

NO ERROR.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).