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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-112

No. COA21-237

Filed 15 February 2022

Brunswick County, No. 19 CRS 52196

STATE OF NORTH CAROLINA

v.

CHRISTOPHER PORTER

Appeal by defendant from judgment entered 23 September 2020 by Judge Jason C. Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 15 December 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Rachel A. Brunswig, for the State.*

*Sigler Law PLLC, by Kerri L. Sigler, for defendant.*

DIETZ, Judge.

¶ 1 Christopher Porter appeals his conviction for assault with a deadly weapon inflicting serious injury after he struck his brother in the face with a machete. He contends that the State failed to present sufficient evidence to overcome his arguments of self-defense and defense of habitation.

¶ 2 As explained below, the State presented substantial evidence from a witness

who testified that, when he arrived at Porter's residence, Porter was screaming and brandishing a machete in the dark. The witness further testified that, when Porter's brother approached, Porter abruptly struck him with the machete. That evidence, although disputed by other witnesses, is sufficient to overcome a motion to dismiss. We therefore reject Porter's argument and affirm the trial court's judgment.

### **Facts and Procedural History**

¶ 3 In May 2019, Jeffery Struckman arrived at the Porter residence. Defendant Christopher Porter was there at the time, as was his brother Berry and their father. After Struckman arrived, Porter at some point struck his brother in the face with a machete causing a severe laceration. Occupants of the home called 911 and law enforcement officers arrived and arrested Porter.

¶ 4 The State charged Porter with assault with a deadly weapon with intent to kill as to Struckman and assault with a deadly weapon inflicting serious injury as to Berry. Porter waived his right to a jury trial and the court held a bench trial at which Porter asserted self-defense and the defense of habitation.

¶ 5 At trial, Struckman testified that Berry asked him to come to the Porter residence that evening. Struckman explained that, when he arrived, Porter was acting erratically, "ranting and raving," and holding a machete. Struckman was worried so he called Berry. When Berry came out of the house and "tried to calm the situation down," Porter struck out at him with the machete, injuring him.

¶ 6 Porter told a different story. Porter testified that Struckman arrived at his home uninvited, threatened him, and started a violent argument because Struckman believed Porter had been intimate with his girlfriend. Porter testified that he mistakenly hit his brother in the face with the machete while trying to defend his brother and other occupants of the home from Struckman's violent attacks.

¶ 7 Berry also testified and explained that the interaction initially began between Struckman and Porter's father. Berry testified that he did not invite Struckman to the Porter residence. Porter's father also testified and his testimony was largely consistent with Berry's testimony.

¶ 8 At the close of the evidence, Porter moved to dismiss all charges. The trial court dismissed the charge of assault with a deadly weapon with intent to kill. The court found Porter guilty of assault with a deadly weapon inflicting serious injury and sentenced him to a term of 20 to 33 months in prison. Porter appealed.

### **Analysis**

¶ 9 Porter challenges the trial court's denial of his motion to dismiss the charge of assault with a deadly weapon inflicting serious injury. This Court reviews 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).

¶ 10 A trial court properly denies a motion to dismiss if there is substantial evidence that the defendant committed each essential element of the charged offense. *Id.*

“Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* When reviewing challenges to the sufficiency of the evidence, this Court “must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences.” *State v. Fritsch*, 351 N.C. 373, 378–79, 526 S.E.2d 451, 455 (2000). The court is not required to determine “that the evidence excludes every reasonable hypothesis of innocence.” *State v. Gilreath*, 118 N.C. App. 200, 205, 454 S.E.2d 871, 874 (1995). “The trial court must determine as a matter of law whether the State has offered substantial evidence of all elements of the offense charged so any rational trier of fact *could find* beyond a reasonable doubt that the defendant committed the offense.” *State v. Riddick*, 315 N.C. 749, 759, 340 S.E.2d 55, 61 (1986).

¶ 11 Ordinarily, our review under this standard focuses on the essential elements of the offense. But here, Porter does not challenge the sufficiency of that evidence. Instead, Porter contends that the State failed to present sufficient evidence that he did not act in self-defense.

¶ 12 When a criminal defendant asserts a self-defense argument, the State has the burden to show beyond a reasonable doubt that the defendant did not act in self-defense. *State v. Herbin*, 298 N.C. 441, 445, 259 S.E.2d 263, 267 (1979). Porter asserted both a traditional self-defense argument and a defense of habitation argument. Traditional self-defense cannot apply when the defendant is the aggressor.

*State v. Greenfield*, 375 N.C. 434, 441, 847 S.E.2d 749, 755 (2020). Likewise, defense of habitation cannot apply when the victim has not unlawfully or forcefully entered the home and the defendant is the aggressor. *State v. Dilworth*, 274 N.C. App. 57, 62, 851 S.E.2d 406, 410 (2020).

¶ 13 Here, the State presented substantial evidence that created fact questions on both of these defenses. Specifically, Struckman testified that he arrived at the Porter residence after being invited there by Berry and that, upon his arrival, Porter was acting erratically and abruptly swung the machete at Berry completely unprovoked:

[THE STATE]. Can you tell me what happened between you and Mr. Christopher Porter on or about May 7, 2019?

[STRUCKMAN]. Yes, ma'am. I came to see Berry. Like I say, a mutual friend. Came to see him. When I pulled up in the driveway, I hear Chris in the background beating a machete against something. I told Berry—immediately told him that his brother is acting a fool again, which is not the first time that he's acted a fool in the neighborhood. So I called Berry; Berry came out; tried to calm the situation down. And appeared to hit him in the face with the machete.

...

Q. When you first got there, what did you do?

A. Parked in the driveway.

Q. And then what did you do?

A. When I exited my vehicle, like I said, I heard Chris in the background screaming, hollering, making a ruckus. So

that's when I called Berry.

Q. When you heard the defendant, Christopher Porter, did you see him?

A. No. He was in the shadows. I couldn't really see where he was at, but I could hear where he was at.

Q. So it was dark out?

A. Yes, ma'am.

Q. Did you speak with him any?

A. I mean, there was—I could tell he was hollering and screaming towards my direction. But as far as making contact with him, I never got within 20 feet of him.

Q. What was he screaming and hollering about?

A. Something about he was a swordsman and he was going to end it tonight. And just ranting and raving.

Q. Did he ever confront you about anything?

A. Not—like I said, we never came within 20 feet of each other, so it wasn't like a contact between me and him.

Q. Okay. So you heard him screaming and hollering, and you said—did you go get Berry in person?

A. No. I called him on the phone.

...

Q. What happened after that?

A. When Berry showed up, it was like—just instantaneously happened. He stuck the machete out, he

hit Berry with it, and then we was calling 911 after that.

¶ 14 This testimony by Struckman is substantial evidence to overcome Porter’s self-defense claim and send the underlying offense to the jury. To be sure, as Porter repeatedly points out in his brief, Struckman’s testimony is inconsistent with the testimony of every other witness who described the events that night. But the determination of which witnesses are credible and which are not cannot be made at the motion to dismiss stage. *State v. Ingram*, 227 N.C. App. 383, 385, 741 S.E.2d 906, 909 (2013). At that stage, the trial court “must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences.” *Fritsch*, 351 N.C. at 378–79, 526 S.E.2d at 455. Applying that standard here, the trial court properly denied Porter’s motion to dismiss based on Struckman’s testimony.

### **Conclusion**

¶ 15 We affirm the trial court’s judgment.

AFFIRMED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).