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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-306

Filed 07 February 2023

Catawba County, Nos. 17 CRS 55200-01

STATE OF NORTH CAROLINA

v.

DANIEL JEREMIAH MINTON, Defendant.

Appeal by Defendant from judgment entered 3 June 2021 by Judge R. Gregory Horne in Catawba County Superior Court. Heard in the Court of Appeals 2 November 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Amy Kunstling Irene, for the State.

Sarah Holladay for Defendant.

GRIFFIN, Judge.

Defendant Daniel Jeremiah Minton appeals from a judgment entered upon a jury's verdict finding him guilty of second-degree murder and voluntary manslaughter. Defendant filed a petition for writ of certiorari if we find the notice of appeal given in open court was imperfect. Defendant argues that the trial court erred in its jury instruction on excessive force and the aggressor doctrine. Additionally,

Defendant contends that the trial court erred in failing to rule on his motion for judgment notwithstanding the verdict. We grant Defendant's PWC, and conclude that he received a fair trial, free from error.

I. Factual and Procedural Background

On 31 August 2017, Defendant went to Ridgecrest Apartments in Hickory, North Carolina, with Maurice Brown and DeAngelo Beatty to purchase marijuana from Cedric Hamlin. DeMarcus Beatty, DeAngelo's twin brother, assisted Brown in contacting Hamlin so Defendant could purchase marijuana. Janarion Knox and Branique McKnight were with Hamlin that day. Defendant, DeMarcus, Hamlin, Knox, McKnight, and Desmond Linder were present in the apartment during the drug deal.

During the deal, Defendant testified that McKnight told him to "give me the money and get out[,] while pointing a gun in Defendant's face. Defendant further testified that as DeMarcus ran out of the apartment—distracting McKnight—Defendant swatted McKnight's hand holding the gun, pulled out his gun, and shot McKnight "two to three times." Defendant then stated that he observed Knox pulling out a gun from the back of his pants which prompted Defendant to shove then shoot Knox as he was turning to aim his gun at Defendant.

Contrary to Defendant's testimony, several witnesses testified that Defendant ordered everyone in the apartment to not move and to get on the ground before Defendant began shooting. Hamlin and DeMarcus testified that Defendant had Knox

in a headlock with a gun pointed between Knox and McKnight. All witnesses inside the apartment during the deal stated that they did not see anyone else with a gun. Thereafter, police were called to the apartment where they found McKnight and Knox dead. Defendant later turned himself in to the police.

On 18 September 2017, Defendant was indicted for two counts of first-degree murder. At trial, the trial court instructed the jury on first-degree felony murder including robbery with a dangerous weapon as the underlying felony; second-degree murder with instructions on perfect self-defense; and voluntary manslaughter based on imperfect self-defense. Neither party objected to these instructions at trial.

On 3 June 2021, the jury found Defendant guilty of voluntary manslaughter for killing McKnight and second-degree murder for killing Knox. Following the verdict, Defendant's trial counsel made a motion for judgment notwithstanding the verdict stating that he didn't "understand the verdict[.]" and found the verdict "perplexing." The trial court proceeded without any ruling on Defendant's motion.

The trial court sentenced Defendant to 304 to 389 months imprisonment. Following sentencing, the trial court asked Defendant's trial counsel if he should "appoint the appellate defender's office[.]" Defendant's trial counsel responded "Yes, sir."

II. Analysis

A. Jurisdiction

Defendant filed a PWC, pursuant to Rule 21(a) of the North Carolina Rules of

Appellate Procedure, after trial counsel did not specifically state Defendant's intention to appeal in open court. Rule 21 states that a PWC "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, or when no right of appeal from an interlocutory order exists[.]" N.C. R. App. P. 21(a)(1). This Court has discretionary authority to allow PWCs to issue. *State v. Killette*, 381 N.C. 686, 690, 873 S.E.2d 317, 319 (2022) (citations omitted). In our discretion, we allow the PWC to issue in this case.

B. Jury Instructions

Defendant argues the trial court committed reversible error "in instructing the jury on the common law concept of excessive force [and] the . . . aggressor doctrine." Defendant failed to object to these instructions at trial.

Where a party fails to object to jury instructions at trial, this Court will review the issue for plain error. N.C. R. App. P. 10(a)(4); *State v. Odom*, 307 N.C. 655, 659–61, 300 S.E.2d 375, 378–79 (1983). Plain error occurs where "a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation omitted). A defendant must establish "that, absent the error, the jury probably would have returned a different verdict[]" to demonstrate a fundamental error occurred at trial. *Id.* at 519, 723 S.E.2d at 335. Courts are urged to apply plain error "cautiously and only in [] exceptional case[s]" where, generally, the error

“seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings[.]” *Id.* at 518, 723 S.E.2d at 334.

Defendant specifically contends the common law of self-defense, which includes the element of excessive force, has been supplanted by our statutory provisions such that, based on the plain language of the statute, excessive force is no longer an element of self-defense when deadly force is used. Further, Defendant alleges because the jury did not find Defendant guilty of felony murder, and thus did not find that Defendant attempted to rob Knox or McKnight, there was no evidence to support the aggressor doctrine instruction. Regardless of any error asserted by Defendant regarding excessive force and self-defense or the aggressor doctrine, Defendant has still failed to establish that, but-for these alleged errors, the jury probably would have returned a different verdict.

There is little evidence to support Defendant’s contention that, had excessive force not been mentioned in Defendant’s case, the jury would have returned a different verdict. Despite Defendant’s analysis of Section 14-53.1, North Carolina’s self-defense statute, and reliance on our Supreme Court’s decision in *State v. McLymore* to correctly assert that “Section 14-51.3 supplants the common law on all aspects of the law of self-defense addressed by its provisions[.]” the aggressor doctrine is still intact by the plain language of the statute. *State v. McLymore*, 380 N.C. 185, 191, 868 S.E.2d 67, 73 (2022).

Section 14-51.3 of our General Statutes states that “[a] person is justified in

using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force." N.C. Gen. Stat. § 14-51.3(a) (2021). On the other hand, the use of deadly force is justified, and the individual "does not have a duty to retreat in any place he or she has the lawful right to be if . . . [h]e or [s]he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another." *Id.* However, the use of deadly force will be unjustified if the individual "[i]nitially provokes the use of force against himself or herself." N.C. Gen. Stat. § 14-51.4(2) (2021). This final section is where the General Assembly has codified the aggressor doctrine.

Here, there is ample evidence the trial court relied on in instructing the jury on the aggressor doctrine. The trial court heard from several witnesses, present during the drug deal, who testified Defendant ordered everyone in the apartment to not move and to get on the ground before Defendant began shooting. Additionally, Hamlin and DeMarcus testified that Defendant had Knox in a headlock with a gun pointed between Knox and McKnight before he shot and killed both of them. While this testimony may not have been enough for the jury to find that Defendant attempted to rob Knox and McKnight, it was sufficient for the jury to find that Defendant was the aggressor in the situation.

Further, while Defendant alleges plain error based on the use of "excessive force" in the jury instructions, Defendant merely points out the frequency with which

the phrase “excessive force” is utilized in the trial transcript. While we do not disagree the inclusion of excessive force in the jury instructions could have had an impact as we are unaware of the jury’s basis for their conviction, only pointing to the times that excessive force was mentioned in the trial transcripts does not establish that the jury probably would have reached a different verdict. Rather, as we have established above, there was sufficient support for the trial court to instruct the jury on the aggressor doctrine and the jury would’ve reached the same verdict. Therefore, we hold Defendant has failed to establish that the jury instructions were plainly erroneous.

C. Motion for Judgment Notwithstanding the Verdict

Finally, Defendant argues “the trial court erred in failing to rule on the motion for judgment notwithstanding the verdict[,]” and that Defendant was prejudiced by the trial court’s failure. Defendant contends the jury reached a compromised verdict because he claims that the jury had to believe that Defendant either attempted to rob Knox and McKnight, or Knox and McKnight tried to rob Defendant. Additionally, Defendant claims it is “unclear [] how the jury could have concluded based on the evidence that [Defendant]” was guilty of voluntary manslaughter regarding McKnight and of second-degree murder regarding Knox.

A motion for judgment notwithstanding the verdict is treated the same as a motion to dismiss or a motion for directed verdict in criminal cases. *See State v. Draughon*, 281 N.C. App. 573, 585, 868 S.E.2d 365, 374 (2022); *State v. Coleman*, 254

N.C. App. 497, 502, 803 S.E.2d 820, 823 (2017). A trial judge must rule on a motion to dismiss prior to the trial moving forward. N.C. Gen. Stat. § 15A-1227(b) (2021). “[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the [trial] court’s action is preserved, notwithstanding [the] defendant’s failure to object at trial.” *State v. Batchelor*, 190 N.C. App. 369, 372–73, 660 S.E.2d 158, 161 (2008) (quoting *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985)).

While it does not appear the trial court explicitly ruled on the motion, Defendant cannot show that he was prejudiced. North Carolina law draws a distinction “between verdicts that are merely inconsistent and those which are legally inconsistent and contradictory.” *State v. Mumford*, 364 N.C. 394, 398, 699 S.E.2d 911, 914 (2010) (citation omitted). So long as there is sufficient evidence to support the verdicts, they will not be invalidated by mere inconsistency. *Id.* (citation omitted). Inconsistent verdicts “reflect some logical flaw or compromise in the jury’s reasoning.” *Draughon*, 281 N.C. App. at 586, 868 S.E.2d at 375 (citation omitted). On the other hand, “a verdict is legally contradictory, or mutually exclusive, when it purports to establish that the defendant is guilty of two separate and distinct criminal offenses, the nature of which is such that guilt of one necessarily excludes guilt of the other.” *Id.* (citation omitted).

Here, the verdicts were not inconsistent, legally contradictory, or mutually exclusive. Based on the jury instructions, the charge of attempted robbery with a

firearm is not mutually exclusive with imperfect self-defense. It is conceivable that, based on the evidence presented, the jury found that the State failed to prove all seven elements of attempted robbery with a firearm, but still believed Defendant acted in self-defense in his encounter with McKnight, but was either the aggressor or used excessive force under the circumstances such that his actions equated to voluntary manslaughter.

Further, substantial evidence was presented to establish Defendant acted differently between McKnight and Knox to justify the different verdicts. Witnesses testified Defendant had Knox in a headlock with a gun pointed between Knox and McKnight prior to shooting McKnight then shooting Knox in the back of the head. On the other hand, Defendant testified that McKnight told him to “give me the money and get out[,]” while pointing a gun in Defendant’s face, and that Defendant swatted McKnight’s hand holding the gun, pulled out his gun, and shot McKnight several times. Based on this testimony, it is entirely plausible the jury determined, as they were instructed, that Defendant did not act in self-defense regarding Knox, necessitating the second-degree murder conviction, but Defendant acted in imperfect self-defense regarding McKnight, requiring a verdict of voluntary manslaughter. Accordingly, we hold that Defendant failed to show he was prejudiced by the failure to rule on the motion.

III. Conclusion

We conclude that the trial court did not plainly err in its jury instructions, and

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that Defendant was not prejudiced by the failure to rule on the motion for judgment notwithstanding the verdict.

NO ERROR.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).