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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-336

Filed 21 February 2023

Scotland County, Nos. 19 CRS 69, 181; 18 CRS 52094, 52115

STATE OF NORTH CAROLINA

v.

TRAYON ANTWAN TEAL

Appeal by defendant from judgments entered 19 August 2021 by Judge Richard Kent Harrell in Scotland County Superior Court. Heard in the Court of Appeals 29 November 2022.

*Attorney General Joshua H. Stein, by Assistant Attorney General Christine Wright, for the State.*

*Patterson Harkavy LLP, by Narendra K. Ghosh, for defendant-appellant.*

ZACHARY, Judge.

Defendant Trayon Antwan Teal appeals from judgments entered upon a jury's verdicts finding him guilty of assault inflicting serious injury in the presence of a minor; habitual misdemeanor assault; assault with a deadly weapon with intent to kill inflicting serious injury ("AWDWIKISI"); assault with a deadly weapon; and two counts of injury to personal property. On appeal, Defendant argues that the trial

court erred by sentencing him for the assault inflicting serious injury in the presence of a minor and habitual misdemeanor assault convictions because the court had already sentenced him for the AWDWIKISI conviction. After careful review, we conclude that the trial court was not authorized to enter judgment and sentence Defendant for the two lesser assault offenses based on the same conduct as that underlying his AWDWIKISI conviction. *See State v. Fields*, 374 N.C. 629, 634–35, 843 S.E.2d 186, 190–91 (2020). We therefore remand the judgment entered in 19 CRS 181 to the trial court with instructions to arrest judgment on Defendant’s convictions for assault inflicting serious injury in the presence of a minor and habitual misdemeanor assault. We affirm the remaining judgment (18 CRS 52094).

### ***Background***

On 7 October 2018, Defendant and his girlfriend, Shaneekqua David, got into a heated argument in Ms. David’s home. At some point during the argument, Ms. David unintentionally broke Defendant’s laptop, and in retaliation Defendant poured water over Ms. David’s television. The argument between Defendant and Ms. David then became physical. After the two exchanged a few blows, Defendant stabbed Ms. David in the neck, back, arms, and face with a boxcutter. Ms. David’s three children—ages 13, 9, and 3 at the time—were present in the home during the attack. The oldest of Ms. David’s children, “Spencer,”<sup>1</sup> threw a metal pole and a knife at Defendant in

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<sup>1</sup> We adopt a pseudonym for ease of reading and to protect the minor victim’s identity.

an attempt to stop Defendant's attack against Ms. Davis. In response, Defendant swung the boxcutter at Spencer, but he did not make contact.

According to Ms. David, while she attempted to call 9-1-1 on her cell phone, Defendant "knocked [the phone] out of [her] hand, stepped on it, and [she] never s[aw] it again." Shortly thereafter, relatives retrieved the children and waited for law enforcement and emergency services to arrive. Ms. David was transported to the local hospital's emergency department and subsequently airlifted to another hospital for further medical treatment.

On 18 February 2019, a Scotland County grand jury returned true bills of indictment charging Defendant with interference with emergency communication, two counts of injury to personal property, and AWDWIKISI. On 29 April 2019, a Scotland County grand jury returned superseding indictments, reindicting Defendant for the same offenses; the grand jury also returned true bills of indictment charging Defendant with assault inflicting serious injury in the presence of a minor, habitual misdemeanor assault, assault with a deadly weapon, and another count of habitual misdemeanor assault. On 22 March 2021, a Scotland County grand jury returned a superseding indictment, reindicting Defendant for AWDWIKISI and also charging Defendant with attempted first-degree murder.

All of the charges brought against Defendant arose out of the 7 October 2018 physical altercation. The charges stemming from Defendant's conduct toward Ms. David were: (1) AWDWIKISI; (2) assault inflicting serious injury in the presence of a

minor; (3) habitual misdemeanor assault (predicated upon assault inflicting serious injury in the presence of a minor); (4) attempted first-degree murder; (5) interference with emergency communication; and (6) both counts of injury to personal property. The charges of (1) assault with a deadly weapon and (2) habitual misdemeanor assault (predicated upon assault with a deadly weapon) stemmed from Defendant's conduct with regard to Spencer.

The matter came on for trial in Scotland County Superior Court on 16 August 2021. On 19 August 2021, the jury returned its verdicts finding Defendant guilty of AWDWIKISI; assault inflicting serious injury in the presence of a minor; habitual misdemeanor assault, predicated upon assault inflicting serious injury in the presence of a minor; two counts of injury to personal property; and assault with a deadly weapon. The jury found Defendant not guilty on the remaining charges. The same day, the trial court entered judgments upon the jury's verdicts and sentenced Defendant to consecutive terms of imprisonment in the custody of the North Carolina Division of Adult Correction: 146 to 188 months for the AWDWIKISI conviction, followed by 16 to 29 months for the remaining convictions, which the court consolidated into one judgment. Defendant gave notice of appeal in open court.

### ***Discussion***

On appeal, Defendant argues that the trial court erred by sentencing him for assault inflicting serious injury in the presence of a minor and habitual misdemeanor assault because "he was also convicted and sentenced for AWDWIKISI."

*I. Standard of Review*

As a preliminary matter, we note that generally “[i]n order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.” *State v. Eason*, 328 N.C. 409, 420, 402 S.E.2d 809, 814 (1991); *see also* N.C.R. App. P. 10(a)(1). Here, Defendant concedes that he did not object below to the trial court entering judgments and commitment for the assault convictions. Nevertheless, “[w]hen a trial court acts contrary to a statutory mandate, the defendant’s right to appeal is preserved despite the defendant’s failure to object during trial.” *State v. Braxton*, 352 N.C. 158, 177, 531 S.E.2d 428, 439 (2000) (citation omitted), *cert. denied*, 531 U.S. 1130, 148 L. Ed. 2d 797 (2001).

“Accordingly, because Defendant contends that the trial court erred in its interpretation and application of statutory provisions, we review the merits of Defendant’s argument[s] notwithstanding his failure to object at trial.” *State v. Jamison*, 234 N.C. App. 231, 237, 758 S.E.2d 666, 671 (2014).

“Issues of statutory construction are questions of law, reviewed de novo on appeal.” *State v. Robinson*, 275 N.C. App. 330, 333, 852 S.E.2d 915, 918 (2020) (citation omitted), *aff’d as modified*, 381 N.C. 207, 872 S.E.2d 28 (2022). Under de novo review, “the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (citation and internal quotation marks omitted).

*II. Analysis*

Defendant first asserts that the trial court erred by sentencing him for assault inflicting serious injury in the presence of a minor because the court had convicted and sentenced him for AWDWIKISI, the more serious assault offense that, as the State concedes, arose from the same conduct. “Because the AWDWIKISI conviction imposes greater punishment,” Defendant argues, “the trial court should have arrested judgment for the assault in the presence of a minor conviction rather than imposing a sentence for that conviction.” We agree.

“It is well[ ]established that the intent of the Legislature controls the interpretation of a statute. If the language of a statute is unambiguous, [appellate courts] will give effect to the plain meaning of the words without resorting to judicial construction.” *Fields*, 374 N.C. at 633, 843 S.E.2d at 189–90 (citations and internal quotation marks omitted).

Concerning the crime of misdemeanor assault, our General Statutes provide, in relevant part:

*(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:*

(1) Inflicts serious injury upon another person or uses a deadly weapon . . . .

N.C. Gen. Stat. § 14-33(c)(1) (2021) (emphasis added). In addition, “inflict[ing] serious injury upon another person, or us[ing] a deadly weapon, in violation of subdivision (c)(1) of this section, on a person with whom the person has a personal relationship, and in the presence of a minor,” is a Class A1 misdemeanor. *Id.* § 14-33(d). Finally, “[a]ny person who assaults another person with a deadly weapon with intent to kill and inflicts serious injury shall be punished as a Class C felon.” *Id.* § 14-32(a).

In *State v. Fields*, our Supreme Court addressed the role that the prefatory language of N.C. Gen. Stat. § 14-33(c) serves in sentencing a defendant where his convictions for habitual misdemeanor assault—predicated upon misdemeanor assault inflicting serious injury—and felony assault inflicting serious bodily injury arose out of the same assaultive act. 374 N.C. at 632, 843 S.E.2d at 189. The *Fields* Court first determined that because the defendant’s felony assault was a Class F felony, “thereby providing greater punishment than misdemeanor assault[,]” *id.* at 634, 843 S.E.2d at 190, his conduct was “covered under some other provision of law providing greater punishment[,]” *id.* (quoting N.C. Gen. Stat. § 14-33(c)). Analyzing the plain language of § 14-33(c), the Court then reasoned that the “prefatory language would serve to prevent [the] defendant from being separately punished for both misdemeanor assault and felony assault.” *Id.* Accordingly, the *Fields* Court concluded that “[o]nce [the] defendant was found guilty of both misdemeanor assault and felony assault, this invoked the prefatory language of the misdemeanor assault statute, which served to invalidate the misdemeanor assault conviction.” *Id.* at 636, 843

S.E.2d at 191. As such, pursuant to N.C. Gen. Stat. § 14-33(c), the trial court erred by sentencing the defendant for his habitual misdemeanor assault conviction. *Id.*

The instant case presents facts akin to those in *Fields*. Like the defendant's crimes at issue in *Fields*, Defendant's assault inflicting serious injury in the presence of a minor and AWDWIKISI convictions arose out of the same assaultive act: the 7 October 2018 attack on Ms. David. And like the assault inflicting serious injury offense in *Fields*, the crime of assault inflicting serious injury in the presence of a minor is a misdemeanor, subject to the prefatory language of § 14-33(c). *See* N.C. Gen. Stat. § 14-33(c), (d). Furthermore, the offense of AWDWIKISI is a Class C felony, *id.* § 14-32(a), "thereby providing greater punishment than" the misdemeanor offense of assault inflicting serious injury in the presence of a minor, *Fields*, 374 N.C. at 634, 843 S.E.2d at 190. Consequently, Defendant's assaultive conduct against Ms. David was "covered under some other provision of law providing greater punishment." *Id.* (quoting N.C. Gen. Stat. § 14-33(c)). And just as in *Fields*, "[o]nce [D]efendant was found guilty of both misdemeanor assault and felony assault, this invoked the prefatory language of the misdemeanor assault statute, which served to invalidate the misdemeanor assault [inflicting serious injury in the presence of a minor] conviction." *Id.* at 636, 843 S.E.2d at 191. Accordingly, we conclude that the trial court erred by sentencing Defendant for assault inflicting serious injury in the presence of a minor where the offense arose out of the same assaultive act as the AWDWIKISI.



Defendant next asserts that because the court erred by sentencing him for assault inflicting serious injury in the presence of a minor—the predicate offense for the habitual misdemeanor assault conviction—“the trial court should have also arrested judgment for the habitual misdemeanor assault conviction rather than imposing a sentence for that conviction.” Again, we agree with Defendant.

Our General Statutes provide that a “person commits the offense of habitual misdemeanor assault if that person”: (1) “violates any of the provisions of [N.C. Gen. Stat. §] 14-33 and causes physical injury”; and (2) “has two or more prior convictions for either misdemeanor or felony assault” within the past 15 years. N.C. Gen. Stat. § 14-33.2.

In *Fields*, the Court explained that although the habitual misdemeanor assault statute lacked the prefatory language found in § 14-33(c), the trial court nonetheless erred by sentencing the defendant for his habitual misdemeanor assault conviction:

[The] defendant’s guilt of habitual misdemeanor assault required that he first have violated the misdemeanor assault statute. But because the prefatory language of the misdemeanor assault statute was triggered, his conduct was not deemed to constitute a violation of that statute. Thus, absent a violation of the misdemeanor assault statute, he could not be guilty of habitual misdemeanor assault, and as a result, the trial court erred in sentencing him for that offense.

374 N.C. at 635, 843 S.E.2d at 191. In other words, because § 14-33(c)’s prefatory language “invalidate[d]” the underlying misdemeanor assault conviction, the “defendant could not be punished for habitual misdemeanor assault.” *Id.* at 636, 843

S.E.2d at 191. The *Fields* Court thus held that “based on the effect of the prefatory language contained in the misdemeanor assault statute coupled with the fact that both of [the] defendant’s convictions arose from the same assaultive act[,]” the trial court should have arrested judgment on the other convictions and sentenced the defendant for the felony assault conviction alone. *Id.* at 637, 843 S.E.2d at 191.

In the case at bar, the assault inflicting serious injury in the presence of a minor conviction served to demonstrate that Defendant “violate[d] any of the provisions of [N.C. Gen. Stat. §] 14-33 and cause[d] physical injury”—a required element for the crime of habitual misdemeanor assault. N.C. Gen. Stat. § 14-33.2. But as explained above, Defendant’s AWDWIKISI conviction triggered § 14-33(c)’s prefatory language, “which served to invalidate the misdemeanor assault [inflicting serious injury in the presence of a minor] conviction.” *Fields*, 374 N.C. at 636, 843 S.E.2d at 191. Consequently, Defendant’s “conduct was not deemed to constitute a violation of that statute.” *Id.* at 635, 843 S.E.2d at 191. “Thus, absent a violation of the misdemeanor assault statute, [Defendant] could not be guilty of habitual misdemeanor assault, and as a result, the trial court erred in sentencing him for that offense.” *Id.*

### ***Conclusion***

“[B]ased on the effect of the prefatory language contained in the misdemeanor assault statute coupled with the fact that both of [D]efendant’s convictions arose from the same assaultive act[,]” *id.* at 637, 843 S.E.2d at 191, the trial court lacked

authority to enter judgment and sentence Defendant for assault inflicting serious injury in the presence of a minor and habitual misdemeanor assault. Therefore, the appropriate course of action is to arrest judgment on Defendant's convictions for assault inflicting serious injury in the presence of a minor and habitual misdemeanor assault in 19 CRS 181. *Id.* at 636–37, 843 S.E.2d at 191.

Accordingly, we remand to the trial court with instructions to arrest the judgment entered in 19 CRS 181, and to resentence Defendant on the remaining charges, consistent with this opinion. We affirm the judgment entered in 18 CRS 52094.

AFFIRMED IN PART; REMANDED FOR RESENTENCING.

Judges WOOD and GORE concur.

Report per Rule 30(e).