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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-499

Filed 21 February 2023

Surry County, Nos. 18 CRS 52806, 19 CRS 461

STATE OF NORTH CAROLINA

v.

RONALD MATTHEWS SPEAKS, Defendant.

Appeal by Defendant from judgments entered 6 January 2022 by Judge William A. Wood II in Surry County Superior Court. Heard in the Court of Appeals 25 January 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc X. Sneed, for the State.

Stanley F. Hammer for defendant-appellant.

MURPHY, Judge.

To be entitled to an instruction on justification in relation to a charge of possession of a firearm by felon, a defendant must be able show, *inter alia*, that he had no reasonable legal alternative to violating the law. Even in the light most favorable to Defendant, here, the evidence shows that he continued to keep a pistol in his back pocket after being specifically asked by officers whether he possessed a

firearm. Once asked, Defendant had a reasonable legal alternative to violating the law.

BACKGROUND

This case arises out of an altercation between Defendant Ronald Matthews Speaks and his acquaintance, Dillon Lewis, Jr., also known as “Rick.” Defendant contends that, during or near this altercation, he was justified in taking up a firearm despite being a convicted felon. On appeal, Defendant argues the trial court erred in failing to instruct the jury on justification; accordingly, we base our review on the evidence viewed in the light most favorable to him. *State v. Mash*, 323 N.C. 339, 348 (1988).

During the evening of 8 August 2018, Lewis unexpectedly appeared at Defendant’s residence, where Defendant lived alongside his friend Angela Tate, his mother, and his father. Defendant believed Lewis, despite having arrived with a large wrench, an open bottle of whiskey, and a .38 Imperial Arms revolver pistol, had come to apologize for assaulting him several days prior. Over the course of several hours, Defendant and Lewis—eventually joined by Tate—carried on a peaceful conversation, the details of which were never specified in the Record.

However, at some point, Lewis became “louder and arrogant[,]” prompting Defendant and his mother to ask Lewis to leave. Lewis, “intoxicated and high” as tensions grew, stood up and began waving his pistol. While waving his pistol, Lewis was moving toward Angela, saying “you gonna get it, you gonna get it.” Angela, who

felt unsafe in light of Lewis's behavior, left the house. And Defendant—physically disabled due to a prior infection in his hip—remained seated, attempting to defuse the situation.

Some unspecified amount of time after Lewis began waving his pistol, he set the pistol down beside a chair in Defendant's home and stepped outside. Defendant, wary of Lewis's prior behavior and concerned he may have stepped outside to pursue Tate, placed the pistol in his back pocket.

Defendant also eventually stepped outside; however, by the time he did—approximately 2:40 a.m. on 9 August 2018—the police were present, having responded to a 911 call by Lewis.¹ Defendant, when asked, initially denied having a firearm, but was quickly discovered to have had Lewis's pistol upon being frisked. Defendant acknowledged having had a prior felony conviction after officers retrieved the weapon.

Defendant was indicted for possession of a firearm by felon and attaining habitual felon status on 15 July 2019 and tried on 5 January 2022. At the charge conference, Defendant requested the trial court instruct the jury on justification, but the trial court denied the request on the basis that Defendant, when given the opportunity to relinquish the pistol to officers, failed to do so. Before closing arguments, Defendant renewed the motion, which the trial court again denied.

¹ It is unclear from the Record exactly when, relative to the surrounding events, Lewis called the police.

The jury found Defendant guilty of possession of a firearm by felon; and, subsequently, Defendant pled guilty to attaining habitual felon status and received an active sentence of 58 to 82 months. Defendant timely appealed.

ANALYSIS

On appeal, Defendant argues the trial court erred in failing to instruct the jury on the defense of justification.² “A trial court’s decisions regarding jury instructions are reviewed de novo.” *State v. Williams*, 283 N.C. App. 538, 542 (2022) (citing *State v. Osorio*, 196 N.C. App. 458, 466 (2009)). “When determining whether the evidence is sufficient to entitle a defendant to jury instructions on a defense . . . courts must consider the evidence in the light most favorable to [the] defendant.” *Mash*, 323 N.C. at 348.

“A trial court must give a requested instruction if it is a correct statement of the law and is supported by the evidence.” *State v. Hudgins*, 167 N.C. App. 705, 708 (2005) (marks and citations omitted). “To resolve whether a defendant is entitled to a requested instruction, we review de novo whether each element of the defense is supported by the evidence, when taken in the light most favorable to [the] defendant.” *State v. Mercer*, 373 N.C. 459, 462 (2020) (citing *Mash*, 323 N.C. at 348). Here, as Defendant requested the instruction at issue, we must examine whether the law and

² Defendant also filed a *Petition for Writ of Certiorari* seeking our review of a number of challenges to his attainment of habitual felon status. However, by a contemporaneous order, we have denied Defendant’s petition and do not reach those challenges.

the facts supported a defense of justification.

“[J]ustification is an affirmative defense and does not negate any element of [possession of a firearm by felon].” *Id.* at 463. “[L]ike other affirmative defenses, a defendant has the burden to prove his or her justification defense to the satisfaction of the jury.” *Id.* (citing *State v. Sanders*, 280 N.C. 81, 85 (1971)). In *State v. Mercer*, our Supreme Court held that a defendant charged with possession of a firearm by a felon must show the following to establish a justification defense:

(1) that the defendant was under unlawful and present, imminent, and impending threat of death or serious bodily injury; (2) that the defendant did not negligently or recklessly place himself in a situation where he would be forced to engage in criminal conduct; (3) that the defendant had no reasonable legal alternative to violating the law; and (4) that there was a direct causal relationship between the criminal action and the avoidance of the threatened harm.

Id. at 464.³ The parties disagree as to whether the evidence supports the first, third, and fourth elements of the justification defense.

Even in the light most favorable to Defendant, the evidence in this case does not support a jury instruction on justification because Defendant cannot show he had “no reasonable legal alternative” to possessing Lewis’s pistol at the time it was

³ The State underscores the *Mercer* Court’s statement that justification with respect to possession of a firearm by felon will only occur in “narrow and extraordinary circumstances[.]” *Id.* at 463. We understand this statement to reflect the unlikelihood that the typical felon in possession of a firearm will meet all of these elements, not to suggest the showing required of a defendant to receive the instruction at all is heightened.

actually discovered. *Id.* Assuming, *arguendo*, Defendant would have been justified in possessing the pistol at the time he left his home, he denied having the weapon when asked by officers. At this point, Defendant had a clear and specific opportunity to relinquish the pistol allegedly taken up to resolve an imminent threat; thus, the undisputed evidence shows that Defendant had a reasonable legal alternative to possessing the pistol before he was frisked and the weapon was discovered by law enforcement. Under these facts, we conclude Defendant was not entitled to a justification instruction.⁴

CONCLUSION

At the latest, Defendant had a reasonable legal alternative to possessing a firearm when he was asked by officers whether he had a weapon. The trial court correctly omitted Defendant's requested jury instruction.

NO ERROR.

Judges DILLON and FLOOD concur.

Report per Rule 30(e).

⁴ Defendant has argued on appeal that, under the Fifth Amendment of the U.S. Constitution, he had the right not to incriminate himself when asked. However, Defendant did not raise the issue at trial, and it is well established that "constitutional issues cannot be raised for the first time on appeal." *State v. Wright*, 200 N.C. App. 578, 584 (2009) (citing *State v. Anthony*, 354 N.C. 372, 389 (2001), *cert. denied*, 536 U.S. 930 (2002)), *appeal dismissed*, 363 N.C. 312 (2010).