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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 22-900

Filed 06 June 2023

Henderson County, No. 18 CRS 53520

STATE OF NORTH CAROLINA,

v.

KENNETH LANORD MILLS, Defendant.

Appeal by defendant from judgment entered 4 February 2022 by Judge William Coward in Henderson County Superior Court. Heard in the Court of Appeals 26 April 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Joseph Finarelli, for the State.*

*Christopher J. Heaney, for the Defendant-Appellant.*

DILLON, Judge.

Defendant Kenneth Lanord Mills appeals from a judgment sentencing him to life without parole based on a jury's verdict convicting him of first-degree murder. We conclude that Defendant received a fair trial, free of reversible error.

I. Background

In the days leading up to 23 August 2018, Tajahre McGrady sent Shalynn

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Pryor numerous messages challenging her to a fistfight following a verbal altercation that occurred between the two. Ms. McGrady and Ms. Pryor agreed to meet at Sullivan Park in Hendersonville.

That afternoon, Ms. McGrady arrived at the park with her fiancé, Lavoris Brown, and several friends. Ms. Pryor arrived shortly after. Also present was Defendant and his girlfriend, Shameil Baker, who was also a friend of Ms. Pryor's.

After a brief verbal exchange, Ms. Pryor and Ms. McGrady began fighting. A recording of the altercation was played for the jury.

Mr. Brown intervened and attempted to separate the two women. Ms. Baker rushed in and tried to push Mr. Brown away, testifying during trial that she "went to approach [Mr. Brown] to tell him not to grab [Ms. Pryor] in that manner."

Witness accounts varied regarding Mr. Brown's response to Ms. Baker's intervention. One witness testified that Mr. Brown merely pushed Ms. Baker away, while Ms. Baker, along with another witness, testified that Mr. Brown "hit" Ms. Baker. Defendant testified that Mr. Brown turned around to strike Ms. Baker and when Ms. Baker stepped back, he began to "attack... and hit [] her again." Defendant testified that he saw Mr. Brown move his hands towards his waist, as if reaching for a gun. With a pistol, Defendant then shot Mr. Brown, who was pronounced dead at the scene.

At trial, Defendant testified that he shot Mr. Brown to defend himself and Ms. Baker. He was convicted by jury of first-degree murder and sentenced to life without

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parole. Defendant appeals his conviction, arguing that (1) the trial court erred in telling the jury not to consider Defendant's testimony concerning Mr. Brown's violent reputation, and (2) the trial court committed plain error when it omitted jury instructions stating that Defendant could regain the right to use defensive force even if Ms. Baker was the initial aggressor. We conclude that the trial court did not commit reversible error.

II. Analysis

A. Reputation Testimony

We first address Defendant's argument that the trial court erred by excluding Defendant's testimony regarding Mr. Brown's reputation for violence. Specifically, Defendant testified that Mr. Brown had a reputation in the community for "[b]eing very dangerous, violent, bully, always fighting people, beating up people, always having a gun, pointing guns at people all the time, gang member, felon." The trial court sustained the State's objection to the testimony.

The decision "to exclude evidence under Rule 403 is a matter left to the sound discretion of the trial court." *State v. Stager*, 329 N.C. 278, 308, 406 S.E.2d 876, 893 (1991). That decision can be reversed only upon a showing of abuse of discretion. *State v. Hipps*, 348 N.C. 377, 405-06, 501 S.E.2d 625, 642 (1998). Further, "evidentiary error does not necessitate a new trial unless the erroneous admission was prejudicial." *State v. Wilkerson*, 363 N.C. 382, 415, 683 S.E.2d 174, 195 (2009) (citations omitted). "In order to obtain a new trial, it is incumbent on a defendant to

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not only show error but also to show that the error was so prejudicial that without the error it is likely that a different result would have been reached.” *State v. Malachi*, 371 N.C. 719, 733, 821 S.E.2d 407, 418 (2018).

Here, the State argues that even if the trial court erred by excluding Defendant’s testimony, Defendant was not prejudiced given the “abundance of evidence” that the jury heard regarding Mr. Brown’s reputation for violence. Specifically, four of Defendant’s witnesses testified that Mr. Brown had a reputation for being “aggressive” and a “bully.” For example, Ms. Pryor testified that Mr. Brown was a “bully and aggressive, mean, [and] not a nice person.” And Ms. Baker testified that Mr. Brown had a reputation for being a “bully” and “aggressive and a lot of females, for one, feared [themselves] around him.”

Of course, in self-defense cases, the victim’s reputation for violence is relevant as it pertains to the reasonableness of the defendant’s apprehension and use of force, which are essential elements of a self-defense theory. *State v. Corn*, 307 N.C. 79, 85, 296 S.E.2d 261, 265-66 (1982). Thus, testimony concerning Mr. Brown’s reputation is only relevant if Defendant knew of the reputation “at the time of the encounter.” *State v. Ray*, 125 N.C. App. 721, 725, 482 S.E.2d 755, 758 (1997).

Here, the jury *did* have the opportunity to hear other testimony from Defendant relating to the reasonableness of his apprehension and use of force. Specifically, Defendant testified to the following: (1) that he saw Mr. Brown carrying a gun that day, (2) that he “knew” Defendant had a gun on him, (3) that Mr. Brown

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was “screaming and yelling” and said that “someone is either going to get hurt or die today,” (4) that Mr. Brown moved his hands down to his waist in the vicinity of where Defendant believed he kept the gun, (5) that Mr. Brown had “dangerous friends” at the park who had guns, (6) and finally, that he feared for his life and the lives of others in the park that day. Because the jury heard all the above testimony, the trial court’s decision to exclude Defendant’s testimony regarding Mr. Brown’s reputation for violence did not prejudice him.

B. Jury Instructions

Defendant next argues that the trial court committed plain error by not instructing the jury regarding self-defense that, pursuant to N.C. Gen. Stat. § 14-51.4(2)(a), a defendant may regain the right to use defensive force even if he is the initial aggressor.

We note that during trial, Defendant requested only that the trial court instruct the jury on common law perfect self-defense and imperfect self-defense. Thus, it could be argued that Defendant did not properly preserve this issue for our review. *State v. Sharpe*, 344 N.C. 190, 194, 473 S.E.2d 3, 5 (1996) (“This Court has long held that where a theory argued on appeal was not raised before the trial court, ‘the law does not permit parties to swap horses between courts in order to get a better mount [on appeal].’”)

However, Defendant cannot show that the alleged error “tipped the scales” and was “fundamental” such that “justice cannot have been done.” *State v. Odom*, 307

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N.C. 655, 660, 300 S.E.2d 375, 378 (1983). The jury received instructions on perfect and imperfect self-defense under common law and were instructed that the charges of second-degree murder or voluntary manslaughter were appropriate if Ms. Baker was the initial aggressor. Thus, the jury's decision to convict Defendant of first-degree murder shows that the jury was not persuaded by Defendant's theory of self-defense anyway.

Therefore, we conclude that the trial court's omission of § 14-51.4(2)(a) from its jury instructions did not amount to plain error.

III. Conclusion

Because Defendant was not prejudiced by the exclusion of his statements regarding Mr. Brown's reputation for violence, we conclude that the trial court did not commit reversible error on the first issue. We also conclude that the trial court did not commit plain error when it neglected to instruct the jury as to Defendant's ability to regain the use of defensive force pursuant to Section 14-51.4(2)(a) of our General Statutes. Therefore, we conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges WOOD and FLOOD concur.

Report per Rule 30(e).