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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-395

Filed 06 June 2023

Buncombe County, Nos. 18CRS92442, 21CRS331

STATE OF NORTH CAROLINA

v.

KAGAN FRANSWARD WILLIAMS, Defendant.

Appeal by defendant from judgments entered on or about 1 November 2021 by Judge Jacqueline D. Grant in Superior Court, Buncombe County. Heard in the Court of Appeals 15 November 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Jasmine McGhee, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant-appellant.

STROUD, Chief Judge.

Defendant appeals from judgments entered on jury verdicts finding him guilty of assault inflicting serious bodily injury by strangulation and attempted second-degree forcible rape. Defendant contends the trial court erred by concluding he violated discovery rules, and therefore precluded him from offering the defense of

voluntary intoxication to negate the specific intent element of the attempted rape offense. Because Defendant was not entitled to a jury instruction or closing argument on the defense of voluntary intoxication, we conclude the trial court committed no error.

I. Background

To protect the victim, we note only the background necessary for an understanding of the issue on appeal. The State's evidence tended to show that in December of 2018, Sarah was 20 years old. About six years earlier, when she was about 14 years old, Sarah had casually socialized with Defendant, but he had then moved away. In 2018, Defendant reached out to Sarah on Facebook Messenger and the two met at a bar where both drank alcoholic beverages; while at the bar, Defendant purchased some of Sarah's drinks. Defendant was "inebriated enough for [Sarah] not to want him to drive home that night." After they had returned to Sarah's home from the bar, Defendant demanded sex or money for the drinks he had purchased. Sarah refused to have sex with him. Thereafter, Defendant strangled Sarah, held her down, and hit her to the point of unconsciousness as he attempted to rape her. Sarah eventually woke her roommate up, and her roommate made Defendant leave their home.

Thereafter, at 5:02 a.m. on the morning of 3 December 2018, Defendant sent Sarah a message on Facebook Messenger. Sarah read the message verbatim at trial; Defendant told Sarah: "I'm sorry, but you really tried the shit out of me after I've

been nothing but genuine. Alcohol ain't help. Honestly it would be a plus sometimes . . . I don't know how, but I'll make it up to you WHENEVER you ready to let me in[.]” (Formatting altered.) Sarah sought medical attention on the morning of the attack and spoke to a police officer while at the hospital.

Several of the State's witnesses testified about Sarah's description of the attack on 3 December 2018. The State presented testimony from Sarah's roommate, the responding police officer from the hospital, a forensic nurse, an emergency room physician, and a detective. The portions of testimony relevant to Defendant's appeal can be summarized as follows: the forensic nurse testified that Sarah stated Defendant “had been drinking a lot and was really drunk[;]” the responding police officer at the hospital testified Sarah stated she and Defendant “were drinking, drinking all night, and that he was too intoxicated to drive home[;]” Sarah testified on cross-examination, in addition to her testimony discussed above, that Defendant was “still highly inebriated” at the time of the assault; Sarah's roommate testified Sarah told her that Sarah and Defendant “had went out to the bar and that they were drinking[;]” the emergency room physician testified that Sarah stated “she and her friends had been drinking some alcohol[;]” and the investigating detective testified, based on his notes from his investigation, that Sarah stated Defendant “was intoxicated” during the 3 December 2018 assault, and had purchased Sarah's drinks. The State rested its case in the afternoon on 28 October 2021. Defendant did not present evidence and rested his case on the morning of 29 October 2021.

STATE V. WILLIAMS

Opinion of the Court

It is not clear when, but at some point after the State rested its case on 28 October 2021, Defendant's counsel sent the trial court and the prosecutor, by email, a notice of intent to offer the defense of voluntary intoxication. The record contains Defendant's notice, which is signed 28 October 2021, but which was filed with the trial court at 9:38 a.m. on 29 October 2021. The transcript indicates Defendant handed this notice to the trial court shortly after proceedings resumed at 9:43 a.m. on 29 October 2021, just before Defendant rested his case. A statement by the prosecutor on the morning of 29 October 2021, indicates that the prosecutor and trial court may have been made aware of the notice as early as 9:45 p.m. on 28 October 2021, when Defendant emailed his proposed jury instructions to the trial court.

Prior to trial, on 25 October 2021, the trial court had ruled on various pretrial motions, including the State's motion for reciprocal discovery, which the State had filed in early September. During the hearing on the State's motion, Defendant informed the trial court he had no discoverable material pursuant to North Carolina General Statute § 15A-905; this statute includes notification of the affirmative defense of voluntary intoxication. The trial court granted the State's motion and ordered "to the extent the defendant does have any discovery that would be discoverable and should be turned over pursuant to North Carolina General Statute 15A-905, the defendant is directed to do so." Defendant later confirmed on 29 October 2021, during the trial court's charge conference and after Defendant had handed up the notice on voluntary intoxication, that Defendant had told the trial court he would

not assert any affirmative defenses.

On 29 October 2021, after hearing arguments by both the State and Defendant during the charge conference, the trial court orally ruled on Defendant's proposed jury instructions, including the request for an instruction on voluntary intoxication:

Okay, so the Court is going to deny the defendant's request for an instruction on the defense of voluntary intoxication, and for several reasons, and of course it is within Statute 15A-910.

In looking at this, the discovery was turned over to [Defense counsel] on September 21st of 2021 before he actually entered an appearance in this case, and it includes statements that the defendant was too drunk to drive home, which is why [Sarah] offered him to stay at her house.

Also at the beginning of this case, when reviewing with the attorneys the charges and whether there was any affirmative defenses that the defendant intended to offer, the response from defense counsel was there were none. And at that time -- plus, you've had access to your client to discuss the case. You didn't have to use it, but you could have expressed an intent [you] may use [the] affirmative defense of voluntary intoxication.

To give absolutely no notice of it until after the State rests their case and right when you're ready to rest your case is prejudicial . . . to the State, because it doesn't give them an opportunity to present witnesses or to present evidence potentially rebutting the defense of there's sufficient voluntary intoxication. So the Court is going to deny that request.

During Defendant's closing argument, Defendant attempted to argue the defense of voluntary intoxication. Defendant argued "attempt is a specific intent

crime” and “a specific intent crime, you have to have your wherewithal enough to create that specific intent. So voluntary intoxication, getting drunk or being drunk is a defense to specific . . . [.]” at which point the State objected, and the trial court sustained the State’s objection. The trial court did not instruct the jury on the defense of voluntary intoxication but did instruct the jury that attempted second-degree forcible rape is a specific intent offense.

The jury returned verdicts finding Defendant guilty of attempted second-degree forcible rape and assault by strangulation. Defendant gave oral notice of appeal. The trial court entered judgments on Defendant’s convictions.

II. Voluntary Intoxication

Defendant presents one issue on appeal:

Whether the trial court’s refusal to instruct the jury on the defense of voluntary intoxication on the charge of attempted rape and sustaining the State’s objection to a defense argument in closing on this defense as a sanction for a purported discovery violation was an abuse of discretion and deprived Defendant Kagan Williams of his State and federal Constitutional due process right to present a defense?

(Capitalization altered.)

A. Jury Instructions

Even generously assuming *arguendo* Defendant had complied with the discovery order, he still was not entitled to a defense of voluntary intoxication, and therefore Defendant’s constitutional due process rights could not have been violated

as to this issue.

1. *Standard of Review*

This Court reviews the trial court's decision not to instruct the jury on voluntary intoxication *de novo*:

To determine whether a defendant is entitled to a requested instruction on voluntary intoxication, this Court reviews *de novo* whether each element of the defense is supported by substantial evidence when taken in the light most favorable to the defendant. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

State v. Meader, 377 N.C. 157, 162, 856 S.E.2d 533, 537 (2021) (citations and quotation marks omitted).

2. *Specific Intent*

To convict a defendant of attempted rape, the State must prove, beyond a reasonable doubt, two essential elements: (i) that defendant had the specific intent to rape the victim The element of intent as to the offense of attempted rape is established if the evidence shows that defendant, at any time during the incident, had an intent to gratify his passion upon the victim, notwithstanding any resistance on her part.

State v. Schultz, 88 N.C. App. 197, 200, 362 S.E.2d 853, 855-86 (1987) (citations omitted), *aff'd per curiam*, 322 N.C. 467, 368 S.E.2d 386 (1988).

Our Supreme Court has noted:

The doctrine of voluntary intoxication should be applied with great caution. A defendant is not entitled to an instruction on voluntary intoxication in every case in which a defendant consumes intoxicating beverages or controlled

substances.

To obtain a voluntary intoxication instruction, a defendant

must produce substantial evidence which would support a conclusion by the judge that she was so intoxicated that she could not form the specific intent. *The evidence must show that at the time of the crime the defendant's mind and reason were so completely intoxicated and overthrown as to render her utterly incapable of forming specific intent.* In absence of some evidence of intoxication to such degree, the court is not required to charge the jury thereon.

There must be some evidence tending to show that the defendant's mental processes were so overcome by the excessive use of liquor or other intoxicants that he had temporarily, at least, lost the capacity to think and plan. A defendant who wishes to raise an issue for the jury as to whether he was so intoxicated by the voluntary consumption of alcohol has the burden of producing evidence, or relying on evidence produced by the State, of his intoxication. Evidence of mere intoxication is not enough to meet defendant's burden of production.

Meador, 377 N.C. at 162, 856 S.E.2d at 537 (emphasis added) (citations, quotation marks, ellipses, and brackets omitted). “When determining whether the evidence is sufficient to entitle a defendant to jury instructions on a defense or mitigating factor, courts must consider the evidence in the light most favorable to defendant.” *State v. Mash*, 323 N.C. 339, 348, 372 S.E.2d 532, 537 (1988).

Defendant presented no evidence at trial. Even taking the State's evidence “in the light most favorable to [D]efendant[.]” *id.*, the evidence was insufficient to support

a jury instruction on voluntary intoxication. There was no evidence of how much alcohol Defendant actually drank, and the only evidence of his intoxication were statements Sarah made, none of which come close to indicating “defendant’s mental processes were so overcome by the excessive use of liquor or other intoxicants that he had temporarily, at least, lost the capacity to think and plan.” *Meador*, 377 N.C. at 162, 856 S.E.2d at 537; *cf. Mash*, 323 N.C. at 340-41, 348-49, 372 S.E.2d at 533-34, 538 (noting as to the defendant’s crime of first-degree murder there was evidence the defendant was “drunker, wilder and out of control[;]” his “eyes were dilated, his complexion had changed, he was sweating and had difficulty speaking or walking[;]” at one point the defendant was “spinning doughnuts” outside of a liquor store; the defendant was “staggered and seemed dazed[;]” and even after the defendant reached this level of intoxication he continued to drink beer in a liquor store parking lot).

In fact, Sarah’s statements tend to indicate Defendant was thinking and had a plan, as Defendant demanded sex in return for the drinks he purchased. Defendant also attempted to justify his own behavior, which he remembered, by his statements on Facebook Messenger. The evidence plainly demonstrates Defendant, “had an intent to gratify his passion upon the victim, notwithstanding any resistance on her part.” *Schultz*, 88 N.C. App. at 200, 362 S.E.2d at 856. This evidence does not “show that at the time of the crime the defendant’s mind and reason were so completely intoxicated and overthrown as to render him utterly incapable of forming specific intent.” *Mash*, 323 N.C. at 346, 372 S.E.2d at 536 (citation and brackets omitted).

“In absence of some evidence of intoxication to such degree, the court is not required to charge the jury” with voluntary intoxication. *Id.* This argument is overruled.

B. Closing Argument

By the same logic as noted above, the trial court did not err in sustaining the State’s objection to Defendant’s closing argument. “[C]ontrol of jury argument is left to the discretion of the trial judge[.]” *State v. Huey*, 370 N.C. 174, 179-80, 804 S.E.2d 464, 469 (2017). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

“It is well-established that counsel’s closing argument must be constructed from fair inferences drawn only from evidence properly admitted at trial.” *State v. Rashidi*, 172 N.C. App. 628, 642, 617 S.E.2d 68, 77 (2005) (quotation marks omitted). As there was no evidence Defendant was voluntarily intoxicated to the level required for an affirmative defense, there was no evidence for the jury to draw “fair inferences” from. *See id.* The trial court did not abuse its discretion in sustaining the State’s objection. This argument is overruled.

III. Conclusion

Defendant was not entitled to a jury instruction on the defense of voluntary intoxication nor to make an argument regarding that defense in his closing argument. The trial court did not err in denying Defendant an instruction on voluntary intoxication and sustaining the State’s objection to Defendant’s closing argument as

STATE V. WILLIAMS

Opinion of the Court

to statements about voluntary intoxication. We conclude there was no error.

NO ERROR.

Judges DILLON and GORE concur.

Report per Rule 30(e).