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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-357

Filed 15 August 2023

Randolph County, No. 19 CRS 052463

STATE OF NORTH CAROLINA,

v.

BRIDGETTE LEE RICHARD a/k/a BRIDGETTE LEE RICHARDS, Defendant.

Appeal by Defendant from judgment entered 14 October 2021 by Judge James P. Hill Jr. in Randolph County Superior Court. Heard in the Court of Appeals 11 January 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Stuart M. Saunders, for the State.

Joseph P. Lattimore for defendant-appellant.

MURPHY, Judge.

Defendant Bridgette Richard, a/k/a Bridgette Richards,¹ appeals her conviction of assault with a deadly weapon inflicting serious injury on the bases that the trial court erred by failing to instruct the jury on self-defense and that she

¹ At trial, Defendant spells out her name as “Richards.” The verdict also lists her name as “Richards,” while the judgement uses “Richard.” References to the spelling of Defendant’s name in the parties’ briefs vary.

received ineffective assistance of counsel. However, the evidence, in the light most favorable to Defendant, did not warrant an instruction on self-defense; and, as her ineffective assistance of counsel argument was predicated on a failure to request a self-defense instruction, we also hold that Defendant did not receive ineffective assistance of counsel.

BACKGROUND

On 2 May 2019, Francina Gullett heard that Defendant was upset about an alleged vehicle collision between their cars. Gullett and Defendant exchanged heated conversation about the alleged collision.

Gullett testified that she was willing to resolve the collision through insurance, but that Defendant smacked a cup out of Gullett's hand. Gullett stated that, after this interaction, the altercation ensued. Gullett also thought that Defendant scratched Gullett during the fight, and Gullett did not see what cut her. The fight continued until Gullett's friend pulled them apart.

Defendant testified that a friend told her that Gullett wanted to resolve the issue with insurance or to fight. She also stated that Gullett struck Defendant first, "mushing" her on her face and punching her head. Defendant testified that she noticed her arm started bleeding during the fight, and she wanted to stop Gullett from using the weapon. Both women required stitches for wounds suffered during the fight, though Gullett was more severely injured and was left with lasting scars.

On 13 October 2021, Defendant was tried for assault with a deadly weapon inflicting serious injury. After the close of all evidence, Defendant's counsel requested a self-defense instruction, but withdrew the request before the trial court's decision. The trial court still considered the withdrawn request and denied it because "Defendant did not recall assaulting the prosecuting witness." Defendant did not object to the trial court's instructions to the jury.

Gullett testified as follows:

I got a phone call that said . . . [Defendant] was upset because I hit her car when I left and that she wanted to fight me about it, that she was upset. And I told them, you know, I have State Farm insurance, we can handle that if there was an accident, or whatnot. So I came back to the scene, and everybody was standing outside. I went to talk to Archie, and we were talking about the situation. And she came up from behind us and was kind of just like "F" the State Farm. You told him that I hit you with my car, or something like that. And I told her, you know, you came this close to hitting me with the car. That's when she smacked my hand and smacked the cup out of my hand, and we started fighting.

. . .

I kept saying like stop scratching me, stop scratching me, and we fell to the ground. And Dominique picked me up, and blood just started rushing down my face. That's when I realized I had been cut.

Then, the State questioned Gullett about the details of the fight:

[STATE]: Did you see what you were being cut with?

[GULLETT]: No.

[STATE]: Did you see anything?

[GULLETT]: Uh-uh.

[STATE]: Who made the first strike?

[GULLETT]: She did.

[STATE]: And could you describe to the jury what the first strike was?

[GULLETT]: Smacking my cup out of my hand and swinging.

. . .

[GULLETT]: When she hit the cup out of my hand, she swung, and so I just started swinging at the same time. We – we twirled around for a minute. Then I – I guess she had cut me in the back because I fell that way. After I got cut in the back, I fell down, and then she was on top of me. And I kept saying stop scratching me. I didn't know that she was cutting my face, and someone pulled her off me.

Terra Hayes, a witness presented by Defendant, later testified:

[HAYES]: I observed [Gullett] reaching behind, reaching around Archie McDonald, mushing [Defendant] in the face, and I seen a silver object in her hand. And when she came up and around-- when -- after she mushed her, I seen something in her hand. And evidently [Defendant's] arm got cut, and they locked up. And that was really the brawl.

. . .

[DEFENSE COUNSEL]: Okay. So -- but the first thing you saw . . . was Ms. Gullett mush [] Defendant in the face?

[HAYES]: Yes.

[DEFENSE COUNSEL]: And did you feel that that's what started the fight?

[HAYES]: Yes.

Defendant then testified to her version of the events:

So [Archie] called [Gullett], and she said [to Archie], well, she said she got insurance, and if you want to fight, she's willing to fight. It's either way, she doesn't care.

. . . .

I went in on that side [of the house] because I didn't want any physical contact with us. I didn't want any confrontation. He said she wants to talk to you about hitting your car. I said I don't want to talk. . . . I'm getting ready to call the officer and have him come out and do a report, thinking that's going to be that.

Well, she reached out to Archie's shoulder, and she said you came this close to hitting me, and mushed me in the face with her hands. And then the next thing I know there was a punch to the head. So I'm trying to defend myself because the last thing I'm thinking is she's going to get physical with me. But in case she does, I made provisions by, you know, standing away from her.

She's larger than me, taller than me, but, you know, it is what it is. I'm just trying to get away from her to make sure that we don't lock up or we don't get into a fight.

When she hit me, I kind of stumbled back, and then I started swinging back. You know, I'm defending myself. I raised my arm to block my face. When I raised my arm to block my face, that's when I felt my arm burning, and I felt some – felt like an itchy, burning feeling. So when I looked down at my arm, I realized that I was bleeding.

So when I realized I was bleeding, it was just like I just blacked out. I don't know what else happened from that moment up until the point that we end up going down on the ground.

All I could think in my mind was I lost my daddy to stabbing. I don't want my kids to lose their mama to somebody stabbing her.

. . . .

[DEFENSE COUNSEL]: Now, so do you recall – I mean, it's obvious there was something sharp –

[DEFENDANT]: Right.

[DEFENSE COUNSEL]: -- used in this fight. Do you recall getting your hands on it or what happened?

[DEFENDANT]: I remember that when I realized that I was cut, I lunged for her because I wanted her to stop, like I was trying to prevent her. So at that point, *I don't actually remember taking it from her, but I'm sure I did.* You know what I'm saying? It's just like fight or flight. And I can't get away.

The jury convicted Defendant of assault with a deadly weapon. Defendant timely appealed. On appeal, Defendant requests we vacate the judgment and remand for a new trial due to the trial court's failure to instruct the jury on self-defense and due to the ineffective assistance of her counsel.

ANALYSIS

A. Plain Error

We review unpreserved allegations of instructional error only for plain error. *State v. Lawrence*, 365 N.C. 506, 516 (2012). Under this standard, “a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that . . . the error had a probable

impact on the jury’s finding that the defendant was guilty.” *Id.* at 518 (citations omitted). Under our Supreme Court’s holding in *State v. Lawrence*, our review for plain error is threefold: “First, there must be an error Second, the error must be . . . ‘clear’ or . . . ‘obvious’ Third, the error must . . . be prejudicial, meaning it affected the outcome at trial.” *Id.* at 515 (citations omitted).

In *State v. Fitts*, we discussed four prongs required to warrant a self-defense instruction when Defendant has used a deadly weapon:

(1) the defendant believes he is in imminent danger of death or serious bodily injury; (2) that belief is reasonable; (3) the defendant is not the aggressor in the dispute or altercation creating the threat; and (4) the defendant’s use of force is not more than is reasonably necessary to protect himself or another person from death or serious bodily harm.

State v. Fitts, 254 N.C. App. 803, 806 (2017) (citing *State v. Revels*, 195 N.C. App. 546, 550 (2009)). When courts determine “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 [the] defendant.” *State v. Mash*, 323 N.C. 339, 348 (1988). Further, “the court must charge on [self-defense] even though there is contradictory evidence by the State or discrepancies in [the] defendant’s evidence.” *State v. Coley*, 375 N.C. 156, 159 (2020) (citing *State v. Dooley*, 285 N.C. 158, 163 (1974)).

However, when a Defendant testifies that she lacked the requisite *mens rea* to have committed the crime with which she is charged, she may not simultaneously

argue that she acted in self-defense. The “absence of consciousness . . . precludes the existence of any specific mental state.” *State v. Boggess*, 195 N.C. App. 770, 772 (2009) (quoting *State v. Fields*, 324 N.C. 204, 208 (1989)). A defendant is not entitled to self-defense when “he testifies that he did not intend to [use deadly force against] the attacker.” *State v. Cook*, 254 N.C. App. 150, 155 (2017), *aff’d by*, 370 N.C. 75 (2018).

In *State v. Yarborough*, the defendant testified that he did not recall shooting the victim. *State v. Yarborough*, 271 N.C. App. 159, 171 (2020). Additionally, an expert witness had testified the defendant was “acting instinctively and involuntarily.” *Id.* The lack of a conscious state “precludes the existence of any specific mental state.” *Id.* (citing *State v. Boggess*, 195 N.C. App. 770, 772 (2009)). This contradicts the first requirement of self-defense: that the defendant “formed a belief that it was necessary to . . . protect himself from death or great bodily harm.” *Id.* We held this evidence “defeat[ed] his self-defense argument.” *Id.* Similarly, in *State v. Williams*, our Supreme Court held that “[t]he defendant is not entitled to an instruction on self-defense while still insisting that he did not fire the pistol at anyone[.]” *State v. Williams*, 342 N.C. 869, 873 (1996). Defendant must have had the *mens rea* to consciously act to be potentially entitled to a self-defense instruction.

Here, Defendant testified that she believed it necessary to use force against Gullett to save herself from being stabbed. However, she later told the jury that she blacked out during the fight after being cut by Gullett. Defendant testified that she

was not conscious during the fight after realizing she was cut, and thus her defense was not predicated on self-defense; rather, her testimony, even in the light most favorable to her, was the equivalent of arguing that she “did not commit the criminal act at all.” *State v. Holshouser*, 267 N.C. App. 349, 353 (2019); *see also Yarborough* 271 N.C. App. at 171. As in *Yarborough*, where the defendant stated he did not recall the attack, Defendant’s purported unconscious state of mind similarly defeats her self-defense argument. Moreover, like *Williams*, where the defendant testified that he did not fire the pistol at all, Defendant’s testimony that she did not recall stabbing anyone with a weapon likewise precludes her ability to argue self-defense. As Defendant could not have formed a belief that she had to act to protect herself while not conscious of her actions, Defendant was not entitled to a self-defense instruction. The trial court’s omission of a self-defense instruction was not erroneous.

B. Ineffective Assistance of Counsel

Our standard of review for ineffective assistance of counsel is de novo. *State v. Wilson*, 236 N.C. App. 472, 475 (2014). Effective assistance of counsel is defined as a “wide range of professionally competent assistance,” and there is a strong presumption that the attorney has “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Strickland v. Washington*, 466 U.S. 668, 690 (1984). If counsel’s “deficient performance prejudiced the defense” and the deficient performance “deprive[d] the defendant of a fair trial,” then counsel has provided ineffective assistance. *Id.* at 687. Further,

Defendant must show that, “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

Here, all of Defendant’s arguments regarding ineffective assistance of counsel pertain to the preservation of the request for a self-defense instruction. For the reasons discussed above, however, defense counsel’s actions would not have affected the result of the proceeding, as Defendant was not entitled to a self-defense instruction even if the request had been preserved. Defendant did not receive ineffective assistance of counsel.

CONCLUSION

We hold that Defendant was not entitled to a self-defense instruction. We further hold that Defendant did not receive ineffective assistance of counsel.

NO ERROR.

Judges CARPENTER and GRIFFIN concur.

Report per Rule 30(e).